

(2009) 05 DEL CK 0217

In the Delhi High Court

Case No : Writ Petition (C) No's. 2084, 2085, 2087, 2088 and 2089 of 1993,
108 and 765/94

Sher Singh

APPELLANT

Vs

The Presiding Officer, Central Government Labour Court

RESPONDENT

Date of Decision : 11-05-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 33C(2)
Railways Act, 1890 — Section 71B

Citation : (2009) 05 DEL CK 0217

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Ashok Aggarwal and Anuj Aggarwal, for the Appellant; Kumar Rajesh Singh, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—This order shall dispose of seven petitions filed by the respective petitioners assailing the order of the Labour Court whereby the individual applications filed by these workmen u/s 33C(2) of the I.D. Act were dismissed.

2. Brief facts relevant for deciding the present petition are as under:

The petitioners were working in the capacity of Cabin men under the respondent management. They claimed overtime in their capacity as Cabin men from the period w.e.f 8.4.1964 to 4.3.1980. The General Manager of the Railways was the only Competent Authority to decide classification of different workmen in the Railways as per existing rules. In the said classification, the petitioners fell in the category of continuous workers and the management could take only 8 hours per day duty from them. The Management had, however, taken 12 hours duty from all these cabin men from the period w.e.f. 8.4.1964 to 4.3.1980 but denied the overtime allowance to them in utter disregard of these and in violation of the law. They infact started paying overtime w.e.f. 5.3.1980 but the payment from

8.4.1964 to 4.3.1980 was withheld without any cogent reasons. The petitioners filed separate claims u/s 33C(2) of the I.D. Act before the Labour Court for the grant of overtime allowance for the period from 8.4.1964 to 4.3.1980. The said claims were rejected by the Labour Court. Aggrieved with the said orders the petitioners preferred these petitions.

3. Mr. Ashok Aggarwal, counsel for the petitioner submits that all the petitioners were working in the capacity of Cabin men and had claimed enhanced over time for the period from 8.4.1964 to 4.3.1980. Counsel further submits that all the petitioners were continuous workers and as per Section 71-B of the Indian Railway Act, 1890 any railway servant whose employment is continuous shall not be employed for more than 54 hours a week in any month. Counsel thus states that since all these petitioners had been working for more than 54 hours a week, therefore, they were entitled to an overtime for the period effective from 8.4.1964 to 4.3.1980 during which period they had continuously been doing overtime work and thus entitled to overtime allowance. Counsel for the petitioner has also placed reliance on the judgment of this Court in General Manager, Northern Railway v. Presiding Officer, Central Government, Labour Court W.P. (C) 2690 to 2694 of 1984 and 2664 & 2665 of 1984 claiming that the issue so far as classification of the category of the present workers as "Essentially Intermittent" is concerned got finally settled and based on the said decision, the services of the petitioners could not have been considered as that of "Essentially Intermittent". Counsel thus submits that once it was held by this Court that there was no valid classification of the petitioners in the category of essentially intermittent workers, therefore, all these petitioners ipso facto became entitled for an overtime allowance claimed by them in their applications u/s 33C(2) of the I.D. Act. Counsel for the petitioners also submits that it was the statutory right of the petitioners to claim the over time allowance which could not have been denied to them, treating them as an "essentially intermittent" workers that too when the controversy was put to rest by the order of this Court dated 30.4.1986.

4. Refuting the said submissions of Mr. Ashok Aggarwal, counsel for the respondent submits that no fault can be found with the findings given by the Labour Court in the impugned order dated 7.2.1992 as the findings of the Labour Court cannot be termed as illegal or perverse. Contention of the counsel for the respondent is that firstly, the petitioners had claimed an over time allowance for a period of about 16 years i.e. from 8.4.1964 to 4.3.1980 by filing the respective applications in the year 1983. Counsel for the respondent also submits that petitioners failed to place on record any documentary proof to show that they had worked over time for the period from 1964 to 1980. Counsel for the respondent further submits that respondent management produced on record a letter dated 19.3.1963 to show that such records were maintained by the respondent/management only for a period of five years and not beyond the said period and therefore, in the absence of any record, the claim for overtime allowance could not have been considered pertaining to such a long period even

if the contention of the counsel for the petitioners was accepted as correct. Counsel for the respondent further submits that the opportunity to the petitioners was given to raise an Industrial Dispute after seeking reference u/s 10 of the I.D. Act but such remedy was not availed by the petitioners.

5. I have heard counsel for the parties at considerable length and gone through the record.

6. The Labour Court had dismissed the applications moved by these petitioners primarily on the ground that all these petitioners failed to bring on record any sufficient material to show that they had actually worked over time in excess of the time permissible in the aforesaid rules. Indisputably, the workmen never raised the dispute for over time allowance for a period of about 16 years i.e. from 1964 to 1980 till the year 1983 when for the first time application u/s 33C (2) of the I.D. Act was preferred by them. Reference has also been made by the Labour Court to the letter dated 19.3.1963 produced by the management which permits the management to maintain the over time allowance records only for a period of five years. In this background, the tribunal observed that as to whether the applicants had worked for excess hour duty for the claimed period could not have been established by the workmen on the basis of the evidence produced by them in these cases. The Labour Court thus found that no inference can be drawn from the evidence of the applicants regarding their entitlement to the overtime allowance claimed by them for the period starting from 1964, and therefore, in the absence of any such evidence placed on record no relief that too u/s 33C(2) of the I.D. Act could have been granted to the applicants/petitioners. It is no more res integra, that u/s 33C(2) of the I.D. Act, the workman is entitled to seek only that benefit which is capable of being computed in terms of money and if any dispute arises as to the computation of the amount than the remedy available to the workman is to raise an Industrial Dispute by seeking reference u/s 10 of the I.D. Act. In this regard in Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, the Hon'ble Apex court explained the nature of proceedings in following manner:

12. It is now well-settled that a proceeding u/s 33C(2) is a proceeding, generally, in the nature of an execution proceeding wherein the Labour Court calculates the amount of money due to a workman from his employer, or if the workman is entitled to any benefit which is capable of being computed in terms of money, the Labour Court proceeds to compute the benefit in terms of money.

In Municipal Corporation of Delhi Vs. Ganesh Razak and Another, , the Apex Court explained the scope of Section 33C(2) in following terms:

12. The High Court has referred to some of these decisions but missed the true import thereof. The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit

claimed and is, therefore, clearly outside the scope of a proceeding u/s 33C(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 33C(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 33C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution.

7. Undoubtedly, in the instant cases the petitioners had claimed over time allowance for a period w.e.f. 8.4.1964 to 4.3.1980 i.e. for 16 years period that too by moving an application in the year 1983 and curiously without placing any material on record to support or substantiate the claim of overtime of such a long period. The Labour Court in given circumstances rightly dismissed the applications moved by the petitioners giving opportunity for seeking relief u/s 10 of the I.D. Act. The order dated 30.4.1986 of this High Court in W.P. (C) No. 2690 to 2694 of 1984 (Supra) dealing with the classification aspect would be of no help to the present petitioners in view of the facts of the present case.

8 . In the light of the above discussion, I do not find there is any infirmity, perversity or illegality in the impugned order. All these petitions are devoid of any merit and therefore, the same are hereby dismissed.