

(2001) 04 BOM CK 0016

In the Bombay High Court

Case No : O.O.C.J. Orgl. Application No. 1449 of 1997 and W.P. No. 723 of 1998

National Textile Corporation (South Mah.) Ltd.

APPELLANT

Vs

Vijay Kumar Agarwal and Others

RESPONDENT

Date of Decision : 11-04-2001

Acts Referred:

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

Citation : (2002) 4 LLJ 909

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.J. Kochar, J.—The Petitioners N.T.C. (SM) Ltd. are a Government Company registered u/s 617 of the Companies Act and is a subsidiary of NTC Ltd., New Delhi. The Respondents are the employees of the erstwhile Elphinstone Spg. & Wvg. Mills Co. Ltd. It was one of the 13 mills the management of which was taken over and vested with the NTC, New Delhi as the custodian under the Ordinance No. 10 of 1983, which was replaced by the Textile Undertaking (Taking over of Management) Act, 1983. Petitioners were appointed as the additional custodian for the aforesaid 13 Mills. The Respondents employees claim to continue in the employment of the petitioners even after the taking over of the management of the erstwhile company. It is an admitted fact that all of them were employed and working in the registered office of the company. The petitioners had disowned them and had denied the relationship of employer-employee. It would be relevant to mention at this stage itself that there was earlier one round of litigation on the question of employer-employee relationship between the petitioners and the respondents employees upto the Supreme Court. This Court in Writ Petition No. 666 of 1986 had directed the petitioners to treat the respondents-employees as their employees and to pay them emoluments as would be admissible. The petitioners carried this judgment to the Supreme Court but their SLP was dismissed on November 24, 1992. The issue of

employer employee relationship was thus finally put at rest by the Supreme Court.

2. According to the. Respondent-employees, they reported for work but they were not assigned any work nor were they paid their wages. After correspondence the. Respondents were constrained to once again knock the doors of the Courts to claim their wages, as the employees of the petitioners who were ready and willing to work were denied the work and also the wages. They filed the present. application u/s 33-C(2) of the Industrial Disputes Act, 1947 and claimed wages from December 1, 1983 till July 1993 claiming to be entitled to the full emoluments during the said period. The present respondents employees had computed their dues in separate annexures with the application individually also praying for other legal dues such as Bonus, Leave Encashment etc. as averred in the applications. It would be appropriate to clarify, at this stage itself that the petitioners had paid to the said employees wages from October 18, 1983 till November 30, 1983 and thereafter they were denied their lawful emoluments which they claim in the proceedings u/s 33-C(2) of the Industrial Disputes Act before the Labour Court.

3. The petitioners filed their written statement and disputed the entitlement and computation of the emoluments claimed by the said employees on various grounds including a ground of employer- employee relationship, which was already finally determined by the Supreme Court. As usual the petitioners had advanced number of untenable pleas to deny even the legitimate benefits of the employees. The petitioners emphatically denied that the said employees had any existing right to claim the money due/benefits from the petitioners. The only material plea taken by the petitioners was that all the employees were gainfully employed in the company viz. Dupont Sportswear Ltd. on and from November 8, 1987 onwards as shown in the Annexure-A to their written statement. The Annexure-A gives the total period of employment of the employees in the said company. It was therefore contended that the employees were not entitled to any wages and the benefits for the entire period during which they were gainfully employed in the aforesaid company. The petitioners therefore prayed for dismissal of the applications filed by the employees.

4. Both the parties adduced oral and documentary evidence before the Labour Court. The learned Judge of the Labour Court by his impugned judgment and order determined the entitlement of the employees to receive wages and other benefits payable by the petitioners and computed the total claims and directed the petitioners to pay the same to the employees. The Labour Court had worked out the total claims individually of all the employees in the operative part of his order. In fact the Labour Court has granted the claims of the employees for the period of unemployment and has denied the claim for the period during which the employees were employed in the aforesaid Dupont Sportswear Ltd. The Labour Court has individually computed the total dues payable to the employees and the same has been reduced by the petitioners in a Tabular Form in Exh. J to

the petition.

5. Ms. Doshi, the learned advocate appearing for the petitioners was at pains to point out that the employees had claimed three benefits which they were not entitled as the employees of the registered office. According to her, they could get the emoluments and other components of the pay packets as they were getting prior to October 18, 1983 and nothing more than that. The grievance of the learned advocate was against the claims of the employees for city allowance, other allowance, ad hoc payment and leave encashment. Ms. Doshi pointed out that the aforesaid four components did not form part of the pay packets of the said employees prior to October 18, 1983 but the employees have claimed the said benefits and were wrongfully granted by the Labour Court. According to her the Labour Court had rightly denied the payment of emoluments during the period of the employment of the employees in the Dupont Sportswear Ltd. She has therefore urged that the counter petition filed by the employees to claim the emoluments for the said period should be rejected. According to her, there was absolutely no dispute that all of them were employed in the said company during the period as stated by the Petitioners before the Labour Court. I may mention at this stage itself that Shri Buch, the learned advocate for the employees fairly did not press his claims in the counter petition. He however, very strongly urged that the Labour Court has elaborately considered the existing rights and the entitlement of the employees and has very carefully computed the dues of the employees, and therefore, this Court should not disturb the impugned judgment and order of the Labour Court. Shri Buch submitted that question of entitlement of very trivial items such as city allowance etc. were not agitated before the Labour Court, and therefore, this Court cannot play the role of a Court u/s 33-C(2) of the Act. Shri Buch has worked out the difference between the claim awarded by the Labour Court and claim admittedly payable by the petitioners to the tune of Re. 1,47,815/-amongst the nine employees. At the same time Shri Buch has pointed out that the Labour Court has denied the legitimate claim of the employees for some of the employees who were actually not impleaded for which they were denied their claims partly. Shri Buch further pointed out that there was absolutely no evidence before the Labour Court about the fact that the employees were not getting the aforesaid three minor benefits prior to October 18, 1983. In the absence of such material evidence the Labour Court has rightly computed the claims, says Shri Buch.

6. I have carefully gone through the entire proceedings of both the above petitions. I have heard both the learned advocates at length. I have carefully gone through the impugned judgment and order of the Labour Court. In my opinion there is absolutely no infirmity or any mistake in the impugned judgment of the Labour Court, which has clearly held on the pleadings and evidence of both the parties and has recorded clear findings of facts. He has elaborately discussed the reasons and has minutely calculated and computed the dues. I do not find any substance or merits in the submission of Ms. Doshi that the employees were not entitled to the three benefits viz, city allowance, other

allowance and ad hoc allowance. Ms. Doshi has frankly admitted that there are no rules for leave encashment benefit payable to the employees. It is therefore not possible for me to deny this benefit to the employees. I agree with Shri Buch that it was for the petitioners to have placed before the Labour Court the documentary evidence to show what was the total pay packet of the employees before October 18, 1983 and what were the components of such pay packets of all the employees. In the absence of such material and relevant evidence I do not find any illegality or any mistake on the part of the Labour Court which has computed total pay packets as emoluments payable to the employees on the basis of their claims. It is not the case of the petitioners that there was any wrongful claim or any exaggerated and untenable benefits claimed by them. If the petitioners found that the aforesaid three components were not payable as they were not paid prior to October 18, 1983 it was for the petitioners to have placed before the Labour Court the relevant documentary evidence, which was available with them. Besides, the difference per head is very small and not very significant which would make any great difference for the petitioners who have withheld the legitimate dues of the employees without any justification for a period of about 10 years or so. The Labour Court has awarded only cost of Rs. 500/- per head and has not considered to grant interest on the legitimate claims of the employees unnecessarily withheld by the petitioners for such a long period. The aforesaid so-called difference can be treated as solatium for the employees who have been subjected to the ordeal of litigation for their legitimate claims of monthly wages. There is absolutely no quarrel with the submissions of Ms. Doshi that the employees were not entitled to any emoluments for the whole period of their employment with Dupont Sportswear Ltd. and the Labour Court has rightly not awarded the wages to the employees for the said period and Shri Buch has rightly and fairly not made any submission on that count. I, therefore, do not find any substance in both the above petitions which deserve to be dismissed and are dismissed.

7. The petitioners ought to have gracefully accepted the order of the Labour Court which is absolutely just and fair and is correct in accordance with law. The petitioners have unnecessarily dragged the employees to this Court. I would have been justified in imposing a heavy cost on the petitioners. I am however restraining myself from doing so for the reasons that the employees are getting little more in the form of the allowances which according to the petitioners were not payable and the petitioners themselves are a sick company vested with the public funds.

8. I therefore, dismiss both the petitions with no order as to costs.