

(2012) 06 BOM CK 0078
In the Bombay High Court
Case No : Writ Petition No. 1192 Of 2012

Mr. Sarjerao Janardhan Hande and Others	APPELLANT
Vs	
Maharashtra State Cooperative Marketing Federation Ltd.	RESPONDENT

Date of Decision : 18-06-2012

Acts Referred:

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

Citation : (2013) 1 ALLMR 562 : (2012) 6 BomCR 346 : (2012) 134 FLR 495 :
(2012) 4 LLJ 718 : (2012) LLR 924 : (2013) 2 MhLj 204

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : R. P. Sawant instructed by Mr. A.K. Jalisatgi, for the Appellant; N. V. Bandiwadekar, for the Respondent

Final Decision : Dismissed

Judgement

Anoop V. Mohta, J.—Heard finally by consent.

The Petitioners have challenged the impugned order passed on an Application u/s 33C(2) of the Industrial Disputes Act, 1947 thereby rejected their claim of overtime wages. Both the Petitioners were working as drivers with the Respondent. Petitioner No. 1 took Voluntary Retirement Scheme(VRS) and retired on 31.03.2008. Petitioner No. 2 retired on 2 wp-1192-12.sxw superannuation on 30.04.2008. NO dispute was raised at that time with regard to the overtime wages. The Common Application was filed on 18.11.2009 i.e. after getting all the benefits of retirement/VRS.

2. The Respondent resisted their Application on all counts and even denied the validity of so-called documents filed and the averments so raised. The Petitioners, therefore, filed an Application for production of documents referring to the dates and vehicle numbers which they claim to have worked and the relevant overtime bills. The Respondent again by its reply dated 24.08.2010 resisted the Application also and denied specifically that they were not in

possession of any original overtime form and/or Register as claimed and/or as alleged. They even denied the existence or possession of such record of overtime. Here we are not concerned with the record of their regular service.

3. The Labour Court, therefore, rightly, considering the scope and purpose of Section 33(C) of Industrial Disputes Act and after considering the rival contentions as well as the documents placed on record, held that the Petitioners failed to prove that they have done the overtime work and they are entitled for wages, if any. 3 wp-1192-12.sxw.

4. Admittedly, this is not the case of the Petitioners that overtime wages which they are claimed, based upon undisputed and/or admitted documents on record. The Respondent, since beginning, are objecting on all counts even the existence as well as their claim of working as a drivers on overtime. No original documents and/or even secondary documents placed on record. The forms so placed on record are admittedly not counter signed by the officers of the Respondent. Zerox copies of those documents are just not sufficient. The existence of the so-called Register and/or documents for which Application was sought for and which was duly denied, in no way, sufficient to accept the case of the Petitioners that the Court ought to have taken adverse inference against the Respondent and thereby should have awarded the claim so raised.

5. Even assuming for a moment that the Court, in a given case, may take adverse inference, but that itself, in my view, in no way sufficient to accept the case of Petitioners that that amounts to admission of the claim. In the present case, as noted, the Respondents throughout denied even the existence and/or the claim of the Petitioners on all counts. Therefore, there is no serious dispute with 4 wp-1192-12.sxw regard to the documents itself apart from the claim so raised. This dispute, in my; view just cannot be gone into for the first time in the proceedings like this.

6. If case is made out in a given case, the Court, may consider the documents and material placed on record only to just verify whether the defence so raised by the employer and/or other side is just false plea and just to avoid the due and crystalised payment. In the present case, as noted above, all those things are missing. In my view, this is not incidental issue which the Court u/s 33, in the present facts and circumstances, should have gone into and should have adjudicated in favour of the Petitioners as contended.

7. The reliance by the learned counsel appearing for the Petitioners on a judgment of this Court dated 30 June 2008 in Writ Petition No. 950/2008 with Writ Petition No. 1514/2008M/s. Maharashtra State Coop. Marketing Federation Ltd. vs. Sarjerao Janardhan Hande and anr., is of no assistance in view of the distinguishing facts and circumstances. That was not a case of denial of even existence of document and even existence of documents. In the present case, as noted, the Respondents have denied the same. Admittedly, even the 5 wp-1192-12.sxw So-called forms were not counter signed by the Officers of the

Respondents. In the application to produce the record also there was specific denial. The Court, in the present case, has therefore considered all these aspects and rejected the application. The case so relied by the learned counsel appearing for the Petitioners, therefore, in no way can be said to be authority when we are dealing with the facts and circumstances of a particular case and not on the law. The case so cited in no way can be stated to be law on the subject when we are dealing with the facts of individual case. The Writ Petition is therefore, in view of the above, dismissed. No order as to costs.