
(2015) 09 BOM CK 0254
In the Bombay High Court
Case No : Civil Writ Petition No. 4957 of 1995

Union of India	Vs	APPELLANT
Mohmad Hussain and Others		RESPONDENT

Date of Decision : 28-09-2015

Acts Referred:

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

Citation : (2015) 09 BOM CK 0254

Hon'ble Judges : N.M. Jamdar, J.

Bench : Single Bench

Advocate : Suresh Kumar and Samiksha Kanani, for the Appellant; N.M. Ganguli and Karuna Yadav, for the Respondent

Final Decision : Disposed Off

Judgement

N.M. Jamdar, J.—By this Petition the Union of India through Chief Commercial Superintendent, Western Railways, challenges the Judgment and Order passed by the Central Government Labour Court No. 2, dated 15 November 1994, directing payment of overtime wages to the Respondents -workmen, in the Application filed by them under Section 33C(2) of the Industrial Disputes Act, 1947.

2. The Respondents, who are 47 in number were working as Head Waiters, Waiters, Cooks, Assistant Cooks, Cleaners in the Dining Cars of Rajdhani Express run by the Western Railways. They filed Application No.LC-2/1223 to 1269 of 1985 in the Central Government Labour Court No. 2 under Section 33C(2) of the Industrial Disputes Act, 1947. According to them, they were supposed to discharge their duties 8 hours per day and 48 hours per week and were entitled to overtime wages in case they worked in excess of 104 hours in two weeks. Their case was that the rate of overtime for the work done between 104 hours and 108 hours was one and half times the ordinary rate and for the work beyond 108 hours, it was double the ordinary rate. According to them, from the time they joined the duty on the train, they were working throughout the journey till

the time they returned back. It was their case that the train generally took 471/2 hours on its journey to New Delhi and back to Mumbai within three days. According to them, they worked during this period and they entitled to overtime wages.

3. The claim was contested by the Petitioner -Western Railways. According to the Petitioner, the Labour Court had no jurisdiction to decide the claim. It was their case that the Respondents were governed by provisions of Indian Railways Act, 1890 and the Railway Servants (Hours of Employment) Rules 1961 and also certain other statutory instructions. It was the case of the Petitioner that the Respondents were not entitled to the overtime wages as claimed and they were not on duty continuously as asserted by the Respondents.

4. The Labour Court by order dated 29 January 1990 allowed the Applications and directed payment of overtime wages to the Respondents -workmen. The Labour Court primarily relied upon the oral evidence adduced by the parties. The Petitioner thereafter filed a Writ Petition No. 3323 of 1990 challenging the order passed by the Labour Court. This Court upheld the findings of the Labour Court as regard limitation and maintainability of the Application. On merits the learned Single Judge observed as under :-

"3. On merits, however, I find that there is no advertence of mind to relevant and important materials placed on record in the form of duty charts, which indicated the actual calculations of duty time and how the time spent during the night hours on the running train ought to be computed for the purpose of calculating the total duty hours under the applicable rules. The Labour Court merely relied on oral evidence of parties, which was entirely scrappy and unsatisfactory. Since the claim of the workmen, if granted, are likely to impose large liability on the Railways and any decision based upon the inadequate and unsatisfactory evidence on record would cause injustice to one or the other party, I suggested to learned Counsel on both sides that the impugned orders could be set aside by consent, and the applications be remanded for being heard and disposed afresh by the Labour Court. The learned Counsel have agreed, and consented to such a Course."

The Petition was allowed and the order of the Labour Court was set aside and the applications were remanded to the Labour Court for consideration in the light of the legal submissions that may be canvassed. Upon remand, the Labour Court has passed the impugned order dated 15 November 1994, allowing the Applications.

5. I have heard Mr. Suresh Kumar, learned Counsel for the Petitioner and Mr. N.M. Ganguli, learned Counsel for the Respondents.

6. The Labour Court in the order dated 29 January 1990 held that where the workmen is entitled to receive in law, any money or any benefit which is computed in terms of money, then the Labour Court will have jurisdiction to entertain an Application under Section 33C(2) of the Act. The Labour Court held

that if the entitlement of a workman can be seen from the statute or the service conditions, then the Court will have jurisdiction. The order of the Labour Court therefore held that if a benefits flows from the service conditions or regulations governing the workmen and are computable in terms of money, then an application under Section 33C(2) of the Act is maintainable. This view has been upheld by the learned Single Judge in the order dated 25 March 1992. The learned Single Judge however noted that the Labour Court had not considered the relevant instrument governing the service conditions of the workmen and had relied primarily on oral evidence of the parties, which was not a correct approach. By way of illustration, the learned Single Judge referred to a form of duty chart and directed the Labour Court to take this material into consideration and calculate the duty hours under the applicable Rules. The learned Single Judge therefore clearly underlined the importance of analyzing the applicable Rules and the documents.

7. However, upon remand, the Labour Court committed the same error as it had committed earlier, which was corrected by this Court. The Labour Court again relied only on the oral evidence of the parties. The Petitioner had relied upon the provisions of the Indian Railways Act, 1890, Indian Railways (Amendment) Act, 1956, Railway Servants (Hours of Employment) Rules 1961, instructions contained in the letter of the Board No. E(LL)78/HER/16 dated 28.6.1979. In the present Petition also the Petitioner has relied upon the instructions issued pursuant to Permanent Negotiations Machinery Meeting held on 16/17 February 1979. None of these Rules or statutory instructions have been referred to by the Labour Court in the impugned order. The Labour Court did not place reliance on the duty chart/diagram dated 23 January 1985 on the ground that the claim of the Respondents was from 16 April 1972 to 5 January 1985. However, the contention of the Petitioner that it was prepared pursuant to the Permanent Negotiations Machinery meeting held in the year 1979. Furthermore, when the learned Single Judge had referred to the duty chart/diagram as one of the relevant and important material, there was no such objection raised that the duty chart is not relevant or important material. Therefore, the Labour Court could not have simply discarded the duty chart, if the duty chart was culmination of Negotiations Meeting.

8. Furthermore, as it has been rightly urged by the learned Counsel for the Petitioner, that such work is done by various staff on different trains apart from the train in question and therefore, this finding by the Labour Court will affect large number of employees of the Petitioner -Railways. Therefore, if the Labour Court had to entertain the Applications under Section 33C(2) ought to have discussed the legal position, relevant enactments, instructions, circulars to find out whether the claim of the Respondents -workmen was tenable and not merely because the Respondents claim it to be so in their evidence. As it has been emphasized by the learned Single Judge that it was not merely a matter of perception based on oral evidence, but on of the statutory entitlement based on documents and enactments. The Labour Court has failed to carry out the enquiry

as directed by this Court.

9. The Petition has remained pending for a long time since many Respondents were not served. It was also dismissed for default and then restored by order dated 24 August 2015. At the request of the learned Counsel for the Respondents, that the claim made by the Respondents is pending since long, the Petition was placed on Board for final hearing as it is.

10. Since the order passed by the Labour Court is not inconsonance of the directions of this Court in the order dated 25 March 1992 and that the Labour Court should take into consideration all the relevant statutory provisions, circulations and guidelines, the Application need to be remanded to the Labour Court for consideration.

11. I am aware that this would be second order of remand and the applications are pending since long. But considering the large scale implications for the Petitioner -Railways, the issue must be decided after taking into consideration all the relevant statutory instructions and therefore, the remand of the proceedings is necessary. Furthermore, the interest of the workmen can be secured by directing that the amount of Rs. 36,57,462/- deposited by the Petitioners in this Court remains deposited till the Applications are decided on merits by the Labour Court. It is directed so accordingly.

12. The Writ Petition is accordingly disposed off by quashing and setting aside the Judgment and Order dated 15 November 1994 in respect of the Applications No. LC-2/1223 to 1269 of 1985 and the applications stand restored to the file of the Central Government Labour Court.

13. Since the oral evidence is now complete and the Labour Court will have to decide the applications on the basis of documentary evidence and record and that the Applications are pending since 1985, it will be appropriate if the Central Government Labour Court gives priority to the disposal of these Applications and make an endeavour to dispose off the same within period of eight months from the date of the Writ of this Court reaching to the Labour Court.

14. It is clarified that what is observed above is only to emphasize the need for remand. The Applications will be considered on their own merits. Till the Applications are disposed off and for period of eight weeks, if the orders are adverse to the Respondents, the amount deposited would not be withdrawn by the Petitioners.

15. Rule is made absolute in above terms. No order as to costs.