

(2012) 10 DEL CK 0138

In the Delhi High Court

Case No : Writ Petition (C) No. 668 of 1974

M/s Otis Elevator Co. (India) Ltd.

APPELLANT

Vs

Sh. R.N. Mehrotra, P.O. Labour Court and Others

RESPONDENT

Date of Decision : 05-10-2012

Acts Referred:

Constitution of India, 1950 — Article 137, 226

Delhi Shops and Establishments Act, 1954 — Section 16, 17, 18

Industrial Disputes Act, 1947 — Section 10, 33C, 33C(2)

Citation : (2012) 10 DEL CK 0138

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Saurabh Prakash and Mr. Siddharth Yadav, for the Appellant; J. Buther, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—This writ petition, under Article 226 of the Constitution of India, impugns the order dated 11.04.1974 of the Labour Court on an application filed, by the respondents No. 3 to 42 workmen through the respondent No. 2 Otis Elevator Employees Union, u/s 33C(2) of the Industrial Disputes Act, 1947 (the I.D. Act) and directing the petitioner to pay to respondents No. 3 to 42 workmen a total sum of Rs.52,255.96 on account of weekly off days for the period January, 1964 to 09.06.1968. Vide ex parte order dated 31.05.1974 this petition was admitted for hearing. Subsequently on 06.06.1974, the counsel for the respondent workmen stated that the amount in question will not be recovered from the petitioner. Vide yet subsequent order dated 29.07.1974, the application of the petitioner for interim relief was disposed of accepting the undertaking of the petitioner to, in the event of this petition failing, pay the amount in terms of the impugned order to the respondent workmen together with interest at 9% per annum from the date of the impugned order till the date of payment. The writ petition however has languished for all these years. The counsels have been heard. The counsel for the petitioner has also filed synopsis of submissions and a second synopsis of submission.

2. The respondent workmen had filed the application aforesaid u/s 33C(2) of the I.D. Act pleading:

(i) that the petitioner M/s Otis Elevator Company (India) Ltd. was registered as a Commercial Establishment under The Delhi Shops and Establishments Act, 1954 (DSEA) at the address of 8, Parliament Street, New Delhi;

(ii) that the respondent workmen were daily rated employees of the petitioner and were covered by the DSEA;

(iii) that the petitioner was engaged in the business of sale of lifts (elevators) etc. as well as installation, service and repairs of lifts etc. and was carrying out servicing and repairs of the lifts from the office at 8, Parliament Street, New Delhi;

(iv) that the respondent workmen being daily rated workmen, were entitled to full wages for the weekly off days in accordance with Sections 17 and 18 of the DSEA and which the petitioner was refusing to pay.

3. The petitioner contested the aforesaid application u/s 33C(2) of the I.D. Act pleading:

(a) that the demand of the respondent workmen was barred by the principles analogous to the principle of res judicata, in view of the decision in an earlier dispute between the petitioner and its workman Sh. Hira Lal Kalra supported by the respondent No. 2 Union;

(b) that the application u/s 33C(2) of the I.D. Act was not maintainable since what was raised thereby was an industrial dispute referable u/s 10 of the I.D. Act;

(c) that the respondent workmen were not employees of the establishment at 8, Parliament Street, New Delhi;

(d) that the respondent workmen were earlier being paid their wages on monthly basis but for facilitating accounting and costing, these monthly rates had been converted to daily rates by dividing monthly salary by 26 which was further divided by 8 to give hourly rate;

(e) that the respondent workmen were not working in any establishment or shop and used to report directly to job site or at City Service Depot and were not covered by DSEA;

(f) that the wages of the respondent workmen were also disbursed either at the job site or at the Service Depot.

4. The Labour Court, on the basis of the pleadings before it, framed the following issues:

1. Whether the applicants claim is barred by operation of res judicata?

2. Whether the claim is barred by the Limitation Act?

3. Whether the Service Depot of M/s Otis Elevator Company, 5-Chamelian Road, Delhi is covered by the provisions of the Delhi Shops & Commercial Establishments Act, if not its effect?

4. Whether the claim is not maintainable u/s 33C(2), and is subject which should be covered under a reference u/s 10 of the I.D. Act?

5. To what benefits or amount, if any are the applicants or any of them entitled?

5. The Labour Court in the impugned order, held the claim of the respondent workmen to be not barred by res judicata, because the respondent workmen were not parties to the proceedings initiated by Sh. Hira Lal Kalra and thus the findings therein of the Labour Court could not bind the respondent workmen.

6. The impugned order records, that the petitioner did not press its plea / defence of the claim of the respondent workmen being barred by limitation. The impugned order nevertheless records that no limitation is provided in the I.D. Act for making an application u/s 33C(2). It may also be noticed, that the application u/s 33C(2) was filed on 26.06.1968.

7. The Labour Court, in the impugned order, has given detailed reasoning for holding the respondent workmen to be covered by DSEA. It has been held, on appreciation of deposition of the witnesses examined by the petitioner and the respondent workmen before the Labour Court, that the petitioner admittedly has a Commercial Establishment at 8, Parliament Street, New Delhi from where sales are affected and which is also registered under DSEA; that it had been admitted in the evidence that overall control of respondent workmen was exercised from 8, Parliament Street, New Delhi and thus the respondent workmen were the employees of the establishment at 8, Parliament Street, New Delhi; that even though the respondent workmen may be working on the job site but that does not take them out of the overall control of the Commercial Establishment at 8, Parliament Street, New Delhi; that in an earlier dispute between the petitioner and its workmen also, no such objection was taken by the petitioner that these workmen were not employees of the Delhi office of the petitioner; that even if it were to be assumed that the Service Depot of the petitioner at 5, Chamelian Road, Delhi is not a Commercial Establishment, it did not affect the respondent workmen who had been found to be the employees of the Delhi office of the petitioner at 8, Parliament Street, New Delhi which was admittedly a Commercial Establishment.

8. On the issue No. 4 aforesaid, as to whether the claim of the respondent workmen could be the subject of an application u/s 33C(2) of the I.D. Act or was a dispute, the Labour Court in the impugned order, relying on Chief Mining Engineer East India Coal Co. Ltd. Vs. Rameswar and Others, and on R.B. Bansilal Abirchand Mills Co. Ltd. Vs. The Labour Court, Nagpur and Others, held that Section 33C(2) of the I.D. Act takes within its purview cases of workmen who claim that the benefit to which they are entitled should be computed in terms of money, even though the right to the benefit on which their claim is based is

disputed by their employers. It was thus held that the claim of the respondent workmen to wages for the weekly holiday / off day u/s 18 of the DSEA was maintainable u/s 33C(2) of the I.D. Act.

9. As far as issue No. 5 supra i.e. on the merits of the claim of the respondent workmen u/s 33C(2) of the I.D. Act was concerned, the Labour Court relying on Workmen of the Bombay Port Trust Vs. Trustees of Port of Bombay, held that the plea of the petitioner of having computed the daily rate wages by taking the weekly holiday / off day into consideration was of no avail; that once it was found that the respondent workmen were employed on daily wages and are covered by DSEA, they are entitled to wages for the weekly holiday / off day. Accordingly, the total amount aforesaid of Rs.52,255.96 was computed as payable by the petitioner to the 40 workmen arrayed as respondents No. 3 to 42 in this petition.

10. The petitioner, in the writ petition and in the synopsis of submissions, has urged:

A. that it is only the employees who are working in the office at 8, Parliament Street, New Delhi whose names have appeared in the registers maintained by the petitioner in accordance with requirements of DSEA and without any objection by the Inspectorate under the DSEA or from the respondent workmen and the names of the respondent workmen have never appeared in the registers maintained as per the requirement of DSEA;

B. that the respondent workmen have never worked in the office at 8, Parliament Street, New Delhi and have been working in the field on the erection and servicing of lifts;

C. that upto 26.02.1961, the said field employees of the petitioner were also paid on monthly basis;

D. that effective from March, 1961, the petitioner revised the system of payment to the field staff and converted their rates from monthly to hourly basis; this was done for the purpose of facilitating the accounts, particularly for billing the clients;

E. that when the field staff was on monthly rate of wages, the payment for Sundays was included therein; while converting the wages of the field staff from monthly to hourly rate, a divisor of 180 was used (instead of 208 being the normal working hours in a month) for ensuring that the field staff continued to be paid for Sundays as well; similarly subsequently in the year 1963, while introducing the Dearness Allowance for the employees, for the field staff the same was fixed by dividing the monthly amount by 26, to ensure payment of Dearness Allowance for weekly off days also;

F. that subsequently in the year 1966, certain disputes between the petitioner and its employees were referred u/s 10 of the I.D. Act for adjudication and with respect whereto an Award dated 10.03.1969 (i.e. after the filing of the

application u/s 33C(2) of the I.D. Act) was made;

G. that one of the demands of the workmen therein was for conversion of labour categories from hourly rate to monthly rate but which was not accepted by the Industrial Tribunal;

H. that the workmen as well as the petitioner appealed to the Supreme Court against the Award dated 10.03.1969 and before the Supreme Court, the respondent workmen and the petitioner settled on some aspects and on the remaining aspects, the Supreme Court pronounced judgment reported as *The Workmen Vs. Otis Elevator Co. (India) Ltd.*, ;

I. that the Supreme Court also did not disturb the system of hourly or daily rates as had been introduced by the petitioner in the year 1961 and the wages of the field staff were taken as inclusive of Sunday wages;

J. that the claim of Sh. Hira Lal Kalra aforesaid, also u/s 33C(2) of the I.D. Act for additional wages for Sundays, had been rejected by the Labour Court vide order dated 28.03.1968;

K. that in view of the Award dated 10.03.1969, as modified by the judgment aforesaid of the Supreme Court, there cannot be any question of grant of any wages for Sunday in addition to the wages as agreed to by the parties before the Supreme Court;

L. that if the impugned order is to be implemented, it would lead to grotesque results and bring about discrimination amongst the workmen inasmuch as hourly rated workmen would become entitled to 1/7th wages in excess of what is being paid to monthly rated workmen - a result not contemplated by the settlement arrived at between the parties before the Supreme Court and which will lead to a fresh industrial dispute;

M. that the reliance placed in the impugned order on the judgment in *Workmen of the Bombay Port Trust supra* is misconceived inasmuch as in that case there had been no conversion from monthly to hourly wage as in the present case;

N. that the respondent workmen being field staff were not covered by the DSEA;

O. that the petitioner was not in violation of Section 18 of DSEA;

P. that the nature of claim of the respondent workmen could be decided only in a reference u/s 10 of the I.D. Act and not in an application u/s 33C(2) of the I.D. Act;

Q. that unless the impugned order is set aside, all workmen of the petitioner employed in the field would claim additional amount along with interest and which would create mammoth liability on the petitioner;

R. that even before the Supreme Court, while computing the increase in wages of the field workers, the increase in wages of the monthly workers was divided by 26, again showing that weekly off days were taken into consideration;

S. that merely because one of the establishments of the company was covered by DSEA, would not imply that all workmen are covered by DSEA;

T. that the impugned order tantamounts to interfering with the settlement arrived at between the petitioner and the respondent workmen before the Supreme Court;

U. that the Supreme Court in the Workmen of the Bombay Port Trust case had not dealt with the amended Rule 23 of the Minimum Wages (Central) Rules, 1950, while the daily wages of the respondent workmen have been computed as per the said Rule;

V. that a settlement has primacy over an Award. Reliance in this regard is placed on The Sirsilk Ltd. and Others Vs. Government of Andhra Pradesh and Another, , Balmer Lawrie Workers' Union, Bombay and Another Vs. Balmer Lawrie and Co. Ltd. and Others, and on Beed District Central Co-operative Bank Ltd. Vs. State of Maharashtra and Others, ; and

W. that had the respondent workmen raised the claim as made in the application u/s 33C(2) of the I.D. Act when the matter was pending before the Supreme Court, the petitioner would not have agreed to the fixing of the wages as done and would have applied the divisor of 30 and not of 26.

11. The respondent workmen have filed a counter affidavit to the writ petition pleading that the grounds urged in the writ petition are beyond the scope of judicial review under Article 226 of the Constitution of India; that the petitioner, by non mentioning of the names of the respondent workmen in the registers maintained under DSEA, cannot deprive the respondent workmen from the benefits of DSEA; that though earlier the petitioner was having a separate office and a Service Depot but at the time of filing the counter affidavit was having the office and the Service Depot at the same place i.e. 7/48, Malcha Marg, New Delhi; that the respondent workmen were similarly placed as the workmen employed in the office and merely because the nature of their duties required them to work outside the office could not place them differently from the employees working in the office; that in the year 1961, when the petitioner converted the respondent workmen from monthly rated to daily rated, the workmen were not organized and had no Union and thus could not protest; that once a daily wage is fixed at a certain figure, it no longer retains its character of being 1/26th of the monthly wages and a daily wage, however arrived at, is a daily wage and it is erroneous to regard it as a certain fraction of the monthly wage; that the scheme of the provisions of DSEA clearly indicates that something in addition to what is being actually received by the workmen for the six days of the week should be paid to them and this cannot be defeated by averring that what is being paid as six days wages is in fact seven days wage; that the respondent workmen are entitled for payment for the weekly off days on the basis of the wages which are payable to them, irrespective of how the said wages were fixed.

12. The counter affidavit aforesaid of the respondent workmen demonstrates that the respondent workmen are not controverting the material pleas of the petitioner, firstly, that prior to 1961, the respondent workmen were being paid on monthly basis; secondly that it was the monthly wages which were converted into hourly rate; thirdly that the monthly wages included the wages for weekly holiday / off day; fourthly that when the monthly wages were converted to daily / hourly rate, the wages for weekly holiday / off day which were a component of monthly wage got built into the daily / hourly rate; fifthly that even while giving the benefit of the Dearness Allowance and increase in wages agreed before the Supreme Court, the same allowance and increase as given to the employees paid on monthly basis was given to the respondent workmen also by spreading out the same allowance / increase over the number of hours worked by the respondent workmen.

13. The argument of the respondent workmen however is that even if while arriving at their daily / hourly wages, the component of wages for weekly holiday / off day is included, they, u/s 18 of DSEA, are still entitled to wages for the weekly holiday / off day.

14. That alone, according to me, is the question for consideration in this petition.

15. Sections 17 and 18 of DSEA are as under:

17. Period of rest (weekly holiday).- Every employee shall be allowed at least twenty-four consecutive hours of rest (weekly holiday) in every week, which shall, in the case of shops and commercial establishments required by this Act to observe a close day, be on the close day.

18. Wages for the holiday.- No deduction shall be made from the wages of any employee on account of the close day u/s 16 or a holiday granted u/s 17 of this Act.

If an employee is employed on a daily wage, he shall nonetheless be paid his daily wage for the holiday and where an employee is paid on piece rates, he shall receive the average of the wages received during the week.

16. However before proceeding to consider the said question, it has to be seen whether the matter is covered by the binding judgment of the Apex Court in Workmen of the Bombay Port Trust and on which the impugned order solely rests, inasmuch as the impugned order has not returned any finding as to whether the daily / hourly wages being paid to the respondent workmen is inclusive of the wages for weekly holiday / off day. The relevant part of the said judgment of the Supreme Court is as under:

This brings us to the employer's claim that there has been constructive payment for the Sundays during this period, viz., October 1953 to March 2, 1956. The argument is that the daily wage for these workmen was fixed by dividing all the components of the monthly scale of pay and allowances by 26 so that what a workman receives as daily wage is really 1/26th of the wage for 30 days. Thus, it

is said, the total receipts for the 26 days, if no separate payment is made for the rest days will be $26 \times \frac{1}{26}$ of 30 days' wage, that is, 30 days' wage. The fallacy in this argument is that it ignores the essential fact that once the daily wage is fixed at a certain figure it no longer retains its character of being $\frac{1}{26}$ of the monthly wage. However arrived at, the daily wage is a daily wage and it is wrong to regard it as a certain fraction of the monthly wage. When the Central Government in making these Minimum Wages Rules made this provision for payment on a holiday, it clearly intended that something in addition to what was being actually received for the six days of the week should be paid. This cannot be defeated by a statement that though in form six days wages were being paid, in fact and in substance, seven days wages were being paid. By no stretch of imagination can payment for six days be equated to payment for seven days.

We have therefore come to the conclusion that the workmen of the A and B categories are entitled to arrears of wages in respect of Sundays during the period October 1953 to March 2, 1956.

17. Though the aforesaid passage completely negates the argument of the petitioner, of the daily / hourly wage being inclusive of the wage for the weekly holiday / off day, but was pronounced by the Supreme Court in the context of Rule 23 of the Minimum Wages (Central) Rules, 1950 as it existed prior to the amendment with effect from 29.07.1960. The Rule, as it existed prior to 29.07.1960, was as under:

23. Weekly holidays - (i) Unless otherwise permitted by the Central Government, no worker shall be required or allowed to work in a scheduled employment, on the first day of the week (hereinafter referred to as the said day) except when he has or will have a holiday for the whole day on one of the five days immediately before or after the said day for which he shall receive payment equal to his average daily wages during the preceding week:

Provided that the weekly holidays may be substituted by another day:

Provided further that no substitution shall be made which will result in any worker working for more than ten days consecutively without a holiday for a whole day.

18. The Supreme Court, at the end of the judgment expressly observed as under:

As has already been mentioned, Rule 23 was amended in July 1960, i.e., long after the Tribunal gave the award under appeal. We express no opinion as to what the position in law is, after this amendment of Rule 23.

19. Rule 23 of the Minimum Wages (Central) Rules, after the amendment with effect from 29.07.1960, in Sub-Rule (4) thereof provides as under:

(4) An employee shall be granted for rest day wages calculated at the rate applicable to the next preceding day and in case he works on the rest day and has been given a substituted rest day, he shall be paid wages for the rest day on

which he worked, at the overtime rate and wages for the substituted rest day at the rate applicable to the next preceding day:

Provided that where the minimum daily rate of wages of the employee as notified under the Act has been worked out by dividing the minimum monthly rate of wages by twenty-six, or where the actual daily rate of wages of the employee has been worked out by dividing the monthly rate of wages by twenty six and such actual daily rates of wages is not less than the notified minimum daily rate of wages of the employee, no wages for the rest day shall be payable, and in the case the employee works on the rest day and has been given a substituted rest day, he shall be paid, only for the rest day on which he worked, an amount equal to the wages payable to him at the overtime rate; and if any dispute arises whether the daily rate of wages has been worked out as aforesaid, the Chief Labour Commissioner may, on application made to him in this behalf, decide the same, after giving an opportunity to the parties concerned to make written representations.

20. It would thus be seen that the dicta of the Supreme Court in *Workmen of the Bombay Port Trust* was in the context of daily wages, irrespective of whether in computation thereof, wages for the weekly holiday / off day had been taken into consideration or not. However, the amended Rule 23 of the Minimum Wages (Central) Rules *supra* takes into account a situation where the daily wage may be worked out taking into account the wage for the weekly holiday / off day and in which situation, no wage for the rest day / weekly holiday / off day is payable.

21. However that is not the end of the matter. In this case, we are concerned with a claim, not under the Minimum Wages (Central) Rules but under the DSEA, the language of Section 18 whereof is similar to the Rule 23 of the Minimum Wages (Central) Rules as it stood prior to the amendment of 29.07.1960. The question which arises is, should in interpretation thereof, the dicta aforesaid of the Supreme Court be applied.

22. I have been unable to find any precedent. The legislative intent of the provisions aforesaid of The Minimum Wages Act and The DSEA is the same i.e. to ensure a "paid" weekly holiday / off day to an employee / workman. There is nothing to indicate that even where, in computing daily wage, the wage for weekly holiday / off day is in-built, the Legislature intended "something more" to be paid to the daily rated workmen or to give an advantage to the daily rated worker, which is not available to his / her monthly rated equivalent. The daily rate does not put the worker in any disadvantageous position qua his monthly rated counterpart, for a need to be felt to compensate him / her for such disadvantage. In the present case, as aforesaid, the claim of respondent workmen to a monthly rate has already been negated. Logic tells me, that when the Legislature itself, realizing the mischief in the amended Rule 23 of the Minimum Wages (Central) Rules, has amended the same, the interpretation which follows from the amended Rule ought to be adopted. I am in agreement

with the contention of the counsel for the petitioner that the purport of Section 18 of DSEA, is not to give an advantage to an employee employed on daily wage over the employee paid on monthly basis, but to place an employee employed on daily wage at par with an employee employed at a monthly wage. Once it is found that wage for the weekly holiday / off day is already built in computation of daily wage, Section 18 of DSEA stands complied with and nothing additional is payable to such an employee.

23. Mention may however be made of *The Cooperative Store Limited Vs. K.S. Khurana and Others*, where also the plea of the employer was that the wages of the workmen in that case had been fixed on the basis of a Notification issued under the provisions of the Minimum Wages Act, 1948 and which Notification clearly provided that the daily rates of wages includes the wages for weekly off days for which no separate payment was necessary. However this Court found the Notification relied upon to be not covering the case of the workmen therein who were being paid on piece rate in as much as the Notification did not fix minimum wage to be paid for piece rate. It was thus held that the workmen were entitled to wages for the weekly holiday / off day in addition to the piece rate wages being paid to them. This order was affirmed by the Supreme Court in the judgment reported as *Cooperative Stores Ltd. Vs. K.S. Khurana and Others*, .

24. I am emboldened in taking the aforesaid view by the judgment of the Supreme Court in *Philips India Ltd. Vs. Labour Court, Madras and Others*, . In that case the employer had prescribed working hours less than the maximum permissible under the Tamil Nadu Shops and Establishments Act, 1947 and had prescribed overtime wages at the rate of 11/2 times the normal wages for the overtime if any done by the worker between the prescribed working hours and the maximum permissible under the Shop Act and at the rate of 2 times the normal wage for overtime beyond the maximum permissible under the Shop Act. The workers contended that since the Shop Act, for overtime prescribed wages at the rate of 2 times the normal wages, they were entitled to wages for overtime beyond the prescribed working hours, even though within the maximum permissible under Shop Act at the rate of 2 times the normal working wages and not at the rate of 11/2 times the normal working wages as being paid by the employer. Though the said contention was accepted by the High Court following the earlier judgment of the Supreme Court in *Indian Oxygen Ltd. Vs. Their Workmen*, but was negatived by the Supreme Court. It was held that the Shop Act having prescribed overtime wages at the rate of 2 times the normal wages for overtime beyond the statutorily maximum prescribed working hours, the employer if had prescribed the working hours less than the statutorily prescribed working hours, is free to prescribed the rate of overtime between the employer prescribed working hours and statutorily prescribed working hours at less than 2 times the normal wages. The earlier judgment in *Indian Oxygen Ltd.* was distinguished as in that case the overtime wages were the same as normal wages and which was held to be amounting to varying the employer prescribed working hours without any compensation to the workmen. The ratio and spirit of

the said judgment as understood by the undersigned is, that the special benefits conferred by the Shop Act are available only beyond the limits fixed by the Shop Act. Applying the said ratio, it follows that an employee employed on a daily wage, would be entitled to his said daily wage for the weekly holiday / off day, in compliance of Section 18 of DSEA only if the said daily wage is exclusive of the wage for the weekly holiday / off day; however if the daily wage is inclusive of the wage for the holiday, Section 18 cannot be read as requiring the employer to pay the wage for the weekly holiday / off day twice over i.e. once by including it in the daily wage and again by paying it over and above the daily wage.

25. Though the Labour Court in the present case has not given any finding on the plea of the petitioner of the daily wage of the respondent workmen being inclusive of the wage for weekly holiday / off day but the respondent workmen in their counter affidavit to the writ petition, have, as aforesaid, admitted the material pleas in this regard. Not only so, a perusal of the Award dated 10th March, 1969 supra shows that the explanation of the petitioner of having converted the wage of the respondent workmen from monthly rate to hourly rate by applying a divisor of 180 hours, so as to take care of weekly offs was accepted; similarly Dearness Allowance paid to the daily rated employees was found to be equivalent to the monthly rated employees of the petitioner and which is again indicative of the Dearness Allowance having also been computed for the weekly holiday / off day. Again, in the judgment supra of the Supreme Court arising from the said Award, enhancement in basic wage of the daily rated workmen of the petitioner was given in the same proportion and according to the same formula as applied for giving enhancement in basic wage to the monthly rated workmen; implying that the enhancement in daily wage was inclusive of the wage for the weekly holiday / off day. The Supreme Court also returned a finding of the privilege leave to which the daily rated workmen of petitioner were entitled to be at par with the privilege leave to which the monthly rated workmen of the petitioner were entitled. It was further found to be in accordance with the settlement between the petitioner and its workmen. It is thus conclusively established that wage for weekly holiday / off day, within the meaning of Section 18 of DSEA, is included in the daily / hourly wage of the respondent workmen.

26. I am therefore of the opinion that the Labour Court erred in blindly following the judgment of the Supreme Court in Workmen of the Bombay Port Trust. As far back as in *Herrington Vs. British Railways Board* 1972 (2) WLR 537 it was observed that there is always a peril in treating the words of a judgment as though they are words in a legislative enactment and it is to be remembered that judicial utterances are made in the setting of facts in a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases and disposal of cases by blindly placing reliance on a decision is not proper. The Apex Court in *Bharat Petroleum Corporation Ltd. and Another Vs. N.R. Vairamani and Another*, cited Lord Denning with approval opining that each case depends on its own facts and a close similarity between one case and another is not enough because even a single

significant detail may alter the entire aspect. It was further held that the temptation to decide cases by matching the colour of one case against the colour of another is to be avoided. Similarly in *Official Liquidator Vs. Dayanand and Others*, it was held that even one additional fact may make a lot of difference in the precedential value of a decision. The same sentiment was reiterated in *Sushil Suri Vs. C.B.I. and Another*, as well as in *U.P. State Electricity Board Vs. Pooran Chandra Pandey and Others*, .

27. I am therefore unable to sustain the order of the Industrial Adjudicator. Though in view thereof, the challenges of the petitioner to the other findings of the Labour Court fades into insignificance, but for complete adjudication, it is deemed expedient to pronounce thereon also.

28. The counsel for the respondent workmen in this regard has relied upon *Cooperative Stores Ltd. supra* where this Court held an application u/s 33C of the I.D. Act to be maintainable for enforcing a claim for payment of weekly off day u/s 18 of DSEA. It was further held that provisions of Article 137 of the Limitation Act, 1963 are not applicable to applications moved before the Industrial Adjudicator constituted under the I.D. Act.

29. As far as the challenge by the petitioner to the respondent workmen being not employees covered by DSEA is concerned, I am of the opinion that the finding of the Industrial Adjudicator of the respondent workmen being employees of the establishment of the petitioner at 8, Parliament Street, New Delhi is not only a finding of fact based on evidence before the Industrial Adjudicator and thus not interfereable in exercise of powers of judicial review, but is even otherwise correct. The petitioner itself has relied upon the Award in the earlier Industrial Dispute and Settlement arrived at before and the judgment of the Supreme Court arising therefrom. A perusal of the said Award and the judgment of the Supreme Court itself show that the petitioner itself was treating the respondent workmen as employees of its establishment at 8, Parliament Street, New Delhi in those proceedings. The plea of the petitioner in these proceedings is thus an afterthought and mala fide. I am therefore unable to accept the challenge by the petitioner to any of the other findings of the Industrial Adjudicator. No error is found in the finding of the Labour Court of the earlier order of the Labour Court in *Sh. Hira Lal Kalra* not constituting *res judicata* qua the application u/s 33C(2) of the I.D. Act preferred by the respondent workmen. However in view of the discussion in paras No. 13 to 27 herein above, the petition is allowed and the order dated 11.04.1974 of the Labour Court in *L.C.A. No. 767/1968* is set aside.

No costs.