

(2007) 10 MAD CK 0083
In the Madras High Court
Case No : W.A. No. 2282 of 2001

Subramani

APPELLANT

Vs

The Presiding Officer, II Additional Labour Court and The
Special Officer, Madurantakam Co-operative Sugar Mills Ltd.

RESPONDENT

Date of Decision : 31-10-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 33(C)(2), 33A

Citation : (2007) 10 MAD CK 0083

Hon'ble Judges : S.J. Mukhopadhaya, J;A.C. Arumugaperumal Adityan, J

Bench : Division Bench

Advocate : D. Hari Parandaman, for the Appellant; N. Balasubramanian, for R1
and S.S. Venkataraman, for R2, for the Respondent

Final Decision : Allowed

Judgement

A.C. Arumugaperumal Adityan, J.—This writ appeal has been preferred against the order passed by a learned Judge of this Court in

W.P.No.12855 of 1991, dated 23.2.1999, under Article 226 of the Constitution of India. This is a writ of certiorari calling for the records of the

1st respondent in C.P.No.898 of 1996 and to quash the order passed therein dated 5.6.1990.

2.1 The Claim Petition No.898 of 1986 was filed by the petitioner/respondent u/s 33(C)(2) of the Industrial Disputes Act claiming that the

petitioner as a driver under the respondent-2 / Special Officer, Madurantakam Co-operative Sugar Mills Ltd., Paladam Post, had worked for

more than 8 hours and hence, he is entitled to double the pay. But the 2nd respondent herein had stopped the additional pay paid by him from

October, 1985. Claiming Rs.16,649.21 towards additional pay for the period from

October, 1985 to August, 1986, the said application was filed.

2.2 It was contended on behalf of the 2nd respondent herein / employer that the petition itself is not maintainable u/s 33(C)(2) of the Industrial

Disputes Act and that the petitioner is not working in an Industry, since he is in no way connected with the protection of the respondent's factory in

any manner.

2.3 After going through the averments in the petition and the counter and after taking into consideration the evidence both oral and documentary,

the learned Additional Labour Judge, Chennai, has allowed the petition filed by the petitioner granting the relief of additional pay of Rs.16,649.21

as prayed for. Aggrieved by the findings of the learned Labour Judge, the employer had preferred the writ petition No.12855 of 1991. After going

through the merits and demerits of the case, the learned single Judge of this Court has come to the conclusion that the impugned order passed by

the learned Labour Judge u/s 33(C)(2) of the Industrial Disputes Act is not maintainable on the ground that the employer / Co-operative Sugar Mill

will be governed by the by-laws and also the circular issued by the Registrar of Co-operative Society alone and that being the position, the order

of the learned Labour Judge, under challenge, is not sustainable and consequently allowed the Writ Petition setting aside the award passed by the

learned Labour Judge in C.P.No.898 of 1986 on the file of the Presiding Officer, II Additional Labour Court, Chennai, which necessitated the

employer to prefer this writ appeal.

3. We have heard the learned Counsel appearing for the appellant Mr.D.Hari Parandaman, learned Counsel appearing for the appellant and

Mr.N.Balasubramanian learned Counsel appearing for the 1st respondent and Mr.S.S.Venkataraman learned Counsel appearing for the 2nd

respondent and considered their respective submissions.

4. The only point for determination in this writ appeal is whether Section 33(C) (2) of the Industrial Disputes Act will be applicable to the present

facts of the case?

5. The learned Counsel appearing for the appellant would contend that even though the Government had declined to refer the matter for

adjudication u/s 10 of the Industrial Dispute Act, it is not an embargo for the appellant u/s 33(C)(2) of the Industrial Dispute Act to move before

the Labour Court. In support of this contention, the learned Counsel for the appellant would rely on a decision of a Bench of this Court in

W.A.No.189 of 2000, dated 10.2.2000, wherein the observation made relevant for the purpose of deciding this writ appeal runs as follows:

Making complaint for contravention of the provisions u/s 33(2)(b) of the said Act by the appellant is a statutory right to an employee, and, merely

because the Government refused to refer the matter to the Tribunal exercising powers u/s 10 of the said Act, exercising such a right by the

employee u/s 33A of the said Act cannot be denied.

Section 33(C)(2) of the Industrial Disputes Act runs as follows:

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.

It was contended on behalf of the respondent that for the purpose of enforcing the existing right and when the existence of that right itself is not

questioned, the Labour Court is totally in out of order in granting the interim relief. But in the Counter filed in C.P.No.898 of 1986 itself the

employer/respondent herein had admitted that if an employee has worked for more than 10 hours he has been paid extra wages proportionate to

the extra hours of work he has done and that in September-1975, the drivers of the respondent had raised a demand of double wages for over

time work beyond 8 hours and also for wage revision with weightage and that there was mediation took place between the employer and the

drivers" association and the Director of Sugars at the request of the drivers had enhanced the extra monetary allowance of Rs.30/- to Rs.60 per

month for the overtime work subject to the condition that the drivers who are eligible for this allowance for their odd hours duty should work for at

least 5 days in a month during odd hours instead of 10 days and a circular which

was applicable to all co-operative and public sector sugar mills

was brought to the notice of all the drivers through an order No.650/85-86-E dated 7.7.1986 by which they were informed that they will be paid

extra monetary allowance of Rs.60/- per month if they work during odd hours atleast for 5 days in a month and that they are not entitled to any

other extra wages. They would further admit that the petitioner has not received the extra monetary allowance of Rs.60/- per month from 1.4.1986

and out of 8 drivers only 4 drivers have received the same. So, under such circumstances, it cannot be contended that Section 33(C)(2) of the

Industrial Dispute Act will not be applicable to the present facts of the case because under C.P.No.898 of 1986, the petitioner has claimed only

over time wages to which he is entitled to.

6. Relying on 1977 (2) LLJ 274 (General Manager, Co-operative Super Market, Madurai v. Additional Labour Court, Madurai and Anr.), the

learned Counsel for the appellant would contend that in the said ratio the question that arose for consideration whether the claim for refund of

security deposit can be the subject matter of the claim petition u/s 33(C)(2) of the Industrial Dispute Act and whether the Labour Court has got

jurisdiction to try the same, were considered in the affirmative as follows:

No doubt, in the instant case, the second respondent, when he was issued Ex.M.3, did not furnish the necessary explanation. However, that would

not enable the Society to contend that the second respondent is not entitled to the return of the security deposit. Ramakrishna, J., in Management

of Kodaikanal Motor Union (P) Ltd., Thenkarai, Peria Kutam, Madurai Vs. A. Nallathambi represented by Madurai Motor Labourers" Union

Branch Thenkarai, Periakulam and Others, :

With regard to the claim for repayment of the security amount, it is urged by the learned Counsel for the management that since the order of

dismissal involves a finding that the worker had caused loss to the management, the management would be entitled to retain the security amount as

a set off against that loss. Here, however, the position is different from the case of bonus prima facie the money belongs to the worker and in the

normal course he would be entitled to get a refund of it. It was for the management to prove satisfactorily when the matter came before the Labour

Court in a claim petition u/s 33(C)(2), that the management had a lien on that

money for loss caused to it by the worker's misconduct. Necessary evidence establishing the link between the worker's conduct and the loss to the management should have been adduced in the context of the return of the security money,

Under such circumstances, we are of the considered view that the findings of the learned single Judge that the Labour Court has no jurisdiction to entertain the petition filed u/s 33(C)(2) of the Industrial Disputes Act cannot be sustainable and warrants interference.

7. In fine, the writ appeal is allowed and the order passed in W.P.No.12855 of 1991 is hereby set aside and the order of the learned Labour Court in C.P.No.898 of 1986 is restored. Time for payment is one month.