
(2001) 04 BOM CK 0037

In the Bombay High Court

Case No : Writ Petition No. 2012 of 1998

Union of India

APPELLANT

Vs

Shri P.S. Pansora and Others

RESPONDENT

Date of Decision : 04-04-2001

Acts Referred:

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

Citation : (2001) 4 ALLMR 58 : (2001) 3 BOMLR 672

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : Mr. Suresh Kumar, for the Appellant; Mr. P.M. Mokashi, for the Respondent

Final Decision : Allowed

Judgement

R.J. Kochar, J.—The Petitioners, the Union of India, through the General Manager, Western Railway, have challenged the impugned orders of the Central Government Labour Court No.2 passed on 5.2.1996, as Judgment Part-I, and on 3.6.1996, as Judgment Part-II, in Application No. LC-2/2 to 5 of 1992 filed on 17.1.1992 by the Respondent No.1 the railway servant, who claimed overtime wages for the period from September, 1975 to August, 1979. The total claim was Rs.46,997.15, as far as this railway servant is concerned. Along with the aforesaid Respondent No. 1 there were three other railway servants, who are before me as Respondent Nos. 2, 3 and 4, who had also filed similar applications u/s 33C(2) of the Industrial Disputes Act, 1947 to claim overtime wages from December, 1975 to November, 1983, from January, 1968 to December, 1982 and from October, 1967 to January, 1980 respectively.

2. There is no dispute that as far as the Respondent Nos. 2, 3 and 4 are concerned, they had not contested their claim before the Labour Court and they had not filed their computations as directed by the Labour Court under its Judgment Part-I. The Petitioners have impleaded them as respondents for the

purpose that they were also directed to file their computations under the Judgment Part-I. It is therefore clear that the Respondent Nos. 2, 3 and 4 had not filed their computations before the Labour Court and therefore, their claims were not granted and it is therefore deemed that they have abandoned and given up their claims. The present petition is being contested only by Respondent No. 1.

3. The Petitioners had filed their written statement to oppose the claims of all the four railway servants. They had challenged the maintainability of such applications on the ground of very old, stale and time barred claims. The Petitioners have categorically stated in the written statement that the alleged claims of overtime were not at all admissible and maintainable and that the railway servants were paid their over time dues as and when they were admissible in accordance with the rules. The Respondent No. 1 had filed his affidavit in the form of oral evidence and he was cross-examined. The Petitioners had also filed an affidavit of their officer.

4. The Labour Court had by its Judgment Part-I held that the concerned railway servants were entitled to get their over time wages as claimed and it further directed the petitioners to file a statement showing the hours of work of the railway servants during the period from 13.9.1975 to 10.9.1979. Similar directions were issued by the learned Presiding Officer of the Labour Court in the case of other applicants also. The Petitioners filed an application before the Labour Court contending that they did not have the record to file the statement as directed. According to the Petitioners as per the Indian Railway Establishment Code, the record of payments are to be preserved for a period of 10 years and old records more than 10 years were destroyed, in this situation, Shri Suresh Kumar for the Petitioners has submitted that as far as the Respondent No.1 was concerned they had prepared a statement showing his dues in accordance with the claims as they had no other alternative for want of availability of the records, in these circumstances the Labour Court directed the petitioners to pay overtime wages as claimed by the Respondent No. 1 with interest at 12% from the date of the application till payment on the basis of the calculations made by the Petitioners in their application which were filed by them and marked as Exh.15. As far as other applicants are concerned they were directed to produce the overtime vouchers or other relevant record before the petitioners for preparing the statement and their payments. It appears that they never approached the petitioners with the overtime vouchers or other relevant records, and therefore, it is deemed that they have abandoned their claims.

5. Shri Mokashi, the learned Advocate for the Respondent No. 1 has submitted that this Court should not interfere with the order passed by the Labour Court under Article 226 of the Constitution of India as the claims u/s 33C(2) of the Industrial Disputes Act for overtime wages were granted by the Labour Court on the basis of the facts and calculations submitted by the Petitioners. According to him, there was no question of delay, laches or limitation to file such claims u/s 33C(2) of the Act. On the contrary Shri Suresh Kumar for the petitioners has

submitted that they had pleaded before the Labour Court that there were no records available in respect of the employees to make any comments as they do not preserve any records after 10 years. He however submitted that the claims are so old, state and the applicants suffer from inordinate delay and laches and the same deserve to be dismissed. He has relied on the following Judgments :

(1) Nanoo Ram v. Mahesh Chandra & Anr.,;

(2) The Madras Port Trust v. Hymanshu International by its Proprietor,.

6. In my opinion the overtime claims of the railway servants made before the Labour Court suffer from inordinate delay and laches and beyond any reasonable limits though there is no period of limitation prescribed in Section 33C(2) of the I.D. Act. Merely because the Legislature had not prescribed the limitation it does not by any stretch of imagination mean that the old and stale claims of 15/20 years can be lodged before the Labour Court. In the present case the railway servants including the Respondent No. 1 have filed their so-called overtime claims from 1967-1968 onwards in the year 1992. The petitioners have made it very clear time and again that it has a huge and large organisation employing about 15 lacs servants and it was just impossible for them to maintain and preserve the records beyond the prescribed and reasonable period of ten years. I fail to understand why these railway servants have waited for 15/20 years to lodge their overtime claims. Shri Mokashi has vehemently pointed out that they had made representations and that their representations were not considered. He was however frank enough to say that first such representation was made in the year 1986 and not there before. In these circumstances it cannot be said that the Respondent No. 1 and the other railway servants are justified to approach the Labour Court u/s 33C(2) of the I. D. Act after lapse of 15/20years to claim overtime wages. In my opinion such overtime claims are bogus and can never be entertained. No genuine claimant would wait for even for a month or a year to lodge his claim. I further fail to understand why the petitioners, which are such a large and huge organisation would deprive the railway servants of their legitimate and genuine claims if they are lodged properly within a reasonable period. It is high time that such claims made by the employees should be totally discouraged. It is significant to note that in spite of the specific absence of the period of limitation u/s 33C(2) of the Act the Supreme Court in the case of Nanoo Ram v. Mahesh Chandra and Anr. (supra) followed the principle of laches u/s 33C(2) of the Act.

7. In the aforesaid circumstances I do not find any substance and merits in the applications for overtime wages filed by the railway servants Including the Respondent No. 1 in the present petition. I am also surprised to note that the Labour Court has directed the Petitioners to file the statement showing the hours the applicants worked during the alleged period. It is the primary and preliminary duty of the applicant to prove his case by showing how many hours of overtime he had put in. The Labour Court had put the burden on the Petitioners to prove the claim of the Applicant.

8. In these circumstances the Rule is made absolute in terms of prayer-clause (a). The impugned orders of the Labour Court are quashed and set aside. No order as to costs. Certified copy is expedited.