

(2010) 05 OHC CK 0032
In the Orissa High Court
Case No : O.J.C. No. 5587 of 2002

The Executive Engineer, Telecommunication (M) Division,
O.S.E.B., Bhubaneswar APPELLANT

Vs

The Presiding Officer, Labour Court, Bhubaneswar and others RESPONDENT

Date of Decision : 05-05-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(1), 33C(2)

Citation : (2010) 05 OHC CK 0032

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

Bench : Single Bench

Judgement

B.K. Patel, J.—In this writ petition the employer has assailed the legality of the order dated 1.1.2002 passed by the learned Presiding Officer, Labour Court, Bhubaneswar (for short "the Labour Court") in I.D. Misc. Case No. 48 of 1994 directing the employer to pay to the legal heirs of the deceased-workman Rs. 4,38,425.68/- towards overtime duty wages payable to the deceased-workman within a period of two months from the date of the order failing which the deceased's legal heirs have been held to be entitled to get the order implemented through process of law with interest at the rate of 15 per cent per annum from the date of amount became payable till the date of actual payment.

2. I.D. Misc. Case No. 48 of 1994 was instituted on the basis of application u/s 33-C(2) of the Industrial Disputes Act, 1947 (for short "the Act"). It was averred by the workman that he joined as a Watchman in the establishment of Telecommunication Laboratory Sub-Division, O.S.E.B., Bhubaneswar under the jurisdiction of Executive Engineer, Telecommunication Mt. Division, Bhubaneswar. He was entrusted with the duties of watching the materials as well as office of the Telecommunication Division and Sub-Division for more than 17 hours a day including on holidays. However, he was not paid any extra wages for the extra hours of duty. According to the calculation sheets annexed to the application, the workman claimed that the employer was liable to pay Rs. 2, 19, 212.84/- to

wards wages for extra hour of duty for the period from 14.6.1985 to 31.1.1994. Accordingly, claim was filed to direct the employer to pay double the amount, i.e., Rs. 4,38,425.68/- towards overtime duty wages.

3. In the counter filed by the employer it was stated that the workman was never engaged to perform overtime work. He was assigned to do work as a Watchman for eight hours a day.

4. Workman having died during pendency of the proceeding before the Labour Court, his legal heirs, who are opposite party Nos. 2 to 5 in this writ petition, were substituted. In order to substantiate the assertions, only one witness A.W. 1, i.e., workman himself was examined and documents marked Exts. 2 to 12 were relied upon on behalf of the workman whereas four witnesses O.P.Ws. 1 to 4 were examined and documents marked Exts. A to D were relied upon by the employer.

5. On the basis of materials on record including the documentary evidence, it was concluded by the learned Labour Court that the workman used to perform duties from 5.00 P.M. till 10.00 A.M. of the next day, i.e., for almost 17 hours within a period of 24 hours for which the employer is liable to pay overtime wages for 9 hours per day amounting to Rs. 4, 38, 425.68/-.

6. In assailing the impugned order it was strenuously contended by the learned counsel for the petitioner that claim for overtime wages made by the workman having been altogether denied by the employer, it was beyond the jurisdiction of the Labour Court to entertain the dispute in exercise of power conferred u/s 33-C(2) of the Act. The workman claimed overtime wages from 14.6.1985 to 31.1.1994 by filing application in the year 1994. During this period, the workman had never claimed that he was entitled to overtime wages. Therefore, not only the claim is stale and barred due to delay and laches, but also in the absence of any prior adjudication of the workman's claim for entitlement to overtime wages decided in a properly framed industrial dispute, learned Labour Court should have refrained from deciding the claim in a proceeding u/s 33-C(2) of the Act, which is in the nature of an execution proceeding. In this context, learned counsel for the petitioner relied upon the decision of the Hon'ble Court in Central Inland Water Transport Corporation Limited Vs. The Workmen and Another, and decisions of this Court in Jagannath Barik Vs. Labour Court and Another, and Surendra Nath Biswal and Others Vs. Presiding Officer, Labour Court and Another, . It was further argued that materials on record indicate that the workman was residing in the office premises. His simple presence in the premises of the office did not amount to performance of duties. Learned Labour Court has passed the impugned order without application of mind solely on the basis of some letters and notices issued by the employer to the workman asking him the reason of his absence from the office premises. Such letters and notices do not necessarily point out that the workman was performing duties from 5.00 P.M. to 10.00 A.M. It was further argued that non-application of mind in passing the impugned order is evident from the fact that though evidence was adduced

on behalf of the employer to indicate that the workman availed casual leaves for a substantial period as well as L.T.C., and also was absent from duties during the strike periods, learned Labour Court allowed the workman's claim in full without indicating the basis of computation.

7. In reply, it was strenuously contended by the learned counsel for the opposite party Nos. 2 to 5 that none of the decisions relied upon on behalf of the petitioner lays down that claim for overtime wages cannot be decided in a proceeding u/s 33-C(2) of the Act. In *Chintamani Acharya v. Union of India and others* : 1988 (II) OLR 501, it has been decided by this Court that Labour Court has jurisdiction to adjudicate the workman's claim for overtime wages in a proceeding u/s 33-C(2) of the Act. It was argued that the learned Labour Court has assigned cogent reasons to conclude that during the entire period from 14.6.1985 to 31.1.1994 the workman was performing duty as a Watchman for 17 hours, and thus, engaged in overtime duties for 9 hours a day. Circulars filed on behalf of the petitioner go to show that there is provision for overtime wages in the establishment of the petitioner. As regards delay in approaching the Labour Court it was fairly conceded by the learned counsel for the opposite party Nos. 2 to 5 that the workman ought to have filed application within a reasonable period. However, it was submitted that delay and laches would not render the entire claim stale. The workman's claim of overtime wages for a reasonable period prior to the institution of the proceeding must be upheld.

8. Having perused the materials on record, upon reference to rival contentions, it is observed that while workman claims to have performed overtime duties, such factual assertion is being denied by the employer. In the writ petition itself circulars issued by the employer providing for principles for payment of overtime wages/overtime remunerations to the employees/workers have been annexed. Therefore, undoubtedly, there is provision in the establishment of the employer for overtime, indisputably an employee rendering overtime duties is entitled to overtime wages/remunerations.

9. In *Central Inland Water Transport Corporation Ltd. v. The Workmen and another* (supra) it has been held :

A proceeding u/s 33-C(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. This calculation or computation follows upon an existing right to the money or benefit, in view of its being previously adjudged, or, otherwise, duly provided for. 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 sometimes be left over for determination in execution proceedings. But that is not the case with the determinations under heads (i) and (ii). Since a proceeding u/s 33C(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". Therefore, when a claim is made before the Labour Court u/s 33C(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, xx xx xx.

10. Placing reliance on the aforesaid decision as well as other decisions of the Hon'ble Supreme Court, it was held by this Court in Jagannath Barik (In O.J.C. 2879/90) v. Presiding Officer, Labour Court & another (supra) 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 course of and in relation to the relationship between the workmen and its employer. The matter covered by Section 10 of the I.D. Act cannot be decided by the Labour Court u/s 33-C(2), as the jurisdiction conferred on the Labour Court is in the nature of that of an executing Court, and that the foundation for the workmen's claim thereunder is the pre-existing entitlement to money or any benefit capable of computation in terms of money against the employer. The Labour Court of course has jurisdiction to go into incidental or ancillary matters having bearing on the question which it is called upon to decide, but this cannot extend to matters which lie within the domain of Industrial Tribunal upon reference u/s 10 (1) of the Act.

11. In Surendra Nath Biswal and others v. Presiding Officer, Labour Court & another (supra), it has been held :

If a workman makes a claim for additional wages (beyond his contract) or relating to the conditions of his work, then it is a matter beyond the Labour Court's power u/s 33-C(2) because the claim falls within the scope of an industrial dispute.

12. As was contended on behalf of the opposite party Nos. 2 to 5 in none of the above decisions relied upon on behalf of the petitioner it has been held that workman's claim for overtime wages cannot be decided in a proceeding u/s 33-

C(2) of the Act. In *Chintamani Acharya v. Union of India and others* (supra), relied upon on behalf of the opposite party Nos. 2 to 5, the petitioner, working under the Railways Department as a Khalasi, claimed overtime wages. As his claim was not adjudicated by the authority, he filed application u/s 33-C(2) of the Act before the Labour Court claiming overtime wages computed by the petitioner to the tune of Rs. 1,87,200/-. According to him, under the Indian Railways Act there is provision for paying overtime wage. The Union of India objected to the application mainly on the ground that since the opposite parties are disputing the entitlement and claim of the petitioner, the Court has no jurisdiction to entertain the application u/s 33-C(2) of the Act. Considering the objection, the Labour Court came to the conclusion that the application of the petitioner does not come within the scope and ambit of Section 33-C(2) of the Act and dismissed the claim petition for want of jurisdiction. It was observed by this Court that undoubtedly there is provision under the Indian Railways Act for overtime. Referring to the decisions of Hon'ble Supreme Court including the decision in *Central Inland Water Transport Corporation Ltd. v. The Workmen and another* (supra) as well as decisions of different High Courts, it was held by this Court that Labour Court has jurisdiction to adjudicate workman's claim of wages for overtime work u/s 33-C(2) of the Act. It was held :

10. What vexes the Court is what would fall within the scope of Sec. 10 reference of the Act and which matters can be adjudicated under Sec. 33-C(2) of the Act. Keeping in view the principles laid down by the Supreme Court and various High Courts, we are of the view that the test would be whether the claim of the workmen relates to any money claimed from the employer or any benefit which is capable of being computed in terms of money and disputes raised must be incidental or ancillary to the money claimed as aforesaid. Ancillary or incidental disputes will also include disputes whether the workman is entitled to receive the money so also the computation of the quantum of money. However, when the dispute is of such a nature that the claim of money becomes incidental to the dispute it can be only adjudicated by the Tribunal by way of reference under Sec. 10 of the Act.

11. It would be very difficult to enunciate or catalogue which category of claim will fall under Sec. 33-C(2). No Court has made any attempt to do so nor we propose to make such an attempt.

12. Keeping the aforesaid principle in view, on the facts of this case we are of opinion that the claim made by the workmen in this case can be adjudicated under Sec. 33-C(2) of the Act, notwithstanding the stand of the employer-the Union of India. The order dated 19.5.1981 holding that the proceeding under Sec. 33-C(2) is not maintainable cannot be sustained and is accordingly quashed. The claim petition is remitted back to the Labour Court for disposal in accordance with law. The writ application is allowed but there will be no order as to costs.

13. In the present case also it is not disputed that there is provision for overtime

in the establishment of the employer. Details circulars have been issued from time to time providing for guidelines for payment of overtime wages. Claimant's claim for overtime wages is on the basis of an entitlement for money which has been provided for and is in existence. There is no lis concerning a workman's right to the benefit of overtime wages and the corresponding liability of the employer for payment of overtime wages. The only dispute in the present proceeding u/s 33-C(2) of the Act relates to the extent of the employer's liability, i.e. computation of benefit which the workman is entitled to. Workman's claim is a pre-existing entitlement to money the extent of which was required to be computed by the Labour Court. Determination of the extent of liability of the employer to satisfy the workman's claim is within the purview of the proceeding u/s 33-C(2) of the Act. That is the ratio in *Central Inland Water Transport Corporation Ltd. v. The Workmen and another* (supra), *Jagannath Barik (In O.J.C. No. 2879/90) v. Presiding Officer, Labour Court & another* (supra) and *Surendra Nath Biswal and others v. Presiding Officer, Labour Court & another* (supra) relied upon on behalf of the petitioner. That apart, it has been categorically held in *Chintamani Acharya v. Union of India and others* (supra) that Labour Court has jurisdiction to adjudicate workman's claim for wages for overtime works. There is no merit in the first contention relating to maintainability of the proceeding u/s 33-C(2) of the Act.

14. Perusal of materials on record reveals that time and again the workman was asked to explain regarding his absence from duties between 5.00 P.M. to 10.00 A.M. Exts. 3, 4 and 5 relied upon by the workman in this regard substantiate the workman's assertion to have been directed to perform duties from 5.00 P.M. to 10.00 A.M. His absence during that period was taken exception to. There is no explanation from the side of the employer in this regard. On the basis of materials on record, learned Labour Court has come to a categorical finding that during workman's temporary absence between 5.00 P.M. to 10.00 A.M. he was called upon to explain and issued warning for which it can safely be concluded that the applicant was performed duties from 5.00 P.M. to 10.00 A.M. of the next day, i.e., for almost 17 hours within a period of 24 hours for which the employer was liable to pay overtime wages for 9 hours per day to the workman. There is absolutely no scope to interfere with such finding in the absence of any infirmity.

15. However, admittedly, the workman presented the application in the year 1994 claiming overtime wages from the period from 14.6.1985 to 31.1.1994. There is no explanation in support of such inordinate delay. That apart, while computing the quantum of overtime wages payable to the workman, the Labour Court also does not appear to have taken note the fact that the workman availed casual leave from time to time and also availed L.T.C. Annexure-6 to this writ application is a statement showing casual leave/L.T.C. and strike period availed by the workman which has not been controverted in any manner. Confronted with such situation, it was contended by the learned counsel for the opposite party Nos. 2 to 5 that though there has been some delay in claiming overtime wages, workman's claim for the same for three years prior to the date of

institution of the proceeding cannot be denied on the ground of delay and laches. It was argued that ordinarily law of limitation allows money claim to be raised within three years. It was submitted that taking into account the overall view of the facts and circumstances of the case including leave and other absence availed by the workman, his entitlement to overtime wages ought to be proportionately computed.

16. In view of concession regarding delay made on behalf of the opposite party Nos. 2 to 5, it is not found just and proper to burden the employer with claim of overtime wages for a period stretching long 9 years. However, as petitioner's claim of overtime wages for three years cannot be held to be unreasonable or improper, ends of justice shall meet if the workman's liability is confined to Rs. 1,50,000/-, i.e., roughly 1/3rd of the amount directed to be paid by the employer. The impugned order is modified to that extent.

17. Accordingly, the petitioner is directed to pay to the legal heirs of the deceased-workman a sum of Rs. 1,50,000/- within a period of two months from today.

The writ petition is disposed of.