

(1995) 04 AP CK 0044

In the Andhra Pradesh High Court

Case No : Writ Petition No. 10025 of 1994

Rajendranagar Municipality

APPELLANT

Vs

B.V. Perraju and Others, Workmen of Rajendranagar
Municipality and Another

RESPONDENT

Date of Decision : 14-04-1995

Acts Referred:

Administrative Tribunals Act, 1985 — Section 28
Evidence Act, 1872 — Section 57, 57(1), 58, 74
Factories Act, 1948 — Section 51, 52, 53, 54, 55
Industrial Disputes (Central) Rules, 1957 — Rule 62(2)
Industrial Disputes Act, 1947 — Section 10(1), 2, 33C, 33C(1), 33C(2)
Minimum Wages Act, 1948 — Section 2

Citation : (1995) 2 ALT 320

Hon'ble Judges : B.K. Somasekhara, J

Bench : Single Bench

Advocate : Gopal Govind Naik, for the Appellant; P. Raghavender Reddy and B. Bhaskar Reddy, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Somasekhara, J.—The common Award of Respondent No. 2, the III Labour Court, Hyderabad (Sri Syed Abdullah) dated 18-8-1993 passed in M.P. Nos. 179, 173, 176, 175, 172 and 174 of 1992 in favour of respondent No. 1 and against the petitioner is the subject and object of assail in all the writ petitions. The petitioner and respondent No. 2 are common in all the writ petitions. The six writ petitions with common questions comprise for disposal in this common judgment. The petitioner is Rajendranagar Municipality. Respondent No. 1 in each of the cases claiming to be a worker/workman of the petitioner, laid a claim for recovery of over-time allowance u/s 33-C(2) of the Industrial Disputes Act. It was resisted by the petitioner, but allowed in the Award. The relevant particulars of the parties, the claim etc., are tabulated hereunder:

SI. W.P. No. & W.P.M.P. No. Corresponding Name of Period Claim No. petitioner

before job held of claim Labour Court (1) (2) (3) (4) (5) (6) 1. W.P.9916/94M.P.174/92 D.S.Baburao Electrician 1-4-1988 Rs. 18,717.70 to 30-6-90 2. W.P.10025/94 M.P. 179/92 B.V.S. Peer Fitter 1-4-88 Rs. 46,386.00+ Raju (Operation) to 17,862.54 28-2-1991 OT 3. W.P.10026/94M.P.173/92 A. Rama- Fitter 1-4-1980 Rs. 17,980.40 chandriah to 31-12-1990 4. W.P.No.10027/94 Prakash Babu Watchman 1-4-1988 Rs. 12,473.38 M.P. 176/92 (dead) rep. by to L.R. Radha Bai 31-12-90 5. W.P.10028/94M.P.175/92 A.V.N.Murthy Fitter 1-4-1980 Rs. 82,857.62 (Operation) to 30-6-90 6. W.P.10030/94 Abdul Waheed Fitter 1-4-1980 Rs. 18,717.80 M.P.172/92 Ali (dead) rep. to by wife 31-12-1990 Ghousia Begum 2. Respondent No. 1 in each of the cases claimed that petitioner is a factory and industry and they are the workers/workmen for the purpose of operation of the Factories Act, Payment of Wages Act, Industrial Disputes Act and other Legislations concerning such persons. They were entitled for one day rest in a week with the benefit of wages. They worked on weekly off days, Sundays and holidays during the period of claim. They were entitled to over-time wages for the period of claim which should be double the rate of normal wages. They were not paid such over-time wages and therefore, they wanted the same to be paid to them by the Labour Court u/s 33-C(2) of the Industrial Disputes Act.

3. The petitioner denied that such persons were workers/workmen for the purpose of such Legislations. On the other hand, they are like the Government servants who are given all the benefits in such capacity like salary, leave etc. It was also denied that they were entitled to over-time wages for the period of claim. It was contended that respondent No. 2 Labour Court had no jurisdiction to allow the claim of respondent No. 1 in all the cases u/s 33-C(2) of the Industrial Disputes Act since the scope of enquiry under the provision was limited. It was further contended that the Labour Court had no jurisdiction to inquire into the claim and decide it as it was neither adjudicated nor recognised by the petitioner and on the other hand, it was disputed throughout. The claim was said to be barred by limitation. The learned Presiding Officer of the Labour Court after holding an enquiry into the controversies came to the conclusion that respondent No. 1 in the cases was entitled to the claim and accordingly allowed the same by rejecting the contentions raised by the petitioner.

4. Mr. Gopal G. Naik, the learned Advocate for the petitioner in support of the grounds raised in these petitions has formulated the following contentions for consideration:

(1) Respondent No. 1 in all the petitions have been employees of a local authority like Government servants and never workers/workmen to be governed by any of the labour legislations including the Industrial Disputes Act and therefore, they are not entitled to any relief u/s 33-C(2) of the Industrial Disputes Act.

(2) Since the claim of such persons being a matter relating to their service conditions, was to be agitated for the remedy, before the Administrative Tribunal

constituted under the Administrative Tribunals Act and not before the Labour Court u/s 33-C(2) of the Industrial Disputes Act.

(3) The claim in question amounted to the plea of entitlement to receive wages for over-time, for certain periods and therefore, required to be agitated upon or recognised by the petitioner and therefore out of the scope of Section 33-C(2) of the Industrial Disputes Act.

(4) The claim of such persons was for wages by way of over-time is not an existing right and therefore, not determinable to be enforced u/s 33-C(2) of the Industrial Disputes Act.

(5) The powers of the Labour Court u/s 33-C(2) of the Industrial Disputes Act which is akin to that of an executing Court did not extend for deciding the question of entitlement in regard to a right which was not in existence and therefore, respondent No. 2 in allowing the claim arrogated itself to decide the rights of such persons thereby making the impugned Award without jurisdiction.

(6) At any rate, the working on holidays, weekly off days and Sundays by such persons could be reimbursed by leave admissible as per Rules and could not have been the subject-matter of claim for decision and implementation u/s 33-C(2) of the Industrial Disputes Act and respondent No. 1 in determining any such claim and allowing it has exceeded its powers and jurisdiction.

(7) The impugned Award is liable to be quashed as being illegal and without jurisdiction.

5. Incidentally the learned Advocate for the petitioner has also contended that respondent No. 1 while applying law to the facts of the case with the precedents, was in total error in doing it.

6. Mr. V. Venkataramana, the learned Advocate for respondent No. 1 has argued to the contrary by repelling the above contentions and tried to support the Award totally both in regard to its legality inasmuch as the jurisdiction for respondent No. 2 to allow such claims.

7. Point: Whether the petitioner is a factory/industry in relation to respondent No. 1 in all the cases and whether respondent No. 1 is a worker/ workman. The petitioner is the employer of the 1st respondent in each of the cases who are Fitters, Operators, Electricians Watchmen etc., Although a doubt was raised regarding respondent No. 1 Prakash Babu (W.P.No. 10027/94) being a Watchman, whether he is a worker or workman, but having found the work entrusted to him concerning the systematic activity of the water supply and the machinery in that, the doubt was given up. Therefore, the status of the petitioner as a Factory/industry and respondent No. 1 in all the cases as workers/ workmen are matters of unquestionable factual and legal peripherals beyond any determinate pale. They while store, pump, supply or distribute water to satisfy human wants, carry on systematic activity by co-operation between them and in the vinculum of employer and workmen. The workers are remunerated for their

services both skilled and unskilled. They engage in the manufacturing process (Section 2(k)(ii) of the Factories Act) in the premises of the petitioner as workers (Section 2(1) of the Factories Act) for wages (Section 2(h) of the Minimum Wages Act). Thus the petitioner is an industry (Section 2(j) of Industrial Disputes Act, 1947) and respondent No. 1 in all the cases are workmen (Section 2(s) of the Industrial Disputes Act). Inescapably they should be operated with all labour/ industrial law and such legislations. Such questions are thus no longer open in view of the binding dictum of a Seven- Judge Bench of the Supreme Court of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, .

8. Point: Bar of jurisdiction of Labour Court u/s 33-C(2) of Industrial Disputes Act in view of the provisions of the Administrative Tribunals Act, 1985:-

Mr. Gopal G. Naik, the learned Advocate for the petitioner appears to have receded from such contentions under first point. However, his endeavour has not abated as respondent No. 1 in all the cases as employees of the municipality to press their service claims instead of approaching the Administrative Tribunal established u/s 4 of the Administrative Tribunals Act, 1985, approached a wrong forum, namely, the Labour Court u/s 33-C(2) of the Industrial Disputes Act having a limited jurisdiction, and having due regard to the provisions of the Administrative Tribunals Act, the Labour Court had no jurisdiction to try the claims of respondent No. 1 in all the cases u/s 33-C(2) of the Industrial Disputes Act. He may be right in thinking, but wrong in the postulations. His stream of ideas flows from certain premises of the Administrative Tribunals Act, 1985. It came into force with effect from 27-2-1985 with Amendment Act 19/86 and Amendment Act 51/87. The Preamble of the Act includes the Members appointed in any legal authority (which should include Municipalities). Section 2 of the said Act while making the provisions of the Act not applicable to certain persons described in sub-clauses (a) to (d) does not include the Members who are appointed and serving in the local authorities like Municipalities. Section 3(q) while defining service matters" means all matters relating to the conditions of the service in connection with the affairs of the Union or of any State or of any local or other authority. The same definitive clause includes remuneration including allowances of such persons. Therefore, the claim for over-time is a conditional service within the said definition. Section 14 of the Act empowers Central Administrative Tribunal to deal with all service matters concerning the persons or Members including such persons in any local or other authority Section 14(1)(b). Similarly, the State Administrative Tribunal deals with such service matters in relation to the Members belonging to local authority (Section 15(1)(b) and (c)). Therefore, when a special forum is constituted for such Members in relation to their service matters for the members belonging to a local authority like Municipality including persons like respondent No. 1, the jurisdiction of all other fora are barred in view of Section 33 of the Act which contemplates that the provisions of the Act have over-riding effect in relation to the matters which are inconsistent between the two. That is how and by virtue of Section 28 of the Act in Chapter V Mr. Gopal G. Naik, the learned Advocate for

the Petitioner contends that the jurisdiction and powers and authority become exercisable under the Act by the Tribunal and no such matter to be decided by Tribunal under the Act can be decided by any other Court or authority. Mr. Venkataramana, the learned Advocate for respondent No. 1 in all the cases, while conceding the implications of the relevant provisions of the Act has pointed out that the very provision (Section 28 of the Act) saves the jurisdiction of Industrial Tribunal and the Labour Court or any authority constituted under the Industrial Disputes Act to deal with such matters. Although, at the first blush, the contention of the learned Advocate for the petitioner looks attractive, his own basis of the argument detracts such an attraction. Mr. Venkata Ramana, the learned Advocate for the Petitioner (sic. Respondent) is right in pointing out that the very basis of the arguments of Mr. Gopal G. Naik repels his contention. Section 28 of the Act reads as follows:

Exclusion of jurisdiction of Courts except the Supreme Court under Article 136 of the Constitution:-

On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning members of any Service or persons appointed to any Service or post,

No Court except -

(a) the Supreme Court; or

(b) any Industrial Tribunal. Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force shall have or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters.

Therefore, instead of barring the jurisdiction of the labour Court or Industrial Tribunal in relation to persons appointed or employed in the local authority like Municipality, the specific provision supra in the Administrative Tribunals Act, 1985, saves the jurisdiction of such Industrial Tribunal /Labour Court to deal with the service matters in relation to such employees. It may be pertinent to point out that the persons governed by various enactments may have several remedies and fora for seeking remedies. In such a case the remedies can be termed as alternative. It may be necessary to point out that the workers/ workmen governed by the Factories Act, Industrial Disputes Act, Workmen's Compensation Act and the Minimum Wages Act have got certain remedies in regard to their service matters. Broadly stated, they have a remedy for compensation for an employment injury or death u/s 3 of the Workmen's Compensation Act, 1923, for such claims like over-time and Section 20 of the Minimum Wages Act for various remedies arising out of an industrial dispute; u/s 10 of the Industrial Disputes Act and also u/s 33-C(2) of the Industrial Disputes Act for recovery of money due from employer, and obviously under the provisions of Administrative

Tribunals Act. The settled law appears to be that where there are more than one alternative remedies, the persons so entitled to such remedies may seek one of the remedies and one of the fora and not all of them either simultaneously or otherwise. Our own High Court in *Business Manager, Andhra Printers Ltd. Vs. Industrial Tribunal-Cum-Labour Court and Another*, (P. Venkatarami Reddi, J.) and in *Mundegam Radhakrishna Reddy v. Bharathi Velu Bus Service* 1986 Lab. I.C. 80 (A.Laxmana Rao, J. who spoke for the bench) (F.B.) has set at rest this question regarding Section 33-C(2) of the Industrial Disputes Act as alternative remedy which can be pursued. Some times such particulars may be expressive in the statute like Section 167 of the Motor Vehicles Act, 1988 where alternative remedies are possible and permissible. Therefore, it would be futile to contend that by virtue of the provisions of the Administrative Tribunals Act in relation to the service matters of persons like respondent No. 1, the jurisdiction of the Labour Court u/s 33-C(2) is barred to entertain, consider and decide the claims for overtime wages.

9. Point:- Whether the 1st respondent in all the cases were entitled to the overtime wages for the period of claim.

10. The basis of the claim for overtime wages of respondent No. 1 in all the cases is that they were entitled to the benefit of weekly off in addition to the holidays etc., but they were made to work on such days and that they are entitled to overtime wages in law by virtue of Section 59 of the Factories Act, 1948 which is denied to them by the petitioner. The entitlement to such a claim is sought to be established by virtue of the provisions of Section 51 to Section 59 in Chapter VI of the Factories Act. In essence, the basis for such a claim is due to working under compulsion or otherwise beyond the prescribed working hours in law. Over time wages being the remuneration can be of being expressed in terms of money should be fit into the expression "wages" of Section 2(h) of the Minimum Wages Act, 1948. The law appears to be that such wages need not be payable on daily basis, weekly basis, monthly basis or any other periodical basis. As rightly pointed out by Mr. Venkataramana, the learned Advocate for respondent No. 1 in all the cases, the provisions stated above and other provisions of the Factories Act should define, explain and regulate the payment of "wages" including "overtime-wages". The title of Chapter VI of this Act itself indicates the computation of payment of remuneration in terms of hours with reference to a day, week and a month. "Day" means a period of 24 hours beginning at midnight (Section 2(e) of the Factories Act), "week" means a period of seven days beginning at midnight of Saturday or such other night as may be approved in writing for a particular area or by the Inspector of Factories (Section 2(f) of the Act). It is mandated that no adult worker shall be required or allowed to work in a factory for more than 48 hours in any week. It is further mandated that subject to the provisions of Section 51 no adult worker shall be required or allowed to work in a factory for more than 9 hours in a day subject to the exception that it may be exceeded to facilitate the change of shift with the previous approval of the Chief Inspector of Factories. Such daily hours are further

subject to interval for rest of atleast half an hour. The working hours shall be so fixed that no period shall exceed five hours continuously (Section 55 of the Factories Act). The periods of work of an adult worker in a factory shall be spread over for various purposes and reasons including night-shifts and the overlapping of shifts subject to the limitation under Sections 51, 54 and 55 of the Factories Act (Sections 56 - 66 of the Factories Act). The workers are also entitled to weekly holidays on the first day of the week (Section 52 of the Factories Act). They are also entitled to compensatory holidays where they are deprived of any of the weekly holidays for which provision is made u/s 52(1) of the Act and that must be computed within two months immediately following the month wherein such holidays were lost (Section 53 of the Factories Act). The cumulative effect of all these provisions is that no worker shall be required or allowed to work in a factory for more than eight hours per day, however, subject to extension to 9 hours with a break of atleast half an hour for rest and at any rate, not continuously for more than 5 hours at a stretch subject to spreading over of the same depending upon the shifts etc., and further the workers are entitled to a weekly holiday of one day in a week to be reimbursed or compensated in holidays if they are required or allowed to work beyond such working hours for certain reasons either due to contingencies of the situation or beyond the control of the management and the workers. Mr. Gopal G. Naik, the learned Advocate for the petitioner therefore, contends that the workers like respondent No. 1 would be entitled to compensatory holidays by virtue of Section 53 of the Factories Act and need not be compensated by means of over-time wages. Mr. Venkata Ramana, the learned Advocate for the 1st respondent in all the cases appears to be justified in contending that the provisions of Chapter VI of the Factories Act do not impose any obligation on the part of the workers to utilise the compensatory holidays for which they are entitled u/s 53 of the Act but also, they have a choice either to use such holidays or have compensation by means of extra wages for over-time by virtue of Section 59(1) of the Act. Such a contention justifiably should persuade this Court in view of the clear law contained in itself in Section 59 of the Act. Section 59(1) of the Factories Act may be extracted hereunder usefully:

"Section 59 Extra wages for overtime: (1) Where a worker works in a factory for more than nine hours in any day or for more than forty-eight hours in any week, he shall, in respect of over-time work, be entitled to wages at the rate of twice his ordinary rate of wages"

On a close scrutiny of Sections 53 and 59 of the Act, there is no room for thinking that the workers are obliged to utilise compensatory holidays only in case they are required or allowed to work for more than the prescribed or required working hours and on the other hand, these two provisions which provide two different and independent rights leaves a choice to be compensated in one of the means, but not both. It may be pertinent to point out, as rightly presented, that over-time wages would be twice the ordinary rate of wages which is explained in sub-clause (2) of Section 59 and therefore, a worker may choose

to recover over-time wages if he thinks that it is more beneficial to him when compared to reimbursement by means of compensatory holidays. It may be stated in certainty that over-time wages would be a benefit to a worker which may be computed in money value in accordance with sub-clauses (2) to (4) of Sec. 59 of the Factories Act. The clear expressions in Section 59 of the Act "shall in respect of over-time work be entitled to wages at the rate of twice his ordinary rate of wages" should be construed as a vested and statutory right conferred on a worker. As laid down in *Birla Cotton Spinning & Weaving Mills Ltd. v. Employees State Insurance Corporation*, New Delhi 1979 Lab.I.C. 527 payment of overtime work is an implied term of contract of employment between the employer and the employee. Therefore, the law is certain that respondent No. 1 in all the cases were entitled to the overtime wages for the period of the claim in view of the finding that they had worked on weekly off days, Sundays and holidays during the period of claim.

11. Point: Scope of Section 33-C(2) of the Industrial Disputes Act and the powers and jurisdiction of Labour Court in a petition under the said provision.

Section 33-C(2) of the Industrial Disputes Act reads:

"Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months; Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit".

The claim of respondent No. 1 in all the cases is for the benefit of over-time wages which is the benefit being capable of computed in money value and they are found to be entitled to it u/s 59(1) of the Factories Act. The law and facts so established themselves empower the Labour Court to decide such a question within its jurisdiction under the provision. But Mr. Gopal G. Naik the learned Advocate for the petitioner very vehemently convasses against such a power or jurisdiction for Labour Court to do it. For him the whole claim is an industrial dispute to be adjudicated by industrial tribunal or labour Court, on a reference by the appropriate Government u/s 10(2) of the Industrial Disputes Act. Because, according to him, the very basis of the claim or the entitlement to overtime wages of respondent No. 1 is disputed there being no adjudication or recognition of the same by the employer-petitioner, the decision as to such entitlement is outside the scope of Section 33-C(2) of the Industrial Disputes Act. His fortification to this contention is due to a categorical expression in a latest pronouncement of the apex Court in *Municipal Corporation of Delhi v. Gnnesh Razak* AIR 1994 SCW 5000. Mr. Venkataramana, the learned Advocate for

respondent No. 1 with equal vehemence tried to demonstrate that the same precedent which is the outcome of several precedents in addition to other precedents that the law so declared and interpreted regarding the scope of Section 33-C(2) of the Industrial Disputes Act is contrary to what Mr. Gopal G. Naik is postulating as above. The relevant portion of Para 12 in Municipal Corporation of Delhi AIR 1994 SCW 5000 being the foundation and structure of the ground of the contention of Mr. Gopal G. Naik is:

"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".

At the open splash it may slush on the claim of respondent No. 1 u/s 33-C(2) of the Industrial Disputes Act. But a lash and tear into the seal of the veil may unveil the real legal position and the result.

12. Like a statute or the document, the judgment in rem or personam cannot be read in its part or piecemeal portion, but should be read as a whole. As rightly pointed out by Mr. Venkataramana, the Supreme Court itself has emphasised this in Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd., , wherein it is stated that:

"....It is neither desirable nor permissible to pick out a word or a sentence from the judgment of the Court, divorced from the context of the question under consideration and treat it to be the complete "law" declared by the Supreme Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before the Court. A decision of the Supreme Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the Courts must carefully try to ascertain the true principle laid down by the decision of the Supreme Court".

Besides that the scope of Section 33-C(2) of the Industrial Disputes Act has plethora of precedents of Supreme Court and our own High Court settling the whole law in it and such precedents supra cannot be read in exclusion or isolation of others unless the latest one holds the entire gamut of the rule in exclusion of the others as a binding precedent. Therefore, as both the sides have conceded and desired and having due regard to the importance of the legal question

involved the decision of which having far reaching consequences, a careful and detailed examination of the same is being done. Let us put the tip of our finger into the flood of thoughts impounded into the dam of preceded precedents. According to Mr. Gopal G. Naik, many questions said to have been resolved appear to have been dealt with on certain presumptions without reference to the settled law by the Supreme Court and other Courts which according to him have been set at rest in *Municipal Corporation, Delhi* (3 supra). At the same time, according to him, the implications of the previous precedents not operating such a situation is opened up. Mr. Venkataramana, the learned Advocate speaks to the converse and according to him, there is no departure from the settled law in the previous precedents and the latest pronouncement of the Supreme Court supra has only confirmed it. At any rate, the situation in this case has tickled through a harness nest. When we are dealing with a remedial provision - Section 33-C(2) of the Industrial Disputes Act plugged into industrial and Labour Law, the intendment of such Legislatures for the benefit and welfare of the workmen cannot be ignored. It is intended to achieve industrial peace by mutuality and consensus in larger public interest and eschew industrial strife, confrontation and consequent wastage and the interpretation of the law must be to strive to reduce the field of conflict and expand the area of the agreement and to show the preference for upholding such a sanctified effect by mutuality and consensus as laid down in *The Workmen and Others Vs. Hindustan Lever Ltd.*, . Therefore, a narrow and restricted meanings to the expressions in the Act should be avoided and a pragmatic and not a padantic approach must be adopted as cautioned in *S.K. Verma Vs. Mahesh Chandra and Another*, . The history and purpose of incorporation of Section 33-C(2) in the statute book was explained in *Chief Mining Engineer East India Coal Co. Ltd. Vs. Rameswar and Others*, which was quoted with approval in *Municipal Corporation of Delhi's* case (3 supra) at para 10 as follows:

".....The legislative history indicates that the legislature, after providing broadly for the investigation and settlement of disputes on the basis of collective bargaining, recognised the need of individual workmen of a speedy remedy to enforce their existing individual rights and therefore, inserted Section 33-A in 1950 and Section 33-C in 1956. These two sections illustrate cases in which individual workmen can enforce their rights without having to take recourse to Section 10(1) and without having to depend on their union to espouse their case".

(Words borrowed from *The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.*, (A five Judge Bench))

To understand thereby, the workmen to espouse their individual causes for a speedy remedy, as a rule, can invoke Section 33-C(2) of the Act and the operation in such an area of Section 10(1) of the Industrial Disputes Act should be an exception, however, subject to the limitations prescribed in the very provision. It need not be emphasized that the remedy u/s 10(1) of the Industrial

Disputes Act is circumventive and very hazardous and some times nugatory of the very object for which it is intended. The law as declared by the Courts of highest hierarchy up to the apex Court in regard to the scope and purpose of Section 33-C(2) of the Industrial Disputes Act up to the latest pronouncement in Municipal Corporation of Delhi's case (3 supra) is consistent and unambiguous. It is beyond the realm of controversy that this provision is in the nature of an executing provision and/or analogous to execution proceedings and the labour Court exercising powers therein, is in a position of an executing Court in execution proceedings governed by the Code of Civil Procedure. The provision 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 is open to the Labour Court to interpret the award or settlement on which the workmen's right rests. It is clear that the right to the benefit which is sought to be computed under the provision must be an existing one that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between an industrial workman and his employer. Therefore, the investigation into the disputed right of a workman under the provision is outside the scope, as the Labour Court under the provision of the Act cannot arrogate to itself the functions of adjudication of the dispute relating to the claim of the workman. Because in the light of such restrictions and limitations placed in this provision, as against Section 10(1) of the Industrial Disputes Act wherein it is only Industrial Tribunal or Labour Court which alone is entitled to make adjudications in regard to the disputed rights or the entitlement (vide The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc., (A five Judge Bench), Punjab National Bank v. Kharbandu AIR 1963 SC187, Bombay Gas Co. Ltd. Vs. Gopal Bhiva and Others, , Chief Mining Engineer's case (7 supra), State Bank of Bikaner and Jaipur Vs. R.L. Khandelwal, , Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, and Anand Oil Industries Vs. Labour Court, Hyderabad and Others, . While examining the true implications of Section 33-C(2) of the Industrial Disputes Act, the distinction between this provision and Section 33-C(1) of the Act cannot be ignored. Although, they are inter-related to have certain common implications, the difference is well marked. The Supreme Court in Central Bank of India's case (7-A supra) appears to have noted such a distinction with caution that while noting the powers of the Labour Court under the provision as that of an executing Court, it should not be interpreted to mean that, scope of Section 33-C(2) is exactly the same as Section 33-C(1) of the Act. This Five Judge-Bench observed that:

".....It is remarkable that similar words of limitation have been used in Section 33-C(1) because Section 33-C(1) deals with cases where any money is due under a settlement or an award or under the provisions of Chapter VA. It is thus clear that claims made u/s 33-C(1) by itself can be only claims referable to the settlement, award or the relevant provisions of Chapter VA. These words of limitations are not to be found in Section 33-C(2) and to that extent, the scope

of Section 33-C(2) is undoubtedly wider than that of Section 33-C(1).....and in that sense, Section 33-C(2) can itself be deemed to be a kind of execution proceeding; but it is possible that claims not based on settlements, awards or made under the provisions of Chapter VA, may also be competent u/s 33-C(2) and that may illustrate its wider scope".

Any interpretation of the provision in question without noting the distinction, is likely to lead to confusion and wrong conclusion. Then coming to the question of the jurisdiction of the Labour Court under the provision, the law appears to be mat all incidental questions necessary to investigate into the real question under the provision, would be part of the same jurisdictional exercise by the Labour Court. In the same precedent - Central Bank of India (7-A), it is made clear that an Act conferring jurisdiction impliedly grants powers of doing all such acts or employing such means as are essentially necessary to its execution. Therefore, while determining whether the relief under the provision can be given or not, the Labour Court is bound to hold an enquiry and find out whether the benefit claimed under the provision is by workman and whether he has a right to receive the said benefit and whether it can be computed in money value and whether the extent of the claim is justified, correct and can be granted either partly or wholly. The contention of Mr. Gopal G. Naik, the learned Advocate that when once the employer disputes the right or entitlement of the workman to the money or benefit computable in money value, it becomes an industrial dispute barring the jurisdiction of the Labour Court and attracting the jurisdiction of Industrial Tribunal u/s 10(1) of the Industrial Disputes Act appears to have no force. Similar contention was raised in Central Bank of India (7-A supra). While rejecting such a contention, the Supreme Court said:

".....In our opinion on a fair and reasonable construction of sub-section (2) it is clear that if a workman's right to receive the benefit is disputed that may have to be determined by the Labour Court. Before proceeding to compute the benefit i n terms of money, the Labour Court inevitably has to deal with the question as to whether the workman has a right to receive the benefit.....

If such a construction is accepted, it would necessarily mean that it would be at the option of the employer to allow the workman to avail himself of the remedy provided by sub-section (2), because he has merely to raise an objection on the ground that the right claimed by the workman is not admitted to oust the jurisdiction of the Labour Court to entertain the workman's application.....".

Dealing with such a question and rejecting such a construction, it was pointed out in the same precedent:

".....The claim u/s 33-C(2) clearly postulates that the determination of the question about computing the benefit in terms of money may, in some cases have to be preceded by an enquiry into the existence of the right and such an enquiry must be held to be incidental to the main determination which has been assigned to the labour Court by sub-section (2). As Maxwell has observed "where

an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution". We must accordingly hold that Section 33-C(2) takes within its purview cases of workmen who claimed 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".

Significantly enough, the Central Bank of India's case (7-A supra) has been referred to with approval in the latest pronouncement of Municipal Corporation of Delhi (3 supra) without dissent or distinction. Such a precedent has found reference and approval in almost all the subsequent precedents of the Supreme Court supra. In fact in Central Bank of India (7-A supra), it is made clear that only if such factors are disputed, an enquiry is called for and if such a right is not at all disputed, nothing more needs to be done and the Labour Court should proceed to compute the value of the benefit in terms of money.

13. While almost all the precedents supra ruled that the power of the Labour Court u/s 33-C(2) of the Industrial Disputes Act is like that of the executing Court, still, it was indicated that such a Court has jurisdiction to enquire into the existing right or otherwise or the entitlement or otherwise of the workmen to establish the claim. Although to mean the same intent, different expressions were made in the precedents viz., such a power is like the power of the executing Court analogous to execution proceedings and akin to execution proceedings. They are all referred and expressed by the Supreme Court in Municipal Corporation of Delhi (3 supra). As to what are the powers of the executing Court in such a situation a uniformly expressed view which is made a note with approval appears to be:

"it is clear that the right to the benefit which is sought to be computed must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of an in relation to the relationship between an industrial workman and his employer" (Para 10). (Emphasis by this Court)

Significantly enough, all the precedents including the latest one appear to be clear that the status of the claimant as workman and the person against whom the claim is laid as the employer should be determined by the Labour Court under this provision. It was broadly stated in Municipal Corporation of Delhi's case (3 supra), that in a proceeding u/s 33-C(2) as an executing proceeding it may be necessary to determine the identity of the person by whom or against whom the claim is made if there is a challenge on mat scope. The determination of identity should be obviously to find if there exists the relationship of employer and workman for the purpose of the provision. Mr. Venkataramana, the learned Advocate has rightly pointed out that even in para 12 of Municipal Corporation of Delhi's case (3 supra), it cannot be read that the existing rights or the rights provided for, cannot be enquired into when disputed, as the words used therein are that "where the very basis of the claim or entitlement of the workman to certain benefit is disputed ". According to him, the expression "very basis of the

claim" has a different meaning altogether than the existing right or the right provided for. The basis of a claim may stem and sprout both on facts and in law. The "entitlement to claim" synonyms to "basis of the claim". Obviously such a claim when set up must be either admitted or adjudicated or recognised both in law and fact for enforcement to call it "entitlement". Such a basis of claim requires determination when disputed. Conversely existing right or claim already existing needs no determination. The distinction between a suit and execution proceedings was marked and illustrated in Central Inland Water Transport Corporation's case. (11 supra) and extracted in Municipal Corporation of Delhi's case (3 supra) in para 11 as hereunder:

"In a suit, a claim for relief made by the plaintiff against the defendant involves an investigation directed to the determination of (i) the plaintiff's right to relief, (ii) the corresponding liability of the defendant, including, whether the defendant is, at all, liable or not; and (iii) the extent of the defendant's liability if any. The working out of such liability with a view to give relief is generally regarded as the function of an execution proceeding. Determination No. (iii) referred to above, that is to say, the extent of the defendant's liability may some times be left over for determination in execution proceedings. But that is not the case with the determinations under heads (i) and (ii). They are normally regarded as the functions of a suit and not an execution proceeding. Since a proceeding u/s 33-C(2) is in the nature of an execution proceeding it should follow that an investigation of the nature of determinations (i) and (ii) above is, normally, outside its scope, it is true that in a proceeding u/s 33-C(2), as in an execution proceeding, it may be necessary to determine the identity of the person by whom or against whom the claim is made if there is a challenge on that score. But that is merely "incidental.". To call determinations (i) and (ii) "incidental to an execution proceeding would be a perversion, because execution proceedings in which the extent of liability is worked out are just consequential upon the determinations (i) and (ii) and represent the last stage in a process leading to final relief. Therefore, when a claim is made before the Labour Court u/s 33-C(2) that Court must clearly understand the limitations under which it is to function, it cannot arrogate to itself the functions-say of an industrial Tribunal which alone is entitled to make adjudications in the nature of determinations (i) and (ii) referred to above, or proceed to compute the benefit by dubbing the former as "incidental" to its main business of computation. In such cases, determinations (i) and (ii) are not "incidental" to the computation. The computation itself is consequential upon and subsidiary to determinations (i) and (ii) as the last stage in the process which commenced with a reference to the Industrial Tribunal. It was, therefore, held State Bank of Bikaner and Jaipur Vs. R.L. Khandelwal, , that a workman cannot put forward a claim in an application u/s 33-C(2) in respect of a matter which is not based on an existing right and which can be appropriately the subject matter of an industrial dispute which requires a reference u/s 10 of the Act."

Mr. Copal G. Naik, the learned Advocate for the Petitioner argues that the basis

of the claim is covered by items (i) and (ii) supra to be decided in a suit and therefore, the Labour Court cannot decide it u/s 33-C(2) of the Industrial Disputes Act. This lacks convincing force. In the first place*, the illustration is not exhaustive. Secondly, it needs a proper and correct understanding in the light of rudiments in science of law and art of expressing it in several precedents. The lex of right, entitlement and liability to understand the meaning of existing right or the right provided for may warrant a little deliberation. The labour law/industrial law although has been sent into the semantics of isotoric legal word, it was and it is meant for that section of the society which can be classified into common persons including any particular labourers or workmen to seek social justice in a welfare State. To start with, the dictionary meaning may be more appropriate. "Entitlement" is the noun derived from the word "entitle". It means give a person a just claim/right". (Page 391 of the Concise Oxford dictionary New Edition Third Impression, 1992). "Right" means "justification or fair claim; a thing one may legally or morally claim; the state of being entitled to a privilege or immunity or authority to Act". (Page 1037 of the above Dictionary). In its usual sense "to entitle" is to give a right or title (Page 626 of Black's Law Dictionary 4th Edn.). In an abstract sense, right means, justice, ethical correctness, or consonance with the rules of law or the principles of morals. In this signification, it answers to one meaning of the Latin "jus" and serves to indicate law in the abstract, considered as the foundation of all rights, or the complex of underlying moral principles which impart the character of justice to all positive law, or give it an ethical content. "In a narrower signification, an interest or title in an object of property; a just and legal claim to hold, use, or enjoy it, or to convey or donate it as one pleases". In civil society, a right is defined to mean that which a man is entitled to have, or to do, or to receive from others within the limits prescribed by law. (Pages 1486 and 1487 of Black's Law Dictionary supra). In simple expression Bouvier meant "entitlement" as "to give a right to". (Page 1044 of Bouvier's Law Dictionary Vol. 1, 3rd Revised Edition of 1974). Therefore, in substance, "entitlement" is the legitimate right of an individual to set up and establish just claim. That is why in *Swadeshi Cotton Mills Ltd. v. I.T.O.*, 1964 (2) ITR 21 Allahabad, the word "entitle" was meant "entitled in law that is some thing which could be enforced in law". That should lead us to the jurisprudential linkage to such expressions. "Rights in law" are therein postulated as a concept and utility, and;

(a) To understand, the term "right" like "duty", can be used in a wider sense. To say that a man has a right to something is roughly to say that it is a right for him to obtain it. This may entail that others ought to provide him with it, or that they ought not to prevent him from getting it. (Page 217 of *Snlmond on Jurisprudence*, 12th Edn. by P.J. Fitzgerald).

(b) Rights, like wrongs and duties, are either moral or legal. A moral or natural right is an interest recognised and protected by a rule of morality - an interest the violation of which would be a moral wrong, and respect for which is a moral duty. A legal right, on the other hand, is an interest recognised and protected by

a rule of law - an interest the violation of which would be a legal wrong done to him whose interest it is, and respect for which is a legal duty. (Page 218 of Salmond on Jurisprudence supra).

(c) In the generic sense, a legal right may be defined as any advantage or benefit conferred upon a person by a rule of law. (Page 224 of Salmond on Jurisprudence supra).

Now with these concepts if the expression "entitled" in Section 33-C(2) is understood, can there be even a spec of doubt that such being a vested right, could it not be an existing right or the right provided for, which is a right for the workman to obtain it, which may entail others including the employer to provide it or that they ought not to prevent the workman from getting it or that it would not be wrong for the workman to bet it ? Read in that context, will it not be a legal right and an interest recognised and protected by a rule of law or an advantage conferred upon the workman by a rule of law and that any such right or entitlement in the provision have the characteristics of a legal right detailed supra ? Can it not include a right or entitlement created by law or any law to call it a statutory right ? A simple answer for these questions ought to be in the affirmative. Therefore, a statutory right which should be a legal right as an entitlement should be clearly brought into the expression "existing right" or the "right provided for" which requires no proof. Here only we should press right into wages for overtime u/s 59 of the Factories Act, 1948 read with Section 2(h) of the Minimum Wages Act, 1948 (regarding wages) as the existing right or the right provided for, for the purpose of entitlement u/s 33-C(2) of the Industrial Disputes Act regarding which no proof is warranted. Mr. Gopal G. Naik, the learned Advocate for a moment, did not dispute that wages for overtime u/s 59 of the Factories Act read with Section 2(h) of the Minimum Wages Act is a statutory right. In the resultant effect barring the rule laid down in the precedent supra including the latest pronouncement - Municipal Corporation of Delhi (3 supra), the right to wages for overtime being an existing right in law, would come within the realm of the jurisdiction of an executing Court for implementation by the Labour Court u/s 33-C(2) of the Industrial Disputes Act. It may be mentioned that even borrowing the expressions of the Supreme Court in Municipal Corporation of Delhi's case (3 supra) in Para 12, when overtime, the very basis of the claim viz., the statutory right is not disputed muchless can be disputed, the jurisdiction of the Labour Court u/s 33-C(2) of the Industrial Disputes Act cannot be taken to be ousted.

14. Point:- Whether statutory right if set up and disputed, requires proof?

The source of statutory right should be obviously the law and particularly so, when it emanates from a piece of Legislation. So if a workman says that he is entitled to money or benefit which can be computed in terms of money value, in law, like in Factories Act, Payment of Wages Act or any other similar Labour and Industrial Law and if disputed or denied as in the present case, the question of fact which arises is whether such a law exists and whether such a law entitles

them with such a right to overtime wages. Therefore, such a question goes into the region of "fact" defined in the Indian Evidence Act, 1872, or the Law of Evidence. In that, a strange concept may give in, that "law is a fact" and it cannot be so strange in the jurisprudential arena in view of Section 57 of the Evidence Act. Sub-clause (1) of Section 57 of the Evidence Act mandates the Court to take judicial notice of the fact viz., all laws in force in the territory of India. Fortunately, employer the petitioner - in all the cases has not ventured to deny or dispute the existence of Factories Act or Payment of Wages Act or the Industrial Disputes Act of which the fact in issue, whether the workmen are entitled to overtime wages within the contemplation of Section 59 of the Factories Act and Section 2(h) of the Minimum Wages Act has arisen. Even if they had ventured the failure is certain. As expressly contemplated u/s 57 of the Evidence Act, if that is disputed, at the best or at the worst, the Court may call upon such workman to produce a copy of such statute codifying such a law by way of entitlement. No such contingency has occurred since such materials are very well available before us. Even treating them as public documents u/s 74 of the Evidence Act, the mere production of the same would be the proof and the Court will take judicial notice of the same by virtue of Section 57(1) of the Evidence Act and in such a situation, no proof is expected of such a fact of the existence of law by virtue of Section 58 of the Evidence Act. Therefore, a legal right conferred under a statute viz., the right to overtime wages forms an item of judicial notice of the Court which needs no proof by virtue of Section 58 of the Evidence Act. No precedent can mean in its declaration of law that such a judicially noticeable fact viz., law, requires proof only because it is denied or disputed for any reason. With all that, where the proof of such a fact to be noticed judicially is involved, that being a rule of law, the settled law is that the responsibility of ascertaining the law rests wholly with the Judge and it is not necessary for the parties to call the attention of the Court to it (Mark by, p. 50, quoted on page 605 of Sarkar on Evidence Act 13th Edn.). If that can be done and should be done, Mr. Gopal G. Naik, the learned Advocate for the petitioner is totally in a misconceived position to interpret the observations of the Supreme Court in para 12 of the Municipal Corporation of Delhi's case (3 supra) that even where the statutory right or legal right is denied in such a situation, the Labour Court u/s 33-C(2) of the Industrial Disputes Act cannot probe into it or determine the same. It must be impressed that such expressions would never bring in, such a meaning as is put by the learned Advocate.

15. Point:- Whether the statutory right like overtime wages as an entitlement is covered u/s 33-C(2) of the Industrial Disputes Act and should be determined even if disputed.

15-A. The question as above appears to be no longer res integra and vexed one and appears to be settled beyond any doubt over three decades by authoritative precedents of several High Courts and also the apex Court.

16. As already pointed out in Central Bank of India (7-A supra), the Supreme

Court pointed out that on a fair and reasonable construction of sub-clause (2) of Section 33-C, it is clear that if the benefit of a workman is disputed, that may have to be determined by Labour Court and that such a claim involving computing the benefit in terms of money value in some cases has to be preceded by an enquiry into the questions of the right and such an enquiry must be held to be incidental to the main determination which has been assigned to the Labour Court by sub-section (2) of Section 33-C.

17. In *Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others*, the law is categorically declared that where applications were filed by the employees for computing in terms of money the benefit of holidays and for recovering the amount, the case squarely falls within sub-section (2) of Section 33-C even where there is no award or settlement under which the benefit of holidays had already been computed. It is indicated therein that although the provision does not prescribe the mode of determining such a question, it is left to the rule making authority to make a suitable provision for the same and in that regard Rule 62 (2) of the Industrial Disputes (Central) Rules, 1957 is pointed out to have incorporated. (This is a direct ruling on the question on hand).

18. In *Chief Mining Engineer's Case* (7 supra) while dealing with the right to bonus claimed as provided under a Scheme - Coal Mines Provident Fund and Bonus Schemes Act, 1948, it was held that since the scope of sub-section (2) of Section 33-C is wider than that of sub-section (1) and the sub-section is not confined to cases arising under an award, settlement or under the provisions of Chapter VA there is no reason to hold that a benefit provided by a statute or a scheme made there under, without there being anything contrary under such statute of Section 33-C(2), cannot fall within sub-section (2). (Para 5). Drawing analogy with such a provision in the statute regarding bonus with overtime wages in Section 59 of the Factories Act and Section 2(h) of the Payment of Wages Act, there is no reason to hold that such a claim does not fall within the scope of Section 33-C(2) of the Industrial Disputes Act by operation of the law declared in this precedent.

19. *Birla Cotton Spinning & Weaving Mills Ltd. Delhi v. Employees State Insurance Corporation, Neil* Delhi (11 supra) appears to have made a deep inroad into such an implication in the statutory right under the provisions stated above to include remuneration of wages in Section 59 of the Factories Act as an implied contract. The overtime payment made as a remuneration for the work done by the employee during a period beyond the normal hours of work of the employee being an implied contract between workman and employer under the provision apart from being a statutory right gets a legal recognition inasmuch as a recognition by the employer by virtue of implied contract which should be covered within Section 33-C(1) or (2) of the Industrial Disputes Act even if the contention of Mr. Gopal G. Naik, the learned Advocate for the petitioner is accepted to the effect that such a right should be existing or recognised by the employer. Similar view of Delhi High Court is taken by Bombay High Court in

Shivaraj Fine Art Litho Works v. Regional Director, Maharashtra 1974 Lab.I.C. 328.. R.B. Bansilal Abirchand Mills Co. Ltd. Vs. The Labour Court, Nagpur and Others, is another mile-stone on the topic. It involves the question whether the Labour Court has jurisdiction u/s 33-C(2) of the Industrial Disputes Act to entertain an application for lay-off compensation u/s 25C of the Industrial Disputes Act. Such a claim of the workmen was denied by the employer. It was held that the claim of compensation of every workman who is laid off is one which arises under the statute itself and Section 25C provides for a benefit to the workman which is capable of being computed in terms of money u/s 33-C(2) of the Industrial Disputes Act. The Labour Court must go into the matter and come to a decision as to whether there was really a closure or lay-off and therefore, the mere plea of the employer denying the workman's computation of claim for compensation in terms of money does not oust the jurisdiction of the Labour Court. In effect, a benefit conferred on a workman in a statute even if denied, could be an existing right which could be entertained and determined u/s 33-C(2) of the Industrial Disputes Act. The equation and analogy similarly applies to the claim of a workman for overtime wages under the provision.

20. Now coming to the view taken by our own High Court in regard to the question on hand, as already pointed out in a latest pronouncement in *The Business Manager, Andhra Printers Ltd.* (2 supra), the statutory right of the employees under the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 to seek recovery of the amounts due to them from the Management under the Act by resorting to Section 33-C(2) of the Industrial Disputes Act is upheld as it was one of the alternative statutory remedies available to them to enforce. Mr. Venkataramana the learned Advocate for the workmen appears to be right in pointing out that the question under consideration is authoritatively and fully concluded by three Full Bench rulings of our own High Court in - *The Divisional Engineer MRT Operation, APSEB v. Ikram Ahmed* 1979(1) ALT 87, *Anand Oil Industries* (12 supra), and *Mandegam Rndhnkrishna Reddy v. Sri Bharathi Velu Bus Service* (2-A supra). The last of the cases *Mndegam Radlia Krishna* (2-A supra) dealt with the matter in general terms. There, the question involved was whether the remedy of the workman under Sections 15 and 22 of the Payment of Wages Act ousted the jurisdiction of the Labour Court u/s 33-C of the Industrial Disputes Act. It was held that although the remedies are available to the workman under the provisions of both the Acts, the remedy u/s 33-C(2) of the I.D. Act is wider than the remedy under 15 (1) of the Payment of Wages Act and the mere denial of the right of the employee to wages does not oust the jurisdiction of the Labour Court u/s 33-C(2) of the Industrial Disputes Act. The former Act prescribed the period of limitation for the remedy, whereas the latter Act did not prescribe any period of limitation and therefore, workman would be entitled to seek the better of the remedies under the latter Act. In effect, the statutory right of the workman under the provisions of the Payment of Wages Act could be enquired into u/s 33-C of the Industrial Disputes Act although it was denied by the employer. Even

from the facts in that case, the workmen had claimed the wages for a particular period when they did not work during a motor-accident and by way of wages and that was held to be permissible u/s 33-C(2) of the Industrial Disputes Act. Therefore, it cannot lie in the region of contention of the petitioner that such a claim, when disputed by the Management, cannot be entertained or decided u/s 33-C(2) of the Act. In Divisional Engineer MRT Operation 1979(1) ALT 87, the scope of Section 33-C(2) was very elaborately considered by referring to various precedents including some of the precedents of the Supreme Court and it was authoritatively held as hereunder:

".....A petition u/s 33-C(2) is maintainable where an individual workman or workmen claim amount of money due or amount at which the benefit should be computed. But such a claim must be based on an existing right. The existing right itself should have vested in them either under a settlement or an award or under the provisions of Chapter V-A or Chapter V-B or conferred under the provisions of any statute. Once the right is shown to be existing under any of the above, the Labour Court would have jurisdiction to entertain the petition and ascertain the money due or the amount at which the benefit may be computed. The mere denial of such an existing right by the employer does not take away the jurisdiction of the labour Court to entertain a petition u/s 33-C(2) of the Industrial Disputes Act. While the right itself should be an existing right for enabling a workman to maintain a petition u/s 33-C(2) it is not necessary that this existing right should have been admitted by the employer. The denial of the existing right of the workmen to receive money or the benefit does not oust the jurisdiction of the Labour Court to entertain a petition u/s 33-C of the Industrial Disputes Act and require the reference of the industrial dispute raised for adjudication u/s 10 of the Act. The denial of this right would only require the labour Court to enquire into the fact whether the right is existing. The labour Court, has jurisdiction to decide and determine this jurisdictional fact. The enquiry u/s 33-C(2) in such cases would have to be preceded by an enquiry into the existence of the right and such an enquiry is incidental to the main determination which has been assigned to the labour Court by sub-section (2). It cannot by an order u/s 33-C(2) however, create a new right.

.....Sub-section (2) of Section 33 applies both to the non-monetary as well as monetary benefits. In the case of monetary benefit it applies where such benefit, though due is not calculated and there is a dispute about its calculation. Section 33-C(2) 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. Just as any existing Court is competent to interpret the decree so also the Labour Court is competent to construe the settlement, award or a statute under which the right is claimed. Such an interpretation of an award, whether the workman falls within a particular class of workmen entitled to the benefits under the section, award or the statute, the total amount due or the amount at which the benefit should be computed, are all matters falling within the jurisdiction of the

Labour Court u/s 33-C(2). This enumeration of matters incidental to an enquiry u/s 33-C(2) is by no means exhaustive nor is it meant to be so. They are only illustrative".

the subsequent Full Bench of this Court in Anand Oil Industries (12 supra), approved it in the same terms and held that:

".....That being the true scope of Section 33-C(2) of the Industrial Disputes Act, if a right to the Payment of Minimum Bonus and the right to the payment of a minimum wage is created under a statute then a petition u/s 33-C(2) for the calculation and payment of the amount of minimum bonus and minimum wage due to each of the respondents is certainly entertainable u/s 33-C(2)".

Mr. Gopal G. Naik, the learned Advocate for the petitioner had to concede that such a law declared by three Full Bench pronouncements of this Court is not varied so far either by the Supreme Court or any other Full Bench or the larger bench of this Court. His contention that the latest pronouncement of the Supreme Court in Delhi Municipal Corporation's case (3 supra) should be taken as deviated from such a law declared as above by the Supreme Court and our Court, finds no merit. There is no reason to think that such a petition u/s 33-C(2) of the Act for the overtime wages, as a statutory right u/s 59(1) of the Factories Act is not maintainable before a Labour Court for want of jurisdiction. In other words, a statutory right like overtime wages, as an entitlement to an existing right is squarely covered by Section 33-C(2) of the Industrial Disputes Act.

21. Mr. Gopal G. Naik, the learned Advocate for the petitioner in the alternative contends that in several precedents stated above, while laying down certain principles, they were all, cases on facts where either the right of the workman was recognised, adjudicated or considered and therefore, they are distinguishable from what is held in Municipal Corporation of Delhi's case (3 supra) which is the latest origin. There appears to be no merit in this contention. The law so declared as above has been notwithstanding the facts and circumstances of the case and in particular regarding the right of the workman created under a statute, it can be called as an existing right for the purpose of the claim u/s 33-C(2) of the Act. On the other hand, on a careful perusal of Municipal Corporation of Delhi's case (3 supra), such an expression (as in para-12 while referring to other decisions) appears to have been made on the facts and circumstances of the case supra. Therein, the workmen of the Municipal Corporation of Delhi pleaded that they were doing the same kind of work as regular employees and therefore, they were required to be paid by their employer, the same pay as regular employees, on the principle of equal pay for equal work, and thus they claimed computation of arrears of wages at the rate the regular employees were paid u/s 33-C(2) of the Act. It was found that there was no earlier adjudication of any forum on the claim of such workmen for wages at the same rate at which the regular workmen were being paid and mere was no award or settlement much less an adjudication nor recognition. Patently, the claim was not based under any statute or any scheme under any statute etc.

Therefore, even on facts, the latest pronouncement supra is distinguishable from the other precedents which are referred to in regard to the scope of Section 33-C(2) of the Act. It must be categorically recorded that in no measure there is any conflict in the view of the Supreme Court in Municipal Corporation of Delhi's case (3 supra) and the other precedents supra dating back to 1963 and even before, much less there is any departure from any of the pronouncements of the same Court. Obviously, the doctrine of *stare decisis et nonquiescit movere* should operate on the facts of this case wherein it is difficult to think that the latest pronouncement of the Supreme Court in Delhi Municipal Corporation's case (3 supra) can be read within para 12 therein, to mean, that there is a departure from such a doctrine. It is clear that the authoritative pronouncements of the three Full Benches of this Court - The Divisional Engineer (17 supra), Anand Oil Industries (12 supra) and Mandegam Radhakrishna Reddy (2-A supra) cannot be taken to have been upset in any manner by the Supreme Court in Municipal Corporation of Delhi's case (3 supra). Even assuming that there is any departure from the earlier views of the Supreme Court, in Municipal Corporation of Delhi (3 supra), in view of the larger bench precedents like Central Bank of India (7-A) (5-Judge Bench) and Nityanand M. Joshi (14 supra) (3-Judge Bench) supra, such an expression contrary to any extent may not command the binding force even if the contention of Mr. Gopal G. Nosk, the learned Advocate for the petitioner is accepted as correct for argument sake.

22. In conclusion and in the light of the detailed deliberation supra, the scope of Section 33-C(2) of the Industrial Disputes Act and the jurisdiction of the Labour Court under the provision, to render a decision is well settled to concede a claim for overtime wages and the award of the Labour Court allowing such a claim of respondent No. 1 in all the cases (rendered by the learned Presiding Officer Sri Syed Abdullah) which is short, crisp, to the point and correctly rendered, is justified and does not warrant any interference by this Court. It is brought to the notice of this Court that the workman like respondent No. 1, including them, have already agitated such claims before the Labour Court and in this Court more than once and succeeded as a matter of fact. It appears to the mind of this Court that the petitioner is raking up the same question again and again without any justification which requires a caution that the repetition may not be well received in future. It is hoped that atleast now the petitioner will settle the claim of respondent No. 1 in all the cases without any delay.

23. In the result, all the Writ Petitions fail and they are dismissed accordingly with costs of respondent No. 1 in all the cases. Since it is reported without controversy that 50% of the claim of respondent No. 1 in all the cases had already been deposited in view of an interim order, if such an amount is deposited or paid at any stage, that shall be deducted out of the total claim of respondent No. 1 in all the cases.