

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT
HYDERABAD

26

~~TRANSMERRED~~ / ORIGINAL APPLICATION NO. 530 of 1989

DATE OF ORDER: 25th May 1990

BETWEEN:

The Divisional Railway Manager,
South Central Railway,
Vijayawada

APPLICANT(S)

and

(1) B. Subba Rao, R
(2) The Presiding Officer, Labour Court,
Visakhapatnam

RESPONDENT(S)

FOR APPLICANT(S): Shri N.R. Devaraj, SC for Railways

FOR RESPONDENT(S): -- None appeared

CORAM: Hon'ble Shri B.N. Jayasimha, Vice Chairman
Hon'ble Shri D. Surya Rao, Member (Judl.)

1. Whether Reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment? } No
4. Whether it needs to be circulated to other Bench of the Tribunal?
5. Remarks of Vice-Chairman on columns 1, 2, 4 (to be submitted to Hon'ble Vice-Chairman where he is not on the Bench)

6/1
HBNJ
VC

R
HDSR
M(J)

JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI D.SURYA RAO, MEMBER (JUDL.)

The applicant herein is the Divisional Railway Manager, South Central Railway, Vijayawada. The application is filed against the orders passed in C.M.P.No.341/86 dated 2.4.1988 and the order in I.A.No.13/88 in CMP No.341/86 dated 17.10.1988 passed by the Labour Court, Visakhapatnam, the 2nd respondent herein.

2. The 1st respondent herein had filed C.M.P.No.42/82 before the Labour Court, Guntur claiming Overtime allowance amounting to Rs.13,596-80 for the period from 8.10.1978 to 1.11.1980. He had alleged therein that he had been working as Senior Booking Clerk, South Central Railway, Rajahmundry since 1974, that in October 1978, the Station Master asked him to look-after the entire work of the booking office in addition to his normal duties. The applicant thus performed the duties of both Senior Booking Clerk as well as Chief Booking Clerk. He had to perform the duties of the Chief Booking Clerk as the Chief Booking Clerk posted to Rajahmundry did not join duty. The applicant/petitioner before the Labour Court averred that he had to work for $10\frac{1}{2}$ hours per day as against the prescribed $8\frac{1}{2}$ hours per day. He had put-in claims for the overtime allowance for the extra hours worked. The Petition before the Labour Court was resisted by the Railways. The Labour Court on the basis of the overtime slips (Exhibits W.8 to W.61) for the relevant period, ~~filed by the petitioner~~ letters (Exhibits W.5 and 6), ~~and~~ bills in duplicate (Exhibit W.7) and oral evidence ^{added} filed by the petitioner before the Labour Court, ~~the Labour Court~~ held that the claim of the petitioner

(2)

therein (1st respondent herein) was not a false claim and that he had worked on the instructions of the Station Master. It was further held that the evidence adduced by the 1st respondent herein was not rebutted by the Railways. The Labour Court therefore held that the 1st respondent (petitioner before the Labour Court) was entitled to claim a sum of Rs.13,596-80 and the claim was decreed.

3. The Railways, applicant herein, filed ~~the~~ an application for review of the order of the Labour Court viz., I.A.No.13/88 and the said I.A. was dismissed on 17.10.1988 stating that ample opportunity was given to both parties to adduce evidence, that the earlier order was not an ~~exparte~~ order, that more than 6 months have elapsed after pronouncing the final order on merits and that there are no valid grounds to reopen the matter. It is ~~these orders~~ that ^{are} questioned in the present application.

4. We have heard the learned counsel for the applicant/Railways Shri N.R.Devaraj, SC for Railways. The 1st respondent is not present either in person or by an Advocate. Two main contentions are raised by Shri Devaraj. The first is that the 1st respondent had delayed in making the claim. The 2nd contention is that the 1st respondent was not eligible to claim the overtime allowance since no overtime is payable for performing the duty of Chief Booking Clerk.

5. In regard to the 1st contention that the petition before the Labour Court was belated and therefore it should not have been entered by the Labour Court, the order of

the Labour Court discloses that the claim of the 1st respondent relates to the period October 1978 to October 1980. The evidence produced by the 1st respondent disclosed that he had made representations till 1981 and that when the applicant/Railways did not make any payment, he filed a petition before the Labour Court in 1982. It was subsequently transferred in the year 1986 to Visakhapatnam and disposed of in the year 1988. It is admitted that there is no limitation for filing a claim or application/petition under Section 33(c)(2) of the Industrial Disputes Act.

Shri Devaraj, however, contends that the claim is belated. It is not known as to how the petition before the Labour Court was belated since the claim relates to the period prior to 1980 and the 1st respondent had sent his bills claiming the said overtime allowance and also made representations in the year 1981. Immediately thereafter in the year 1982 he had filed the petition before the Labour Court. It cannot, therefore, be said that the petition before the Labour Court was belated.

6. The 2nd contention raised is that for the work done in the post of Chief Booking Clerk, the applicant was not entitled to payment of any overtime allowance and hence the service rendered by the 1st respondent as Chief Booking Clerk was not admissible for payment of overtime allowance. It has not been established or shown to us that this objection was taken before the Labour Court. An application before this Tribunal wherein an order of the Labour Court is questioned is an application analogous or similar to that made to a High Court under Article 226 of the Constitution for issue of a writ of certiorari. On such an application being made, the Court can prevent the excess

or failure of jurisdiction by the Labour Court. The question whether for work rendered in the post of Chief Booking Clerk the applicant was not entitled to overtime allowance or that the Labour Court had no jurisdiction to entertain the application were not raised. If the Labour Court had erroneously sought to clutch at or seize jurisdiction or if no overtime allowance was payable at all for the post in regard to which the claim was sought to be made, the applicant herein, Railways, ought to have raised ^{such} ~~the~~ objections and got adjudicated these issues before the Labour Court. The only objection as to jurisdiction raised before the Labour Court and before the Tribunal is that the applicant had a right to move the authority under the Payment of Wages Act. AIR 1969 SC 1335 (Athani Municipality Vs. Labour Court, Hubli) was a case similar to the present case wherein certain workers sought computation of their claim for overtime for a certain period and indicating the amount claimed. An objection was taken that the provisions of Section 20 of the Minimum Wages Act are a bar to the application under Section 33(c)(2) of the Industrial Disputes Act. While holding that Section 20(1) of the Minimum Wages Act would be ^{affected} ~~altered~~ if a dispute is raised regarding the rates of payment of overtime etc., the Supreme court went on to observe as follows:-

"In cases where there is no dispute as to rates of wages, and the only question is whether a particular payment at the agreed rate in respect of minimum wages, overtime or work on off-days is due to a workman or not, the appropriate remedy is provided in the Payment of Wages Act. If the payment is withheld beyond the time permitted by the Payment of Wages Act even on the ground that the amount claimed by the workman is not due, or if the amount claimed by the

To:

1. The Divisional Railway Manager, south central railway, Vijayawada.
2. The Presiding officer, Labour Court, Visakhapatnam.
3. One copy to Mr.N.R.Devaraj, SC for Railways,CAT,Hyderabad.
4. One spare copy.

• • •
kj.

(2)

workman is not paid on the ground that deductions are to be made by the employer, the employee can seek his remedy by an application under Section 15(1) of the Payment of Wages Act. In cases where Section 15 of the Payment of Wages Act may not provide adequate remedy, the remedy can be sought either under Section 33C of the Act or by raising an Industrial Dispute under the Act."

Having held so, the Supreme Court further held that the question of the Labour Court's jurisdiction to entertain the applications under Section 33(c)(2) being barred fails. The facts of the present case being similar, it follows that the jurisdiction of the Labour Court is not barred on the ground that an application under the Payment of Wages Act should have been filed. So far as the plea that the post of Chief Booking Clerk is not a post to which overtime wage is payable since no such plea was raised before the Labour Court, it cannot be validly raised here.

7. For the reasons given above, we are of the opinion that there are no merits in this application and the application is accordingly dismissed. There will be no order as to costs.

B.N.Jayashimha
(B.N.JAYASIMHA)
Vice Chairman

D.S.Rao
(D.SURYA RAO)
Member (Judl.)

Dated: 25 May 1990.

9/5/90
For Deputy Registrar (J)
28/5/90

CHECKED BY *28/5/90*

TYPED BY:

COMPARED BY:

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH:HYD.

HON'BLE MR.B.N.JAYASIMHA: V.C.

HON'BLE MR.D.SURYA RAO:MEMBER:(JUDL)

A N D

HON'BLE MR.J.NARASIMHA MURTHY(M)(J)

A N D

HON'BLE MR.R.BALASUBRAMANIAN:(M)(A)

DATED: *25/5/90*

ORDER/JUDGMENT:

M.A./R.A./C.A./No. in

T.A.No.

W.P.No.

O.A.No. *530189*

Admitted and Interim directions issued.

Allowed.

Dismissed for default.

Dismissed.

Disposed of with direction.

M.A. ordered.

No order as to costs.

Sent to Xerox on:

