
(2011) 02 AHC CK 0163
In the Allahabad High Court
Case No : Writ C No. 31201 of 1993

U.P. S.R.T.C.

APPELLANT

Vs

V. Ghose

RESPONDENT

Date of Decision : 11-02-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2
Factories Act, 1948 — Section 59
Uttar Pradesh Industrial Disputes Act, 1947 — Section 33C

Citation : (2011) 02 AHC CK 0163

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sibghat Ullah Khan, J.—Heard learned Counsel for the parties. This writ petition is directed against order dated 15.5.1993 passed by Presiding Officer, Labour court (II), U.P. Kanpur in Misc. Case No. 99 of 1984-Vireshwar Ghosh v. U.P.S.R.T.C., Central workshop, Kanpur. The case had been initiated on an application filed by workman Respondent No. 1 u/s 33C-(2) of Industrial Disputes Act claiming Rs. 3,227.05 as overtime wages for the period from 1.4.1983 to 30.6.1984. The Petitioner employer contended that Respondent No. 1 was not entitled to any overtime wages and that Respondent No. 1 was Junior foreman and nature of his duties was supervisory and he was getting Rs. 500/- per month as wages and Rs. 50/- per month as additional allowance hence he was not workman as defined under U.P. Industrial Disputes Act. The Labour court accepted the case of the Petitioner on the ground that for the periods prior as well as subsequent to the period for which Respondent No. 1 was claiming overtime before the Labour court the authority under payment of wages Act had granted relief to Respondent No.1. Respondent No. 1 had filed one case u/s 15 of Payment of wages Act for recovery of overtime from 1.4.1982 to 31.3.1983. Second similar case before the same authority was filed for the period from 1.7.1984 to 31.3.1985 (Rs. 3,200/-).

2. The Labour court held that for the period between the two also Respondent No. 1 was entitled to overtime wages.

3. The Presiding officer, Labour court through the impugned order did not record any independent finding. It merely followed the order of the Prescribed authority under Payment of Wages Act for the period prior as well subsequent to the period which was in dispute before the Labour court.

When for prior and subsequent periods matter had been raised by Respondent No. 1 under Payment of wages Act, it was not permissible for him to make a claim for overtime wages for the intervening period before the Labour court.

4. Moreover by filing claim before the authority under Payment of Wages Act for the subsequent period (1.7.1984 to 31.3.1985), it was no more open for Respondent No. 1 to claim overtime wages for the period prior to that on the principles of Order 2 Rule 2 CPC The illustration to Order II Rule 2 CPC is quoted below:

A lets a house to B at an yearly rent of Rs. 1,200/-. The rent for the whole of the years 1905, 1906 and 1907 is due and unpaid. A sues B in 1908 only for the rent due for 1906. A shall not afterwards sue B for the rent due for 1905 or 1907.

5. Moreover there is no finding in the impugned order that on what dates and for how much time Respondent No. 1 worked overtime.

6. Learned Counsel for the Respondent No. 1 has cited an authority of the Supreme court reported in Vijaya Bank Vs. Shyamal Kumar Lodh, In the said case it has been held that the Labour court u/s 33C-(2) of I.D. Act can compute subsistence / suspension allowance and direct the same to be paid by the employer to the employee.

7. However, in respect of over time wages reference may be made to D. Krishnan v. Special Officer AIR 2009 S.C. 395 para-7 of which is quoted below:

Para-7- Mr. Gonsalves, has, however urged that a preexisting right could also emanate from a statute, in this case from Section 59 of the Factories Act, which provided for the payment of overtime wages and in this view of the matter, all that the Labour Court was called upon to do was to make a calculation of the amounts due to the Appellants. The facts of the case are, however, not as clear cut and dried, as has been contended. The Division Bench has observed that though Section 59 of the Factories Act undoubtedly provided for extra payment as overtime wages, but according to Rule 78B of the Tamil Nadu Factories Rule, 1950, only an employee authorized to work overtime by an overtime slip would be entitled to claim an overtime allowance. The specific case of the Respondent-Management, which has not been contested by the Appellants even during the course of the arguments before us, is that no such slips had ever been issued.

Additionally, we are of the opinion that in the absence of any supporting oral evidence Chief Mining Engineer East India Coal Co. Ltd. Vs. Rameswar and

Others, by the workmen which would also result in their cross-examination, a mere reliance on the documents filed by them is insufficient for determining the factual basis of the issues involved, in proceedings u/s 33C(2) of the Act. In this view of the matter, Mr. Gonsalves's argument based on Rameshwar's case (supra) or the scope and ambit of Section 33C(1) vis-avis Section 33C-(2), is also unacceptable.

Learned Counsel for the Petitioner has also placed reliance upon a judgment dated 13.7.2010 passed by this Court in writ petition No. 45671 of 1993 between the same parties i.e. U.P.S.R.T.C v. Vireshwar Ghosh wherein the aforesaid authority of D. Krishnan has been considered. In the first para of the said judgment it is mentioned that in the case which was subjudice in the said writ petition, Respondent No. 1 the workman had been denied overtime allowance by the Labour court.

8. Accordingly, writ petition is allowed. Impugned order is set aside.