
(2001) 04 BOM CK 0015
In the Bombay High Court
Case No : O.O.C.J. W.P. No. 52 of 1999

Union of India (UOI)

APPELLANT

Vs

Narayana M. and Others

RESPONDENT

Date of Decision : 10-04-2001

Acts Referred:

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

Citation : (2001) 90 FLR 210 : (2002) 4 LLJ 912

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

Bench : Single Bench

Final Decision : Allowed

Judgement

R.J. Kochar, J.—The Union of India through the General Manager, Western Railway, in the present petition have challenged the Judgment and order dated November 3, 1992 passed by the Presiding Officer of the Central Government Labour Court No. 2 in Application Nos. LC-2/173 to 191 of 1991 filed by the 19 workmen u/s 33-C(2) of the Industrial Disputes Act, 1947 to claim overtime wages for the period from January 1973 to November, 1979. Out of them three claims are for lesser period as indicated by the petitioners in their writ petition.

2. By the impugned Judgment and Order the Labour Court has not actually computed the amounts of the overtime claims filed by the workmen individually. The Labour Court has merely reproduced the nature of the claims in the Cyclostyle Applications filed by the workmen, who have averred that they were entitled to overtime wages if they worked in excess of 104 hours in two weeks at 1 1/2 times upto August 1, 1974. Further the names of the Trains are given to indicate that the individual workmen were booked for the respective trains. All the workmen have given the duty schedule, train schedule etc. Along with the applications all of them have done some common figure work to show the hours of overtime done by them during the period from 1973 to 1979. The Labour Court has finally held that on the basis of the rules the workmen were entitled to get overtime wages and it directed the administration of the petitioners to

compute the actual over-time work done by each of the workmen and pay that total amount to Shri M.V. Anchan, their advocate.

3. The petitioners have filed their written statement to oppose the applications, inter alia, on the ground of inordinate delay in claiming the so-called overtime wages. The petitioners have flatly denied admissibility of the claims as all the workmen were paid overtime wages from time to time on the basis of the actual overtime work performed by them. The petitioners have maintained that no overtime wages were payable as claimed by the workmen.

4. The workmen (applicants) did not lead any oral evidence in support of their claims. They did not produce any documentary evidence to show and substantiate their claim of actual overtime work done by them. Curiously they have relied on some oral evidence recorded by the Labour Court in some other applications filed by some other workmen against the petitioners. It is a fact that the petitioners had also agreed to lead that evidence in the case of the present workmen. The petitioners, however, examined one of their officers, who deposed that the claim of the overtime was not maintainable as all the workmen were paid their overtime wages from time to time. He, however, candidly admitted that he was not in a position to say anything in respect of the period from 1973 to 1979 as at that time he was not in employment.

5. On the basis of the aforesaid pleadings and evidence on record the Labour Court has decided the claims in favour of the workmen.

6. I have heard both the learned Advocates for their parties and I have also carefully gone through the proceedings. The petitioners have approached this Court by filing the present Petition on November 3, 1998 to challenge the impugned order dated November 3, 1992, exactly after six years. Shri Ramamurthy, appearing for Respondent No. 1 workman has made a serious grievance before me that the petition suffers from inordinate delay and laches, and therefore, it deserves to be dismissed on that ground alone. On the other hand Shri Suresh Kumar appearing for the petitioners, conceded that there was a delay of six years in challenging the impugned order of the Labour Court, however, he did not go to any length to justify the delay caused by the concerned officers at various tables and departments of the railways. He pointed out that there were number of Stations wherein there were number of Station Masters to take their own decisions and give green signal to the matter to proceed further. He has however pointed out that if the petitioners were guilty of laches and delay even the workmen are not free from such blemish. He has put his finger on the fact that the workmen filed their applications to claim overtime wages for the period between 1973 to 1979, in the year 1991 after about a period of 18 years. Shri Suresh Kumar expressed his genuine problem that after lapse of about 18 years it was impossible for the administration to trace and locate the relevant record of assignment of duties and the period of overtime put in by each of the workmen. He further submitted that generally such record is destroyed after 10 years or is not traceable at all in the deep ocean of the

Railway Administration. He further pointed out that in the huge complex of the administration of the railways the work force keep on changing periodically and it is more often that no relevant record is available and no material witnesses can be traced or located. He however, positively asserted that overtime wages are paid at the relevant period and there was no delay in making such payment and that was the reason why the workmen did not feel any urgency and need to file applications promptly or within a reasonable period or expeditiously.

7. In reply to the second objection of Shri Ramamurthy that except the Respondent No. 1 workman the petitioners have not served the Rule Nisi on the other workmen individually, Shri Suresh Kumar submitted that in the applications filed by the workmen before the Labour Court they did not give their address at all and they had given only names. All of them had authorised Shri M.V. Anchan, the advocate, to act and appear on behalf of them. He further pointed out that the said Shri Anchan was served a copy of the writ petition on behalf of all the workmen and he had received the same on behalf of all the workmen for whom he had appeared before the Labour Court. Shri Suresh Kumar pointed out that even the Labour Court had directed the petitioners to make payment under the said order to Shri Anchan on behalf of the workmen. In this peculiar circumstance, says Shri Suresh Kumar, that it should be deemed that the Respondents were served and were defended by Shri Ramamurthy. Shri Ramamurthy, however, vehemently asserted that he was appearing only for one of the workman i.e. Respondent No. 1 and not for the others. Shri Anchan, who was present in the Court was also not able to furnish the addresses of the workmen for whom he appeared before the Labour Court. Shri Ramamurthy further submitted that only one copy of the petition was served on Shri Anchan and not as many as 19 sets were served to indicate that the service of the petition was on behalf of 19 workmen. Technically Shri Ramamurthy might be right. In the facts and circumstances very peculiar to this case I have considered the merits of the matter, after hearing Shri Ramamurthy, who confines his appearance only to Respondent No. 1 and not the 19 workmen. The claim of the workmen was common, the advocate defending the workmen was common, and the judgment and order given by the Labour Court was also common. In the High Court however taking the advantage of the great handicap of the petitioners Shri Ramamurthy and Shri Anchan both have adopted a very unfair and technical attitude.

8. There is no doubt about the proposition of law that there is no period of limitation prescribed u/s 33-C(2) of the Industrial Disputes Act, 1947 to claim money/benefits from the employer. A workman can file such application even after 50 years claiming over time wages for the overtime work done by him while in the service of the employer, 50 years back. Theoretically reading the letters of law one would be right to opine that there is no limitation provided for in the said provision and the Courts cannot legislate or read any law of limitation in the said section. In my opinion the intention and purpose of the legislature in not providing for limitation is that if the workman claims his dues such as difference

in wages or other amounts while in employment he would jeopardise his employment itself. It was therefore contemplated that if a workman applies for his dues within a reasonable period the claim should not be denied only on the ground of delay. The intention was -that no real, bonafide and genuine claim should suffer merely because there is some time lag. I am sure that the legislature by not prescribing the limitation intended to encourage stale and old claims to be raked up after decades. We also must realise the object of the Industrial Disputes Act was and is early and expedient settlement of industrial disputes and not to keep them alive for years or decades together. If that is done the whole purpose of the Act would be defeated, In my opinion the claim for overtime wages filed by the workmen in the year 1991 for the period from 1973 to 1979 cannot be encouraged. It must be remembered that in the huge railway administration it becomes unmanageable to maintain and preserve such old records to meet such stale and old claims of the so-called overtime work. During such a vast period sea-changes take place. Though there is no limitation prescribed u/s 33-C(2) of the Act there is absolutely no explanation given by the workmen why they had kept quiet for a period of more than 18 years. A reasonable lapse of time, perhaps need not be explained. But when there is such an unreasonable delay in the lodgment of the claims it becomes the duty of the claimants to put forward some plausible reason why they were interested to file such a claim after such a very long lapse of period. Ordinarily the workmen are not expected to say anything about the period of limitation, however, the present is an extraordinary and unusual case of delay of 18 years, they are certainly bound to say something about such unusual delay in claiming overtime wages. There is not even a whisper in the application filed by the workmen to explain their conduct of filing the claim, after the lapse of 18 years.

9. It is very significant to note that the workmen have not adduced any oral and documentary evidence to substantiate their claims of overtime wages. None of the applicants workmen stepped in the witness box to prove their claims. They did not produce any documentary evidence to prove their case. They did not even call upon the petitioners to produce the records such as their duty schedules etc. Beyond filing the applications no efforts are taken by them to prove and substantiate their claims. I fail to understand how they could rely on some oral evidence of some other workmen in some other matter against the petitioners. There is no relation or connection between the matters. Every case of overtime would differently stand on the different facts, on which the Labour Court will have to compute the amounts due. According to me, the workmen have merely taken a chance by filing the application to claim overtime wages. I am told that there are umpteen number of such cases filed by the workmen to claim overtime wages and such other untenable claims. It further appears that some unscrupulous officers permitted and encouraged such claims for their own selfish benefits. In such cases delay in challenging the orders in the higher forum inevitable takes place, as has happened in the present matter. There was absolutely no reason for the petitioners to take six years to challenge the order

of the Labour Court. I am not inclined to dismiss the petition only on that ground as the petition has been pending for final hearing from 1998 particularly when I am fully satisfied about the claim of the workmen for overtime being totally bogus and untenable. There is absolutely no material and evidence to hold that they are entitled to get the overtime wages. In my opinion ordinarily no genuine claim waits for such along period. The order of the Labour Court therefore, cannot be sustained and the same deserves to be quashed and set aside as there is absolutely no application of mind to the facts and circumstances of the case. There was no evidence and material before the Labour Court to grant the claim of the workmen. I therefore allow the petition and make the Rule absolute in terms of prayer Clause (a). No order as to costs.

10. I fail to understand why the file is required from table to table as submitted by the Learned counsel for the petitioners. The whole case file with the judgment must be placed before the highest authority who is empowered to take decision whether to proceed further in the matter if the decision is against the Railways and to defend if the other side challenges the judgment against it. If this method is evolved the highest decision taking authority can be held responsible for the delay, laches or lapses. I am constrained to observe as such inordinate delays are taking place almost in all the cases and the patent and stock reason always put forward is the "slow journey of the file from officer to officer and from table to table." I, therefore, direct Shri Suresh Kumar, the learned counsel to bring to the notice of the highest decision taking authority this judgment and I further direct such authority to consider and take appropriate decision in all the Court, matters to streamline the administration in the matter of Courts very tightly in the larger public interest.