

(2006) 12 MAD CK 0097

In the Madras High Court

Case No : Writ Petition No's. 5177 to 5190 of 2000

Southern Railway

APPELLANT

Vs

S. Dharani and Others

RESPONDENT

Date of Decision : 08-12-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)
Limitation Act, 1963 — Section 4
Minimum Wages Act, 1948 — Section 24
Payment of Wages Act, 1936 — Section 15

Citation : (2006) 12 MAD CK 0097

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : Aparna Nandakumar, in W.P. No. 1577 of 2000 and S. Balaji, in W.P. Nos. 1578 to 1590 of 2000, for the Appellant; L. Chandra Kumar, for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—In all these writ petitions, the first writ petitioner is the Southern Railway represented by its General Manager and the second writ petitioner is the Divisional Railway Manager, Southern Railway, Tiruchirapalli. The first respondent in all these writ petitions are all workmen, working as Stations Masters. They had approached the second respondent Central Government Labour Court at Chennai with Claim Petitions filed u/s 33(C)(2) of the Industrial Disputes Act [for short "I.D. Act"].

2. Their claim petitions were taken on file by the second respondent Labour Court as C.C.P. Nos. 55 to 68 of 1989. In respect of the claimants in 1, 2, 4, 7 to 12 and 14, the claim was for the leave salary for the period those workmen went on Medical Leave and the period was between 26.3.1988 to 04.4.1988. In respect of the claimant, viz., E.N. Parameswaran, first respondent/workman in W.P. No. 5179 of 2000 (arising out of C.C.P. No. 57 of 1989), the claim relates to the period of leave from 23.02.1983 to 05.03.1983. In respect of the workman

M. Ramani, the first respondent in W.P. No. 5182 of 2000 (arising out of CCP No. 60 of 1989), the claim consists of five different periods from 01.5.1985 to 21.02.1987. Though these petitions were filed as early as 1989, the counter statements were filed by the writ petitioner Department only on 16.6.1991 and an additional counter was filed on 05.8.1992.

3. Before the second respondent Labour Court, two workmen, viz., K.Dharani (first respondent in W.P. No. 5177 of 2000) and R. Ravikumar (first respondent in W.P. No. 5180 of 2000) examined themselves as common witnesses on the side of the petitioners/claimants. They had also marked documents Exs.P.1 to P.8. However, the writ petitioner chose not to file either documentary or oral evidence before the Labour Court but contented with their own counter and additional counter statements. As the claims were identical and relate to similar subject matter, the Labour Court conducted a joint trial and passed a common order dated 04.4.1994 and allowed all the claim petitions. The computation made by the Labour Court is as follows:

Sl. No.	W.P. No.	Name	C.C.P. No.	Amount computed	Rs.
1	5177 of 2000	S. Dharani	55 of 1989	236	2
2	5178 of 2000	S. Ganesan	56 of 1989	307	3
3	5179 of 2000	E.N. Parameswaran	57 of 1989	574	4
4	5180 of 2000	R. Ravikumar	58 of 1989	290	5
5	5181 of 2000	Riaz Ali Khan	59 of 1989	453	6
6	5182 of 2000	M. Ramani	60 of 1989	2907	7
7	5183 of 2000	R. Palanivelu	61 of 1989	283	8
8	5184 of 2000	M. Balasubramanian	62 of 1989	349	9
9	5185 of 2000	P.C. Ravindra Kumar	63 of 1989	340	10
10	5186 of 2000	N. Raghuraman	64 of 1989	290	11
11	5187 of 2000	M. Ramani	65 of 1989	425	12
12	5188 of 2000	G. Kanagasundaram	66 of 1989	357	13
13	5189 of 2000	J. Ganesh Kumar	67 of 1989	456	14
14	5190 of 2000	P. Sundaram	68 of 1989	806	

4. Even though this order was passed as early as 1994, the writ petitioner Department, which is a Central Government establishment run with the public money, chose to file the writ petitions only in the year 2000, i.e., after a period of six years by challenging the order of the second respondent Labour Court. Not one reason was stated in the affidavits filed in support of the writ petitions and sworn to by the second petitioner. As to the enormous delay in filing the writ petitions, a vague statement has been made stating that the copy of the impugned order passed by the Labour Court was made available only in the year 1998. It is seen from the certified copy of the impugned order produced by the petitioners that an application for copy of the order itself was made by them only on 30.4.1998 and it was obtained by them on 09.9.1998 itself. By this one vague sentence, the writ petitioners cannot get over the long delay in coming to this Court. Even otherwise, when they had received the order copy in the year 1998, there is no explanation as to why the writ petitions were filed two years thereafter. This is especially in the context that in paragraph 3 of the affidavit filed in support of the writ petitions, they had taken a stand that the workmen were guilty of laches by going to the Labour Court with inordinate delay in making their claim.

5. As in all the writ petitions, the amount claimed is very meagre, these matters were sent to the Lok Adalat dealing with the labour matters by this Court. Before the Lok Adalat held on 18.11.2006, the officers of the Department were not willing to pay the amount as computed by the Labour Court even though the amounts involved excepting in one case were ranging from Rs. 200/- to Rs. 300/- only and it was informed to the Lok Adalat that since the issue related to the policy of the Organisation, it must be heard judicially. Therefore, once again, the matters were directed to be posted before the Court.

6. I have heard the arguments of Mrs. Aparna Nandakumar, learned Counsel appearing for the writ petitioners and Mr. L. Chandrakumar, learned Counsel appearing for the respondent workmen in all the writ petitions and have perused the records.

7. Firstly, the writ petitions are liable to be dismissed on the ground of laches. Secondly, the amounts involved are so trivial that the Government Department should not waste so much money in filing these writ petitions as they will be spending more money than what is required to be paid to the workmen that too at the cost of exchequer. In any event, since the learned Counsel appearing for the writ petitioners wanted to urge the points raised in the writ petitions, the same are accordingly dealt with herein.

8. The first point urged by the learned Counsel for the petitioners is that the petitions u/s 33(C)(2) of the I.D. Act are not maintainable as there is a serious dispute about their entitlement. The second point is that the issue is relating to the limitation. According to the writ petitioners, though under the Payment of Wages Act, 1936, a limitation is prescribed, they ought to have proceeded before the authority under that Act and should not have gone to the Labour Court thereby getting over the limitation and the same should not be allowed.

9. In this context, it is relevant to refer to the decision of the Kerala High Court reported in 1986 L.I.C.1509 [Divisional Personnel Officer, Southern Railway v. K.P. Moidutty and Anr.] wherein a learned Judge of the Kerala High Court has squarely answered similar contentions in paragraphs 3 and 4 of the judgment, which reads as follows:

Para 3: The main ground of attack against Ext.P5 is that the Labour Court had no jurisdiction at all to entertain the employee's application and deal within on merits. Why, one should legitimately ask. The pleading on this point, in Ext.P3 objection filed against the employee's application, was this:

The above claim petition is not maintainable either in law or on facts. It is beyond the scope of Section 33C(2) of the Industrial Disputes Act.

The question again arises as to why the petition was not maintainable "in law or on facts" or as to how it was beyond the scope of Section 33C(2); but the rest of the objections, not unduly brief, furnishes no answer to any of these questions. Where proceedings before a court or authority is objected to as not maintainable

or beyond the scope of the statutory provision invoked, one should legitimately expect the objector to set out the facts or the reasons (or both) in support thereof; and if he fails to do so, the court or authority could not be blamed for not considering the same either properly or improperly. For this reason also I think the Original Petition should fail.

Para 4: The jurisdictional point argued before the Labour Court (despite want of proper pleadings) was that as the petitioner's claim was for wages denied to him for some period, the matter could have been agitated u/s 15 of the Payment of Wages Act alone, and not in proceedings u/s 33C(2) of the I.D. Act, as the Payment of Wages Act was a "self-contained Code impliedly excluding the jurisdiction" of other Courts and authorities. The discussion of the Labour Court on this point may not be happy, but its conclusion seems to be beyond reproach. In *Vimal Printers v. Omana* 1982 KLT 923 : 1983 LIC 270 it was argued before this Court that the Minimum Wages Act, 1948 was a self-contained Code and that a claim for minimum wages could not be brought u/s 33C(2) of the I.D. Act. The court rejected the contention; and it seems to me that the reasoning of that decision should apply to the present contention in respect of the Payment of Wages Act also. It is interesting to notice that Section 22 of the P.W. Act is practically similar to the provisions of Section 24 of the Minimum Wages Act discussed in that case. In *Bombay Gas Co. Ltd. Vs. Gopal Bhiva and Others*, the Supreme Court indicated that a claim barred under the P.W. Act could be agitated u/s 33C(2) of the I.D. Act, indirectly at least indicating thereby that the jurisdiction of the Payment of Wages Authority is not exclusive.

10. What is surprising is that the learned Counsel should re-agitate the arguments all over again without reference to the above decision, which was rendered in respect of the very same writ petitioner institution. Even otherwise, though the law of limitation will not apply when a claim is made u/s 33(C)(2) of the I.D. Act, the said question came up for consideration by the Supreme Court vide its decision reported in *Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others*, and in paragraph 3 of the judgment, it has been observed as follows:

Para 3: In our view Article 137 only contemplates applications to Courts. In the Third Division of the Schedule to the Limitation Act, 1963, all the other applications mentioned in the various articles are applications filed in a court. Further Section 4 of the Limitation Act, 1963, provides for the contingency when the prescribed period for any application expires on a holiday and the only contingency contemplated is "when the court is closed". Again u/s 5 it is only a court which is enabled to admit an application after the prescribed period has expired if the court is satisfied that the applicant had sufficient cause for not preferring the application. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963.

Therefore, the argument on the ground of limitation has to be rejected outright.

11. Merely because the writ petitioners have objected to the maintainability of the claim u/s 33(C)(2) of the I.D. Act, it does not oust the jurisdiction of the Labour Court and the Labour Court is entitled to go into all incidental issues arising out of the claim made by the workmen. In this context, it is necessary to refer to the decision of the Supreme Court reported in *R.B. Bansilal Abirchand Mills Co. Ltd. Vs. The Labour Court, Nagpur and Others*, . etc. wherein in paragraph 23 of the judgment, it has been held as follows:

Para 23. In substance the point urged by the appellants was that if a claim is made on the basis of a lay-off and the employer contends that there was no lay-off but closure, it is not open to a labour court to entertain an application u/s 33C(2). The more so it was stated, when the dispute was not between a solitary workman on the one hand and the employer on the other but a whole body of workmen ranged against their employer who was faced with numerous applications before the Labour Court for computation of benefit in terms of money. As has been said already the Labour Court must go into the matter and come to a decision as to whether there was really a closure or a lay-off. If it took the view that there was a lay-off without any closure of the business it would be acting within its jurisdiction if it awarded compensation in terms of the provisions of Chapter V-A. In our opinion the High Court's conclusion that

In fact the business of this Company was continuing. They in fact continued to employ several employees. Their notices say that some portions of the mills would continue to work" was unexceptionable. The notices which we have referred to can only lead to the above conclusion. The Labour Court's jurisdiction could not be ousted by a mere plea denying the workman's claim to the computation of the benefit in terms of money; the Labour Court had to go into the question and determine whether, on the facts, it had jurisdiction to make the computation. It could not however give itself jurisdiction by a wrong decision on the jurisdictional plea.

12. The last legal contention is that while the claim should be made under the Payment of Wages Act and not u/s 33(C)(2) of the I.D. Act, it has been held in a number of cases that the workman has an option to avail both the remedies and each Act is not mutually exclusive of the other. Only to cite two cases which are relevant for this proposition are given below.

13. A Division Bench of the Bombay High Court in its decision reported in *Union of India Vs. Samuel Peters and Another*, in paragraph 9 of the judgment held as follows:

Para 9: The next contention that was raised was that the decision of the Payment of Wages Authority operates as *res judicata* and the Industrial Court could not award the claim of the respondent No. 1 which was made by the respondent No. 1 before the Payment of Wages Authority and rejected by it though on the ground of limitation. The claim prior to January, 1962 was rejected by the Payment of Wages Authority on the ground that the said claim could not be

entertained a it was beyond a period of 6 months which was within the period of limitation and on that ground the claim was rejected. It is contended that since the claim has been rejected by the Payment of Wages Authroity the Industrial Court could not go into that question. Here no question of any res judicata arise. The Payment of Wages Authority could not entertain a claim which was beyond the period of 6 months and could not exercise any jurisdiction so far as that claim was concerned unless it thought fit to condone the delay. u/s 33C(2) of the Industrial Disputes Act, there is no question of any limitation. Such a claim could be entertained at any time and in a proceeding u/s 33C(2) no issue could arise as to whether a particular clam is barred by limitation or not. The issue in the earlier case before the Payment of Wages Authority was whether the claim prior to January, 1962 was barred by limitation. Such an issue could not be entertained in a proceeding u/s 33C(2). Therefore, there is no question of trying the same issue as was tried and decided in the earlier proceeding, even assuming that that prior Court was a Court of exclusive jurisdiction. In the first place in order that a decision of an Authority which is not the same as a subsequent Authority that earlier Authority must be the exclusive Authority of competent jurisdiction. This is not the case here. As we have said earlier, the Payment of Wages Authority is not the exclusive authority, but it is an alternative and independent Authority, but the Labour Court is an Authority u/s 33C(2) of the Industrial Disputes Act. Secondly, the issue which was tried in the proceeding before the Payment of Wages Authority does not arise in the proceeding u/s 33C(2) and in such a case the question of operation of the principles of res judicata cannot also arise. This ground, therefore, also must fail.

14. Similarly, a Division Bench of this Court vide its decision reported in Ananda Transport Vs. M. Chelliah and Others, has rejected a similar plea in paragraph 9 of the judgment and the same is extracted below:

Para 9: ... After having posed the question, he answered that it could not have been so and said that the Parliament could not have contemplated driving the workmen on whom certain benefits are conferred by the Act to go before one authority in respect of some benefits and to go before another authority in respect of certain other benefits and that if that were the intention of the Parliament, such intention would have been expressed in clear and definite language. We agree with the learned Judge. In the light of this decision, we are unable to accede to the contention of Mr. Naidu that the workmen in the instant case should have taken steps for redressal of their grievance under the Payment of Wages Act and ought to have resorted to an application u/s 33C(2) of the Industrial Disputes Act and approached the labour Court for computing their benefits in terms of money.

15. Now, coming to the facts of these cases, the Labour Court has categorically held that it believes the evidence of two workmen, who have been examined and also referred to the documents marked on the side of the workmen and held that the writ petitioner Department did not reject the leave request and there are also

Rules to the extent that in certain contingencies, a Certificate by a private medical practitioner can be received and the Department has allowed such claims earlier. In any event, the Labour Court has categorically rendered a finding that the workmen had appeared before the Railway doctor and had received the certificate for joining duty and this has not been denied by the Railways by examining any person on behalf of the administration. It was also held that no Railway doctor has given any certificate against any one of the workmen. In fact, it is a case of the writ petitioner that the Department is not having any defence to the contrary and merely satisfied itself with the counter statement and the additional counter statement wherein only certain untenable legal pleas were raised which have been answered above.

16. Under these circumstances, the impugned common order passed by the Labour Court in all these writ petitions is liable to be sustained. The finding of the Labour Court that the writ petitioner Department should pay the amount with 12% interest is legally valid and no exception can be taken for that direction.

17. In the light of the above, all the writ petitions fail and the same shall stand dismissed with a direction that the writ petitioner Department should pay the amount as quantified by the Labour Court together with 12% interest as directed. Further, for frivolously contesting the order of the Labour Court, that too, after a period of six years and also wasting public money and also for dragging the workmen unnecessarily before this Court, they must be mulced with costs. Therefore, the writ petitioner Department is directed to pay Rs. 1000/- towards cost in each of the writ petitions and the same shall be paid to the workmen along with the directions given above within a period of four weeks from today.