

(2002) 06 BOM CK 0130

In the Bombay High Court

Case No : Writ Petition No. 2188 of 1998

S.A. Shaikh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-06-2002

Acts Referred:

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

Citation : (2002) 4 ALLMR 482 : (2002) 5 BomCR 464 : (2002) 95 FLR 749 :
(2002) 3 MhLj 544

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

Bench : Single Bench

Advocate : C.M. Jha, for the Appellant; Suresh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

R.J. Kochar, J.—The petitioner is aggrieved by the judgment and order passed by the Central Government Labour Court No. 2 in application No. LC-2/577 of 1995 filed u/s 33(C)(2) of Industrial Disputes Act, 1947 (hereinafter referred to as the Act) for certain monetary reliefs in respect of overtime allowance, night duty allowance, 2nd and 3rd increments in the scale of Rs. 205-380 and revision of pay fixation in the scale of Rs. 110 - 180. The applicant had justified his claim which was for the period from 27th May 1957 to 24th July 1964 for which he had filed the application after a lapse of 26 years. The respondents contested the application by filing their written statement. The first and foremost contention raised by them, obviously, was of laches or limitation. They pleaded that they had not preserved the record for such a long period of 26 years, as under the rules, the same was required to be destroyed and was accordingly destroyed. It was also the case of the respondents that as and when the dues were payable were duly paid to the applicant and nothing was due and payable to him. The Tribunal by the impugned order dated 4th March, 1998 dismissed the said application. The Tribunal has rightly observed that the said application was filed by the applicant only to try his luck after a period of 26 years. The Tribunal has

also tried to examine the merits of the claim of the applicant in respect of the inordinate delay and latches in filing of the application. The application has not been dismissed by the Tribunal on the ground of latches or limitation or delay alone. The Tribunal has examined the material in support of the claim of the applicant. Obviously, after a period of 26 years, even the applicant had not and could not have produced any material for overtime, night duty allowances etc. The burden to prove the claim was again obviously on the applicant. It was for the applicant to have proved by producing some material before the Tribunal in support of the claim of overtime and night duty allowances etc. Except saying so in his affidavit in support of the application, there was absolutely no material before the Tribunal to grant even a single farthing to the applicant. If the applicant could not produce any material or any record in support of his claim, it is futile to expect the railways to preserve the record of overtime and night duty allowance etc. of the employees for such an inordinate and unimaginable period of 26 years. Administration have to maintain railways and not the old records for such very minor claims of the large number of employees. The respondents could not have dreamt that they had employed a person who would file an application after a lapse of 26 years to claim overtime and night duty allowance for the period from May 1957 to July 1964. The respondents have rightly and truthfully taken the plea that they had not preserved such old records. In case, if the applicant had produced some iota of record in support of his case, that would definitely have helped him to take his case further. I do not find any substance in the writ petition. The Tribunal has rightly dismissed the application finding that there was absolutely no record produced by the applicant in support of his claim.

2. Shri Jha has tried to argue that there is no limitation u/s 33(C)(2) of the Act to file an application to claim money due from the employer. In theory he is absolutely right that there is no prescription of any limitation under the said provision. Merely because there is no specific prescription of limitation, we cannot lose sight of the reality that there are rules for destruction of the records and the employers are not at all expected to preserve the records for decades or centuries together. It is absolutely absurd to imagine that since there is no limitation prescribed u/s 33(C)(2) of the Act, any application can be filed at any time. We cannot mortgage our sense of reasons. We have to be reasonable to interpret such provisions. It is more of an abuse of the said provision than what the legislature had intended to help the employees for recovery of their legitimate dues. To say that the application can be filed even after 50 years merely because there is no limitation, is to stretch the absurdities to absurd limits. We have to be rational and reasonable in interpretation of the provisions of law. The Supreme Court has refused to interfere in number of matters where the employees tried to raise industrial disputes after inordinate delay. Such disputes were of substantial nature of challenge to the orders of termination claiming reinstatement. Even in such cases, the Supreme Court refused to grant any relief on the ground that no state disputes can be raked up to disturb the industrial peace. The same logic can be applied even in the cases of applications

u/s 33(C)(2) of the Act. In the result, I do not find any merit and substance in the contention of Shri Jha.

3. There is no merit and substance in the writ petition and the same deserves to be dismissed and the same is dismissed with no orders as to costs. Rule is discharged.