

**(2003) 01 RAJ CK 0016**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 5852 of 1993**

Municipal Council Udaipur

APPELLANT

Vs

Nand Kishore and Another

RESPONDENT

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**Date of Decision :** 07-01-2003

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Industrial Disputes Act, 1947 — Section 20, 33C

**Citation :** (2003) 1 RLW 637 : (2003) 2 WLC 694 : (2003) 1 WLN 498

**Hon'ble Judges :** Prakash Tatia, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Prakash Tatia, J.—Heard learned Counsel for the parties.

2. By this writ petition the petitioner has challenged the order dated 20th Sept. 1993, copy of which is placed on record as Annex. 6 by which the Labour Court allowed the application u/s 33-C(2) of the Industrial Disputes Act, 1947 (for short "the I.D. Act") filed by the non-petitioner No. 1 claiming over-time wages from 1st Jan., 1971 to 31st Dec., 1980 amounting to Rs. 51,444/-

3. The brief facts of the case are that the non-petitioner employee agitated his claim for overtime by filing application under the provisions of Minimum Wages Act, 1948 and ultimately rights were determined when the Writ Petition No. 934/1982 was filed by the petitioner against the order of the authority under the Minimum Wages Act dated 21st August, 1981. this Court while deciding Writ Petition No. 934/1982 on 15th March, 1983 held as under:

It is directed that (i) the Fire Brigade Employees are entitled to overtime wages and the authority has jurisdiction to determine the overtime wages at the overtime rates and that the hard duty allowance which is said to have been paid in pursuance of the Notification Annexure-3 dated December 2, 1972 cannot be said to be the payment of the overtime wages under the Act; (ii) that the

determination of the amount relating to overtime wages compensation etc. cannot be sustained for, no enquiry in accordance with Section 20(3) of the Act was held. The Authority should determine the amount for the overtime wages in respect of the days on which non-petitioner No. 1 has worked overtime for four hours falling within the period of six months preceding the date of the presentation of the claims.

The result is that the writ petition is allowed to the extent indicated above. The order Annexure-4 dated August 21, 1981 of the Authority in regard to the determination of the quantified amount is quashed and set aside. The Authority shall hold enquiry and make a fresh order in regard to the amount payable to non-petitioner No. 1 on the claim filed u/s 20(2) of the Act in accordance with law keeping in view the observations made hereinabove. In the circumstances of the case, the parties are left to bear their own costs of the writ petition.

4. It is an admitted fact that after the decision of this Court dated 15th March, 1982, the amount was determined by the authority concerned and amount was paid to the non-petitioner but this amount was for the period starting prior to six months of filing of the claim petition by the employee before the authority under the Minimum Wages Act. These facts are not in dispute by both the parties.

5. The non-petitioner-employee submitted an application u/s 33-C(2) of the I.D. Act claiming the overtime wages starting from 1st Jan. 1971 to 31st Dec., 1980. According to learned Counsel for the petitioner, the claim petition u/s 33-C(2) of the I.D. Act was not maintainable because of the reason that the Labour Court has no jurisdiction to decide the disputed question of fact and entitlement of the claim of the employee. The authority dealing with the application u/s 33-C(2) of the Act of 1947 has only jurisdiction to adjudicate the pre-determined claim of the parties.

6. learned Counsel for the petitioner relies upon the judgment of Hon"ble Supreme Court delivered in the case of Municipal Corporation of Delhi Vs. Ganesh Razak and Another, . The other submission of the learned Counsel for the petitioner is that the claim petition of the non-petitioner-employee is barred by principles of res-judicata. learned Counsel for the petitioner also relied upon the judgment of Hon"ble Supreme Court reported in Workmen of The Straw Board Manufacturing Co. Ltd. Vs. Straw Board Manufacturing Co. Ltd., and also relied upon the judgments of this Court reported in 1999(1) WLC 545 & 1974 SC 1604 to submit that once a party approaches the Court and it could have raised plea and failed to raise the plea, then the principles of the res-judicata applies. According to learned Counsel for the petitioner, even if the claim for overtime wages for the period commencing from 1.1.1973 to 31.12.1980 became barred by time under the Act, the non-petitioner-employee could have moved an application for condonation of delay before the authority but he did not chose to submit any application before the authority. Therefore, in fact he has failed to raise the claim before the authority and it will be deemed that non-petitioner-employee himself abandoned the claim.

7. learned Counsel for the respondents submits that in fact there were two petitions for the relief of overtime wages filed by the employee before the competent authority upon which case No. 26/80 relating to the period from 1st Jan., 1971 to 31st March, 1980 was decided on 21st August, 1981 against which the Writ Petition No. 934/82 was filed and which was decided by order dated 15th March, 1983. The another claim petition No. 214/81 was relating to the period from 1st April, 1982 to 16th June, 1982 and was decided on 23rd Oct., 1982 against which no writ petition was filed. It is submitted by learned Counsel for the non-petitioner-employee, that in fact entire rights and liabilities have already been determined by this Court while deciding the Writ Petition No. 934/1982 and this Court has categorically held for the entitlement of the non-petitioner for the overtime wages. On the basis of the determined right of the petitioner by the High Court, the Labour Court was required to pass the appropriate order for the amount, which was not paid to the non-petitioner. The Labour Court was not called upon to decide the entitlement of the non-petitioner.

8. It is also submitted that the plea of res-judicata is not applicable in the facts of this case because the non-petitioner's claim was not denied by the competent authority and the authority had jurisdiction only to grant relief for the period, which was permitted by the High Court in its order dated 15.3.1983 when the competent authority had no jurisdiction to hear and decide the claim of the non-petitioner employee then the plea of res-judicata is not available. So far as the right of getting delay condoned from the concerned authority is concerned, it is submitted that since the non-petitioner had another option for getting the relief from the Labour Court u/s 33-C(2) where no period of limitation is prescribed, therefore, non-petitioner moved to competent authority u/s 33-C(2) of the Act of 1947. It is also submitted that when two remedies are available to one person, then the person can choose the forum and non-petitioner had chosen the Labour Court as the forum.

9. I considered the rival submission. It is clear from the order dated 15.3.1983 of this Court (Annex. 2), this Court directed the authority to determine the amount of back wages in respect of the days for which non-petitioner worked overtime falling within six months preceding, the date of presentation of application then authority under the Minimum Wages Act had no jurisdiction to entertain the claim of the employee which was not permitted by the High Court, then other remedy to get relief from other authority, where claim was not barred by any period of limitation, cannot be held barred and plea of res-judicata has no application nor it can be said that claim stand abandoned by the claimant only because instead of seeking indulgence of the authority under Minimum Wages Act, the non-petitioner opted for the another forum the Labour Court where he had no hurdle of bar of limitation against the claim of the non-petitioner.

10. So far as the contention of learned Counsel for the petitioner that the application u/s 33-C(2) itself is not maintainable before the Labour Court is concerned, has no force. Even in the judgment which was relied upon by learned

Counsel for the petitioner delivered in the case of *Municipal Corporation of Delhi v. Ganesh Razak and Anr.* (cited supra), the Hon"ble Supreme Court has categorically held as under:

It is clear that there has been no earlier adjudication by any forum of the claim of these workmen of their entitlement to be paid wages at the same rate at which the regular workmen of the establishment are being paid and there is no award or settlement to that effect. In short, this claim of the workmen has neither been adjudicated nor recognised by the employer in any award or settlement. The real question therefore is: whether in these circumstances, without a prior adjudication or recognition of the disputed claim of the workmen to be paid at the same rate as the regular employees, proceedings for computation of the arrears of wages claimed by them on that basis are maintainable u/s 33-C(2) of the Act? In our opinion, the question for decision is no longer *res integra* being long settled by earlier decisions of this Court. Some of the decisions have been referred by the High Court in the impugned judgment, but the application of the settled principle made by the High Court is erroneous.

The High Court has referred to some of these decisions but missed the true import thereof. The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding u/s 33-C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power u/s 33-C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power u/s 33-C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution

(Emphasis Supplied)

11. It is clear from the above judgment itself that the writ petitions were dismissed by the Hon"ble Supreme Court by holding that there is no prior adjudication or recognition of any of the right of the parties was there, whereas contrary to it, this Court by order dated 15th March, 1983, has already determined the right of the employee with respect to entitlement of overtime wages and this point is not open for challenge. What has been done by the Labour Court is that Labour Court directed the respondents to calculate the amount of the overtime wages. The executing court is required to interpret the order, which is required to be executed and while doing so, certainly the executing court can calculate the value of the claim. Here in this case, the Labour Court has not adjudicated any right of the party with respect to entitlement of the back wages. Mere calculation of the amount cannot be said to be a

determination of any right, therefore, contention of learned Counsel for the petitioner has no force in the facts of the case.

12. In pursuance of the order of this Court, the petitioner has already submitted claim of the overtime which is due in the petitioner of non-petitioner for which the non-petitioner's counsel has not raised any objection and admitted that if the amount which is determined by the petitioner amounting to Rs. 20,286/- is given in pursuance of the award dated 20th Sept., 1993 along with other relief as given in the award then the non-petitioner will not dispute this. Therefore, in view of the above, nothing is required to be, determined by the Court and this is admitted though subject to objection, entitlement of the nonpetitioner, which is accepted by the non-petitioner.

13. Therefore, in view of the fact that the employee non-petitioner had another remedy and availed that remedy and there is no bar of limitation for availing that remedy and earlier decision in favour of the employee, the claim has already been adjudicated by this Court in favour of the employee, then this Court is not supposed to interfere while exercising the jurisdiction under Article 226 of the Constitution of India to deny the legitimate benefit of the order even if it is erroneous in law, but here in this case, I do not find any error of law in the impugned order, therefore, the writ petition deserves to be dismissed and in view of the fact that the non-petitioner-employee has accepted the determination done by the petitioner no further determination is required.

14. Therefore, the writ petition is dismissed and the petitioner is directed to make the payment of the overtime wages along with interest as they have calculated and submitted the statement in this writ petition.