

(2022) 04 BOM CK 0068

In the Bombay High Court

Case No : Writ Petition No. 8128, 8129 Of 2009, 244 Of 2010

Prabhakar Kisan Magar And Others

APPELLANT

Vs

Divisional Railway Manager

RESPONDENT

Date of Decision : 18-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 2(s), 3(1), 3(1)(a), 3(1) (b), 4, 33(C)(2)

Citation : (2022) 04 BOM CK 0068

Hon'ble Judges : G. S. Kulkarni, J

Bench : Single Bench

Advocate : R.R.Salvi, Suvarna Telgote, Neeta V. Masurkar, Nieyaati Masurkar, Suresh Kumar

Final Decision : Allowed

Judgement

G. S. Kulkarni, J

1. These are four Writ Petitions which raise common issues of facts and law in mounting a challenge to the orders passed by the Central Government Industrial Tribunal & Labour Court No.II at Mumbai (for short 'Industrial Tribunal') whereby the applications of the petitioners filed under Section 33(C)(2) of the Industrial Disputes Act, 1947 (for short 'the ID Act'), have been dismissed.

2. The facts in all the four petitions are quite similar. For convenience, the facts of Writ Petition No.8129 of 2009 are required to be noted. The petitioner in the present case was formerly employed as a "First Class Coach Attendant", in the Commercial Department of the respondent-Railways. In the year 1989, he filed an application before the Industrial Tribunal under Section 33-C(2) of the Act claiming overtime wages from the respondent.

3. The said application of the petitioner was allowed by the Industrial Tribunal by an order dated 30 September 1992 whereby the Industrial Tribunal ordered the respondent – railways to pay to the petitioner overtime wages of Rs.49828.35.

Such amount was to be paid to the petitioner within a period of three months from the date of the said order. The amounts are different for the other petitioners.

4. The respondent, however, failed to comply with the said orders passed by the Industrial Tribunal and later on after lapse of about six years of the order of the Industrial Tribunal, the respondent approached this Court by filing Writ Petition No.1955 of 1998, which came to be dismissed by this Court by an order dated 10 February 2000. Respondent thereafter filed a Writ Appeal before this Court being Appeal No.311 of 2002, assailing the orders passed by the Single Judge, dismissing their writ petition. The said writ appeal(s) as filed by the respondent also came to be dismissed by the Division Bench by an order dated 23 April 2002.

5. Despite the Division Bench dismissing the respondent's writ appeal(s), the respondent with impunity failed to comply with the order passed by the Industrial Tribunal and make payment of overtime wages due to the petitioner since the year 1992. The petitioner, being aggrieved by such adamant conduct on the part of the respondent, filed a contempt petition before this Court alleging non-compliance of the order passed by the Industrial Tribunal, as confirmed by the learned Single Judge of this Court as also by the appeal Court.

6. The petitioner has stated that this Court had taken cognizance of such conduct of the respondent and notices were issued to the respondent in the contempt proceedings. Only thereafter, on 14 March 2003 the respondent finally paid an amount of Rs.49,828.35 as awarded to the petitioner by the Industrial Tribunal vide order dated 30 September 1992. Thus, the respondent made the petitioner wait for a period of almost 11 years to receive the benefits of the orders passed by the Industrial Tribunal.

7. Being aggrieved by such conduct of the respondent, the petitioner, as permissible in law, filed an application before the Industrial Tribunal on 11 August 2003 under Section 33C(2) of the ID Act claiming interest at the rate of 12% per annum from 30 September 1992, namely the date on which the Industrial Tribunal allowed the petitioner's application under Section 33-C(2), till the date of filing of the said application.

8. The Industrial Tribunal by the impugned order dated 14 August 2008 has rejected the petitioner's application filed under Section 33-C(2) of the ID Act interalia observing that the petitioner was not entitled to claim interest as the relationship of the petitioner and that of the respondent was not of a workman and employer, as contemplated under the Act for the reason that the petitioner was a pensioner when the said application was filed and thus, he was not entitled to any interest on the delayed payment of overtime wages. It was also observed that since the petitioner had not pressed for interest in the earlier proceedings before this Court, the petitioner would not be entitled to claim any interest. The orders of the Labour Court as impugned in these four petitions are similar and all are dated 14 August 2008. Such orders were passed by the Industrial Court on a

bunch of the applications, one of the applicants being Prabhavati Ramgarib B.

9. The petitioners being aggrieved by the said order passed by the Industrial Tribunal, have filed the present proceedings inter alia praying that the impugned order passed by the Industrial Tribunal be quashed and set aside and the respondent be further directed to make payment of interest on the amount at the rate of 12% per annum since 1992 till the amount is actually paid to the petitioners.

10. Mr.Salvi, learned Counsel for the petitioners has submitted that alongwith the petitioners, Prabhavati Ramgarib B. had also filed a writ petition assailing the said orders dated 14 August 2008 passed by the Industrial Tribunal. A learned Single Judge of this Court decided the writ petition filed by Prabhavati Ramgarib B. which was identical in facts and law as in the present proceedings. The judgment of the learned Single Judge is dated 4 February 2010 (Prabhavati Ramgarib B. Vs. Divisional Railway Manager, Western Railway Manager, Mumbai) reported in 2010(4) Mh.L.J. 691. By such directions the learned Single Judge allowed the writ petition of Prabhavati Ramgarib B., thereby directing the respondents to pay interest to the said petitioner at the rate of 12% per annum from the date of the application.

11. Mr.Salvi, learned Counsel for the petitioners in assailing the impugned order would hence submit that the view as taken by the Industrial Tribunal in rejecting the petitioner's application cannot be sustained as the challenge against an identical order has succeeded before this Court in the judgment and order of the learned Single Judge of this Court in the case of Prabhavati Ramgarib's case. It is submitted that in identical facts this Court has held that a claim such as one as made by the petitioners, was maintainable, inasmuch as, it pertained to a previously existing right of the employee against the employer. Mr.Salvi has submitted that the findings as recorded by the Industrial Tribunal are findings similar to the ones as recorded in Prabhavati Ramgarib's case which are certainly prior to this Court rendering its decision in Prabhavati Ramgarib's case (supra), as the impugned judgment is dated 14 January 2008 and the decision in Prabhavati Ramgarib's case (supra) was rendered on 4 February 2010.

12. Mr.Salvi has submitted that thus, in Prabhavati Ramgarib's case (supra) on identical considerations and by an identical order which was passed on the same day as the order impugned in the present petition, the Industrial Tribunal had not only rejected the application of Prabhavati Ramgarib, but also the petitioners' application was rejected. It is hence, Mr.Salvi's submission that the reliefs as prayed for in the present proceedings stand fully and completely covered by the said decision of the learned Single Judge of this Court in Prabhavati Ramgarib's case (supra).

13. On the other hand, Mr.Suresh Kumar, learned Counsel for the respondent, in opposing the petitions, would raise similar opposition as raised on behalf of the respondent in Prabhavati Ramgarib B. (supra) case which was considered and

stood concluded on its rejection in the said decision of the learned Single Judge. Mr.Suresh Kumar however, fairly would not dispute that in similar facts and circumstances as in the present case, this Court has rendered the decision in Prabhavati Ramgarib B. (supra). He submits that the said judgment was accepted by the respondent. Mr.Suresh Kumar has tendered a chart which would indicate that the facts in the present case including the dates of the several earlier orders are identical as in Prabhavati Ramgarib's case, as also the impugned orders are similar to the one in Prabhavati Ramgarib's case.

14. Having heard Mr.Salvi and Mr.Suresh Kumar, in my opinion, there is much substance in the contention as urged by Mr.Salvi in regard to the entitlement of the petitioners for the reliefs as prayed for in the present petitions. It is crystal clear that the petitioner had succeeded in the earlier litigation when the petitioners had made claims for payment of overtime wages, which were granted to them by the Industrial Tribunal. Such order of the Industrial Tribunal had attained finality not only before the learned Single Judge of this Court but also before the Division Bench of this Court in letters patent appeal, and ultimately as noted above, after a very long delay, such amounts came to be paid to the petitioners. Admittedly, there was delay which could not be attributed to the petitioners and hence, the petitioners being deprived of the fruits of the said amounts, the petitioners claimed that they had become entitled to interest on such amounts. In my opinion, it was a reasonable and a legitimate approach on the part of the petitioners to claim interest on such amounts which were deprived to them by the respondents for no fault of theirs and considered by all reasonable standards. It is with such legitimate grievance, the petitioners had approached the Industrial Tribunal in the proceedings in question praying for the interest amounts. In my opinion, the Industrial Court has completely misapplied itself to render the petitioner, not entitled for such amount on the ground that the petitioner ceased to be in the employment of the respondent and was in fact a pensioner. Such observations of the Industrial Court are required to be noted which read thus:-

"8) From this provision any person who wants to claim benefit under this provision must show that, he is entitled to receive said benefit in terms of money. When he establish that he has right to claim that benefit and in that case Court can compute the same and can pass an order. Here as stated by the Railway Authorities, no such right is acquired by the Applicant. As stated by the Railway Authorities, no Court has observed that, the Applicant is entitled to receive the interest if dues are not paid within time. Moreover, here word 'workman' is used who is entitled to take benefit of this provision and that too against his 'employer'. Here at present 'workman' and 'employer' both relations are not in existence as far as Applicant and Railway Authorities are concerned. Admittedly applicant has retired and is a 'Pensioner' of the Railway Authorities. So by any stretch of imagination it cannot be observed that, at present the Applicant can be called as 'workman' as expected and defined under Section 33(c) (2) of the Industrial Disputes Act,1947 and the Opponent cannot be called as the

'employer' in the light of the above definition.

9) Besides this, Railway Authorities have referred some citations. Citation published in 2004(8) SCC page 262 Apex Court while deciding the case of Executive Engineer, Zilla Parishad, Engg. Division Vs. Digamber Rao & Ors. observed that, sympathy and sentiments cannot be ground for passing an order where there is no legal right to claim such a relief. In the instant case there was no any order of interest. Only because this Applicant is a retired person and there was a delay of 10 years which was done by the Railway Authorities, in that case the sympathy or sentiments will not help the Applicant as observed by the Apex Court and Applicant cannot get interest as prayed. Besides, by said ratio Apex Court observed that, the principles of Res judicata apply in the Labour Laws in such case and the same view is taken by the Apex Court while deciding the case of Pandechery Khadi & Village Industries Board Vs. P.Kulothongan and Anr. published in 2004(1) SCC page 168. Even our Bombay High Court while deciding the case of G.Thiagarajan alias Rajan Gopal s/o. Gopala Swamy Vanniar Vs. J.B. Engineering Works and anr. Published in 2001(4) Bom.C.R. page 444 observed that, Applicant of this type cannot be called as 'workman' under Section 2(s) of the Industrial Disputes Act,1947."

15. In making such observations, the Industrial Tribunal has completely overlooked that the entire cause of action has arisen in regard to the legitimate entitlement of the petitioners to claim interest in regard to their claims of overtime wages, when they had ultimately succeeded before the Industrial Tribunal and even before this Court and ultimately having succeeded before the Division Bench when the writ appeal of the respondent was dismissed. Such payment which was entitled to the petitioners, was delayed on account of the litigation as resorted to by the respondent. Thus, admittedly, the petitioners were deprived of such amounts for no fault of theirs, to which they were, legitimately entitled. It is hence clear that the entire cause of action to receive such amounts inclusive of interest on delayed payment had hinged on something which had happened during the course of employment and when the petitioners were the 'workman' within the definition of the term as defined under Section 2(s) of the Act. Thus, for all purposes the petitioners were deemed to be workman for the purposes of the Section 33-C(2) application as the cause of action certainly related to their entitlement during the course of the employment. If the interpretation as made by the Industrial Court is accepted, it would lead to absolute miscarriage of justice in workman being prohibited from claiming amounts legally due and payable to them by the employer during the course of their employment, post the severance of the contract of employment.

16. Be that as it may, the issue is no more res integra and the controversy in the present proceedings is squarely covered by the decision of this Court in Prabhavati Ramgarib's case (supra) as rightly contended by Mr.Salvi. In such case, in an identical controversy, learned Single Judge of this Court considering the defence as advanced on behalf of the respondent, negated the findings of

the Industrial Court while holding that the petitioner therein (Prabhavati) was entitled to claim interest on such delayed payment as claimed by Prabhavati before the Industrial Court in her application which was rejected by the Industrial Court. The petitioners' claim before the Industrial Court was exactly similar to the one as made in Prabhavati's case. The relevant paragraphs in the said decision are required to be noted which read thus:-

"3. Mr.Patil, the learned counsel appearing on behalf of the Respondent opposed the Petitioner's application for interest on the following grounds :-

- i). The application under Section 33-C(2) was filed after considerable delay.
- ii). The application is not maintainable as there was no employer - employee relationship between the parties at the relevant time.
- iii). The Petitioner failed to furnish any evidence in support of the application.
- iv). The application is barred by res-judicata and/or principles analogous thereto.
- v). There is no legal basis for the grant of interest.

I have answered each of the submissions in the negative, against the Respondent.

4. The question of law that arises is whether the Labour Court has power under Section 33-C(2) to order an employer to pay the employee interest for the period between the date of an order of a Court or Tribunal or authority for payment and the date of payment.

I have answered the question in the affirmative upholding the claim for interest in such cases on four grounds - under Sections 3(1) (a) and (b) and 4 of the Interest Act, 1978, and in exercise of powers under Article 226 of the Constitution of India. A view to the contrary would lead to a total miscarriage of justice and disastrous consequences not merely in this matter but for bona-fide and innocent employees in general. It would put a premium on an employer disregarding orders of Courts, Tribunals and other authorities. Worse still, it would encourage an employer to refuse payments under such orders for as long as possible, rendering them virtually meaningless.

7. To uphold this contention would be a traversery of justice. It would put a premium on the entirely unreasonable and, in fact, contumacious conduct of the Respondent in not merely having failed and neglected to comply with the order dated 30th September, 1992, but having wilfully and contumaciously refused to comply with the same despite the fact that the order had been upheld by a learned single Judge and by the Division Bench of this court. It was only under pain of the contempt proceedings that the order was complied with. It is pertinent to note that the present application under Section 33-C(2) was filed on 11th August, 2003, i.e. within five months of the amount having been paid. There is no question, therefore, of the application suffering from delay and latches.

10. The impugned judgment in this regard is contrary to the provisions of Section 33-C(2). If this view is upheld, any application for recovery of money or other benefits under Section 33-C(2) made after the cessation of an employer-employee relationship would have to be dismissed even if the claim was in respect of a period when such a relationship existed. The impugned order is, in fact, contrary to the judgment of the Supreme Court in National Buildings Construction Corporation Ltd. Vs. Pritam Singh Gill & ors., (1972) 2 SCC 1 = 1972 Labour Industrial Cases, 857. ”

11. The ratio of this judgment would apply to a claim for interest on this amount awarded or due to a workman, even though it is for a period after the applicant ceases to be a workman so long as it is in respect of a principal sum which arose on account of or relates to his relationship as an industrial workman with his employer. In other words, an application for interest under section 33-C(2), in such a case, would be maintainable if it pertains to the principal sum which accrued when the person was a workman.

Such an application would also be maintainable for compound interest for even when the interest is compounded, it still in effect relates to the principal amount. Interest is always qua a principal amount. That the component of the principal amount may differ from case to case. For instance where compound interest is payable it will also include the previous interest. It makes no difference. The interest is relatable to and in respect of a right to receive wages or other benefits during the subsistence of the employer-employee relationship to wit during the period the applicant was a workman.

12. Any other view would lead to a totally unjust and undesirable result where the workman would be entitled to maintain an application under Section 33-C(2) only upto the period of his employment, but not thereafter despite the fact that the claim arises in respect of, in relation to or in connection with a period during which he was a workman. It would also lead to an absurd result requiring an employee to file proceedings before the Labour Court for the principal sum and possibly a part of the interest and a civil suit for the interest for the period after he ceased to be a workman.

... ..

27. The claim for interest is, as I said earlier, maintainable under subclauses (a) and (b) of sub-section (1) of section 3 and under section 4 of the Interest Act, 1978. A Court in exercise of powers under Article 226 can also grant interest in a case such as this. Section 3(1) of the Interest Act, 1978 is as under:—

“3.Power of Court to allow interest. — (I) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the Court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the following period, that is to say,—

(a) if the proceedings relate to a debt payable by virtue of a written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings;

(b) if the proceedings do not relate to any such debt, then, from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings:

Provided that where the amount of the debt or damages has been repaid before the institution of the proceedings interest shall not be allowed under this section for the period after such repayment."

17. I am in complete agreement with the above reasoning and conclusion of the learned Single Judge of this Court in Prabhavati Ramgarib's case. In my opinion, it is clear that the judgment of this Court in Prabhavati Ramgarib's case squarely covers the issues as arising in the present writ petitions.

18. The respondent in the present case has no other plea than what was urged before this Court in Prabhavati Ramgarib's case (supra). Moreover, the respondent has accepted the decision in Prabhavati Ramgarib's case (supra). The writ petitions hence need to succeed.

19. The petitions are accordingly allowed in terms of the following order:-

ORDER

(I) The impugned orders dated 14 August 2008 passed by the Central Government Industrial Tribunal and Labour Court No.II at Mumbai, in each of the above writ petitions, stand quashed and set aside.

(II) Each of these petitions are allowed in terms of prayer clause (a) which read thus:

Writ Petition No.8129 of 2009

(a) That this Hon'ble Court be pleased to issue writ of certiorari and/or writ in the nature of certiorari, order and/or direction calling for the records of proceedings from the Central Government Labour Court No.2, at Mumbai in Application No.LC-2/62/03 and after going through the legality and propriety of the judgment/order dt. 14/8/08, same be pleased to set aside the same and further be directed the Respondent to pay Rs.1,13,436/- from the date of application with interest @ 12% per annum till payment;

Writ Petition No.8128 of 2009

(a) That this Hon'ble Court be pleased to issue writ of certiorari and/or writ in the nature of certiorari, order and/or direction calling for the records of proceedings from the Central Government Labour Court No.2, at Mumbai in Application No.LC-2/61/03 and after going through the legality and propriety of the judgment and order dated 14 /8/2008 and the same be pleased to set aside the

same and further be directed the Respondent to pay Rs.1,08,318/- from the date of application with interest @ 12% per annum till payment;

Writ Petition No.205 of 2010

(a) That this Hon'ble Court be pleased to issue writ of certiorari and/or writ in the nature of certiorari, order and/or direction calling for the records of proceedings from the Central Government Labour Court No.2, at Mumbai in Application No.LC-2/69/03 and after going through the legality and propriety of the same be pleased to set aside the order dated 14 / 8/2008 passed by the Labour Court and further be directed the Respondent to pay Rs.1,37,208/- from the date of application with interest @ 12% per annum till payment;

Writ Petition No.244 of 2010

(a) That this Hon'ble Court be pleased to issue writ of certiorari and/or writ in the nature of certiorari, order and/or direction calling for the records of proceedings from the Central Government Labour Court No.2, at Mumbai in Application No.LC-2/65/03 and after going through the legality and propriety of the same be pleased to set aside the order dated dated 14/8/08 passed by the learned Labour Court and further be directed the Respondent to pay Rs.1,30,252/- from the date of application with interest @ 12% per annum till payment;

(III) Taking into consideration the fact that the petitioners are awaiting the amounts since the year 2008, the respondent is required to be directed to release the amounts at the earliest to the petitioners and which shall be released within a period of two weeks from today.

(IV) Rule is accordingly made absolute in the above terms.

(V) No costs.