

(2013) 03 MAD CK 0027

In the Madras High Court

Case No : Writ Petition No. 7716 of 2008 and M.P. No. 1 of 2008

Management of Chennai Corporation

APPELLANT

Vs

D. Arumugam and Another

RESPONDENT

Date of Decision : 12-03-2013

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(c)(2)

Citation : (2013) 139 FLR 202 : (2013) 2 LLJ 807 : (2013) LLR 1253

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : V. Udayakumar, for the Appellant; A. Amalraj, for the Respondent

Judgement

Vinod K. Sharma, J.—The Management of Corporation of Chennai has invoked extraordinary equitable jurisdiction of this Court under

Article 226 of the Constitution of India to challenge the award passed by the learned II Additional Labour Court, Chennai, dated 18.8.2007. G.

Arumugam, Workman was working as permanent labour with the petitioner. The Workman was directed to do emergency work on 15.10.1997

by the Divisional Electrical Engineer. The memo issued by the Divisional Electrical Engineer directed the petitioner to attend work with Tvl.

Damodaran, Venugopal and Srinivasan. The workman was directed to work from 8.00 a.m. to 8.00 p.m. and thereafter, Venugopal and

Srinivasan were directed to take charge from 8.00 p.m. to 8.00 a.m.

2. The case of the Workman before the learned II Additional Labour Court was, that as the Workman worked overtime for more than 8 hours

and therefore, were entitled to additional allowance.

3. On the failure of the petitioner to pay overtime allowance, the respondent No.

1 invoked the provisions of Section 33(c)(2) of Industrial Dispute Act, to claim the awarded amount.

4. Before filing claim petition u/s 33(c)(2) the respondent No. 1 had filed W.P. No. 18236 of 1989 praying therein for issuance of a writ in the nature of mandamus, to direct the petitioner to frame a Scheme for payment of additional remuneration for extra work done by the workmen. The writ petition was dismissed by this Court by observing that there was hardly any ground for framing of scheme as there were number of labour legislation taking care of additional remuneration payable for extra work.

5. Therefore, while dismissing the writ petition, liberty was granted to the respondent No. 1 to work out his remedy in accordance with law. It was in view of the liberty granted by this Court that the respondent No. 1 moved the learned Labour Court u/s 33(c)(2) of Industrial Dispute Act.

6. The learned Labour Court on appreciation of pleadings and evidence, recorded a finding of fact that the petitioner worked overtime and therefore, was entitled to additional remuneration as stipulated under the Minimum Wages Act and accordingly, passed award in favour of the respondent No. 1.

7. The learned counsel for the petitioner, has challenged the impugned award on the ground of jurisdiction of the learned Labour Court to entertain a petition u/s 33(c)(2) of I.D. Act in absence of any rule, regulation or Scheme for payment of additional remuneration for overtime work.

8. It was contended by the learned counsel for the petitioner that there was no scheme, agreement or rule for grant of additional remuneration which is clear from the fact that the respondent No. 1 had filed writ petition in this Court to frame a Scheme for additional remuneration. Therefore, it was not open to the learned Labour Court to entertain a petition u/s 33(c)(2) of I.D. Act, as the dispute regarding eligibility could only be gone into u/s 10 of I.D. Act. Therefore, the petition u/s 33(c)(2) which is in the nature of execution application was not maintainable.

9. Writ petition is opposed by the learned counsel for the respondent No. 1, by contending that it is not open to the petitioner, to challenge the maintainability, as this Court while dismissing W.P. No. 18236 of 1989 had clearly observed that there was number of labour legislation entitling payment of overtime and that there was no need to frame any Scheme as

claimed by the respondent No. 1. It was for this reason that the respondent No. 1 was permitted to work out his remedy in accordance with law.

10. On consideration, I find that there is no force in this writ petition. It is not disputed that the Minimum Wages Act and other industrial legislation recognise the right of a workmen to get overtime wages.

11. A finding of fact has been recorded by the learned Labour Court that the respondent No. 1 worked overtime for which he was entitled to additional remuneration.

12. It is true that reliance placed by the learned Labour Court, on provisions of Factories Act for grant of overtime allowance was not correct as this act was not applicable to the respondent No. 1. But, at the same time, it cannot be denied that the Minimum Wages Act was applicable to workman and respondent No. 1. The Corporation of Chennai is also bound by the provisions of Minimum Wages Act.

13. The right under the statute is a determined right which entitles a Workman to invoke the jurisdiction of the learned Labour Court u/s 33(c)(2) for commutation of benefit in terms of money for passing of award.

14. The learned Labour Court has exactly done this. The award therefore, cannot be said to be without jurisdiction or vitiated under any law which may entitled this Court to exercise writ jurisdiction under Article 226 of the Constitution of India.

15. The contention of the learned counsel for the petitioner that petition u/s 33(c) (2) of I.D. Act was not maintainable in absence of any rule or

Regulation also, cannot be accepted, as there are statutory provisions dealing with the grant of overtime allowance. Learned Labour Court has

given good reasons for awarding overtime allowance and those findings cannot be said to be perverse which may call for interference by this

Court.

No merit, dismissed.

No cost.