The Managing Director vs The Presiding Officer on 13 September, 2023

Author: G.K.Ilanthiraiyan

Bench: G.K.Ilanthiraiyan

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.24642 to 24683 of 2009
and M.P.Nos.1 & 2 of 2009 (42 Nos.)

W.P.No.24642 of 2009 :-

The Managing Director,
Tamil Nadu State Marketing Corporation,
(TASMAC),
Thalamuthu Natarajan Maligai,
Gandhi Irwin Salai,
Egmore,
Chennai – 600 008 ...Pe

-Vs-

1. The Presiding Officer,
   Principal Labour Court,
   Chennai.

2. P.Gurunathan ... R

Prayer: Writ Petition filed under Article 226 of the Constitution o
praying to issue a Writ of Certiorari, calling for the records rela
order dated 26.10.2009 of the first respondent herein in Claim Peti
No.560 of 2007 and quash the same.

In all W.Ps.

For Petitioner : Mr.K.Balakrishnan
Standing Counsel for TASMAC

For Respondents
R1 : Court
For R2 : Mr.V.S.Jagadeesan
For Mr.R.Rengaramanujam

COMMON ORDER

These writ petitions have been filed challenging the common award passed by the first respondent dated 26.10.2009, in Claim Petitions Nos.560 to 601 of 2007, thereby ordered to pay double wages for working of weekly holidays, four national and festival holidays and also ordered to pay double wages for over time work.

2. The issues raised in all the writ petitions are common and the petitioners preferred the writ petitions for similar prayer. Since the Labour Court passed common award in all the claim petitions, this Court is inclined to pass a common order in all these writ petitions.

3. The second respondent in all the writ petitions (hereinafter called as “the claimants”) had filed computation petitions before the first https://www.mhc.tn.gov.in/judis W.P.Nos.24642 to 24683 of 2009 respondent viz., the Labour Court, Chennai, under Section 33(C)(2) of the Industrial Dispute Act, 1947 (hereinafter called as “the ID Act”) claiming computation with interest from the petitioner. The claim of claimants is that, they are working in the Tamil Nadu State Marketing Corporation (hereinafter called as “TASMAC”). In terms of the provisions of the Tamil Nadu Shops and Commercial Establishments Act, 1947 and Minimum Wages Act, 1948, the working hours for the employees are eight hours a day or forty eight hours in a week. They would be entitled to one day leave as holiday.

4. But the claimants were required to work from 8 a.m., to 12 o'clock in the night viz., 16 hours in a day. They were not given weekly holiday and they were worked in all seven days in a week. They have been working in the national and festival holidays without leave. Therefore, they are entitled to double wages for over time and working on weekly holidays and national and festival holidays. The Labour Court allowed their computation petitions and ordered to pay double wages for over time work and double wages for working weekly holidays and four national and festival holidays as per the Minimum Wages Act. Aggrieved by the same, the petitioner filed the present writ petitions. https://www.mhc.tn.gov.in/judis W.P.Nos.24642 to 24683 of 2009

5. The learned Standing Counsel appearing for the petitioner would submit that the Labour Court ought not to have entertained computation petition under Section 33(C)(2) of the ID Act, claiming the double wages for overtime and double wages for national and festival holidays. The claim of the

claimants cannot be decided under Section 33(C)(2) of the ID Act. The proceedings under Section 33(C)(2) of the ID Act is in the nature of executing provisions and as such the labour Court would not have the jurisdiction to decide the claim made by the second respondent in all the writ petition.

5.1. He further submitted that the provisions of the Tamil Nadu Shops and Establishments Act is not at all applicable to the petitioner, since it is exempted from the Tamil Nadu Shops and Establishments Act. The working conditions of the claimants are governed by the terms and conditions and guidelines formulated by the petitioner from time to time. Accordingly, the claimants had agreed and abide by them at the time of their appointment in the respective shops. Therefore, now they cannot claim any dues under the Tamil Nadu Shops and Establishments Act, Minimum Wages Act as well as the Tamil Nadu Industrial Establishment https://www.mhc.tn.gov.in/judis W.P.Nos.24642 to 24683 of 2009 National and Festival Holidays Act, 1958.

5.2. Further, the business hours of the petitioner's shop are from 10 am., to 10 p.m., with effect from 01.01.2009. The claimants are working on shift basis through local arrangements. In urban areas there is one Supervisor and three to four salesmen per shop. In rural area, there is one supervisor and two salesmen per shop. They avail weekly holidays on rotation basis through internal arrangements without affecting the business. Likely they also avail national and festival holidays. Therefore, no employee would work for more than eight hours per day.

5.3. The learned Standing counsel also produce a letter from the Principal Secretary to Government, Chennai, to the Commissioner of Lavour, dated 22.02.2010, thereby clarified that TASMAC is wholly owned and controlled by the State government. Thus, it is clear that TASMAC is an establishment under the State government and consequently the provisions of the Tamil Nadu Shops and Establishment Act, 1974 are not applicable in veiw of the exemption contained in Clause

(c) of the sub Section (1) of Section 4 of the said Act. Hence, he prayed to set aside the award passed by the Labour Court.

https://www.mhc.tn.gov.in/judis W.P.Nos.24642 to 24683 of 2009

6. The learned counsel appearing for the claimants vehemently contended the the entire claim made by the claimants come under the purview under Section 33(C)(2) of the ID Act and under the statue. Therefore, the Labour Court can very well deal with the issue and accordingly, the Labour Court rightly ordered to pay the dues in favour of the claimants under the Tamil Nadu Shops and Establishments Act and Minimum Wages Act as well as the Tamil Nadu Industrial Establishment National and Festival Holidays Act, 1958.

6.1. He further submitted that the claimants claimed double wages for over time, double wages for national and festival holidays under the Minimum Wages Act, for the period from 01.04.2004 to 31.03.2006. In those period, the petitioner's establishment was not exempted from the Tamil Nadu Shops and Establishments Act. Therefore, the claimants can very well made their claim under the Tamil Nadu Shops and Establishments Act, Minimum Wages Act as well as the Tamil Nadu Industrial Establishment National and Festival Holidays Act, 1958, since the petitioner's

establishment was very much came under the Tamil Nadu Shops and Establishments Act.

https://www.mhc.tn.gov.in/judis W.P.Nos.24642 to 24683 of 2009 6.2. He further submitted that the Labour Court dealt the issue in detailed manner and hold that the claimants were working more than eight hours in a day and they were also working in four national and festival holidays. Before the Labour Court, the petitioner had produced the attendance registers and movement registers. It reveals the working house of the claimants. In fact, the petitioner's witness categorically admitted the fact that the working hours of the petitioner's shops are from 10 a.m., to 11 p.m. As per section 9 of the Tamil Nadu Shops and Establishments Act, no employee in any shop shall be required or allowed to work therein for more than eight hours in a day and forty eight hours in a week.

6.3. He also contended that as per Section 31 of Tamil Nadu Shops and Establishments Act, whether any person employed in any establishment is required to work overtime, he shall be entitled, in respect of such overtime work, to wages at twice the ordinary rate of wages. The Section 13 of the Minimum Wages Act, provided for a day of rest in https://www.mhc.tn.gov.in/judis W.P.Nos.24642 to 24683 of 2009 every period of seven days and for the payment or remuneration in respect of such days of rest. Further provided for payment for wok on a day or rest at the rest not less than the overtime rate. The claimants were working more than eight hours in a day that too without any rest day. If the claimants worked more than eight hours in a day and worked in a rest day, they shall entitle for double the rate of wage. The workmen also worked in four national and festival holidays. Therefore, the Labour Court rightly allowed the claim made by the claimants. Hence, he prayed for dismissal of all the writ petitions.

7. Heard the learned counsel appearing on either side and perused the material placed before this Court.

8. The claimants filed computation petition under Section 33(C)(2) of the ID Act, claiming double the wages for over time work, double the wages for working weekly holidays and national and festival holidays with interest at the rate of 12% per annum. The petitioner's establishment belongs to the government of Tamil Nadu. The claimants have been appointed in the post of Supervisor and Salesman. As per the https://www.mhc.tn.gov.in/judis W.P.Nos.24642 to 24683 of 2009 service condition, the working hours of the petitioner's establishments are from 10 a.m., to 10 p.m., and the claimants are working on shift basis.

9. Further the claimants are governed by the terms and conditions and guidelines formulated by the petitioner. All the claimants had agreed to abide the terms and conditions at the time of their appointment. They have availed weekly holidays by rotation. Insofar as the national and festival holidays are concerned, such as Thiruvalluvar day, Vallalar Day, Mahaveer Jayanthi, Miladi Nabi and Gandhi Jayanthi, are dry days and those holidays are availed by the claimants. Though the working hours of the petitioner's shop are from 10 a.m., to 10 p.m., the claimants were working on shift basis and it is evident from the Ex.R.1 series viz., attendance registers and Ex.R2 series viz., movement registers.

10. On perusal of Ex.R.2 revealed that, the claimants' time of coming into the shop and time of go out from the shop are entered in the movement register. Accordingly, no claimants is working more than eight hours in a day. Likewise, they also availed weekly holiday by rotation. They also availed national and festival holidays. Admittedly, all the national holidays are the holidays for the petitioner's shop. Further, https://www.mhc.tn.gov.in/judis W.P.Nos.24642 to 24683 of 2009 though the claimants claimed double the wages for over time for the period from 01.04.2004 to 31.12.2006, as if they worked for 16 hours in a day, they failed to prove the same by adducing evidence. In support of their contention, they did not even produce any iota of evidence, to prove that they had worked 16 hours in a day.

11. Likewise, though the claimants claimed double the wages for national and festival holidays and weekly holidays, they failed to prove the same as if, they worked on weekly and national holidays. The claimants had marked their respective order of appointment and the government order dated 22.02.2005. Whereas the petitioner had marked Ex.R1 to Ex.R.3 series and it revealed the movement of the claimants and their availment of holidays viz., weekly holidays, national and festival holidays. Therefore, the conclusion of the Labour Court is perverse and without any evidence.

12. The learned counsel appearing for the claimants relied upon the judgment reported in (2016) 5 SCR 408 in the case of A.Satyanarayana Reddy & ors., Vs. Presiding Officer, Labour Court https://www.mhc.tn.gov.in/judis W.P.Nos.24642 to 24683 of 2009 & ors., in which the Hon'ble Supreme Court of India held that, if a workman’s right to receive the benefit is dispute, that may have to be determined by the Labour Court. Before proceeding to compute the benefit in terms of money the Labour Court inevitably has to deal with the question as to whether the workman has a right to receive that benefit. If the said right is not disputed, nothing more needs to be done and the Labour Court can proceed to compute the value of the benefit in terms of money; but if the said right is disputed, the Labour Court must deal with that question and decide whether the workman has the right to receive the benefit as alleged by him. Further held that the claim under Section 33(C)(2) of the ID Act, clearly postulates that the determination of the question about computing the benefit in terms of money may, in some cases, have to be preceded by an enquiry into the existence of the right and such an enquiry must be held to be incidental to the main determination which has been assigned to the Labour Court by sub- section (2) of Section 33(C) of the ID Act. The jurisdiction of the Labour Court to entertain application for lay off-compensation under Section 33C(2) of the ID Act, such jurisdiction could not be ousted by a mere plea denying the workman’s claim for computation of the benefit in terms of money, adding that the Labour Court had to go into the question and https://www.mhc.tn.gov.in/judis W.P.Nos.24642 to 24683 of 2009 determine whether on the facts it had jurisdiction to make the computation.

13. Whereas in the case on hand, even assuming that the Labour Court can determine the computation, the claimants failed to prove that they had worked for 16 hours in a day and they had worked on weekly holidays and national & festival holidays. Therefore, the above judgment cited by the learned counsel appearing for the claimants is not applicable to the case on hand.

14. The learned counsel appearing for the claimants also relied upon the another judgment of the Hon'ble Supreme Court of India reported in (1969) 2 SCC 400 in the case of U.P. Electric Supply Co. Ltd.,VsR.K.Shukla & anr., which held as follows :-

> "The legislative intention disclosed by ss. 33 C (1) and 3 3 -C (2) is fairly clear. Under s. 33-C(1) where any money is due to a workman from an employer under a settlement or an award or under the provisions of Ch.

V-A, the workman himself, or any other person authorised by him in writing in that behalf, may make an application to the appropriate Government to recover of the money due to him. Where the workman who is https://www.mhc.tn.gov.in/judis W.P.Nos.24642 to 24683 of 2009 entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money, applies in that behalf, the Labour Court may under s. 33-C(2) decide the questions arising as to the amount of money due or as to the amount at which such benefit shall be computed. Section 33-C(2) is wider than s. 33C(1). Matters which do not fall within the terms of s. 33C(1) may, if the workman is shown to be entitled to receive the benefits, fall within the terms of s. 33C(2). If the liability arises from an award, settlement or under the provisions of Ch. V-A, or by virtue of a statute or a scheme made thereunder, mere denial by the employer may not be sufficient to negative the claim under s. 33-C(2) before the Labour Court. Where however the right to retrenchment compensation which is the foundation of the claim is itself a matter which is exclusively within the competence of the Industrial Tribunal to be adjudicated upon a reference, it would be straining the language of section 33C(2) to hold that the question whether there has been retrenchment may be decided by the, Labour Court. The power of the Labour Court is to compute the compensation claimed to be payable to the workmen on the footing that there has been retrenchment of the workmen. Where retrenchment is conceded, and the only matter in dispute is that by https://www.mhc.tn.gov.in/judis W.P.Nos.24642 to 24683 of 2009 virtue of s. 25FF no liability to pay compensation has arisen the Labour Court will be competent to decide the question. In such a case the question is one of computation and not of determination, of the conditions precedent to the accrual of liability. Where, however, the dispute is whether workmen have been retrenched and computation of the amount is subsidiary or incidental, in our judgment, the Labour Court will have no authority to trespass upon the powers of the Tribunal with which it is statutorily invested. In the unreported judgment of this Court in The Board of Directors of the South Arcot Electricity Distribution Co. Ltd. v. N. K. Mohammed Khan, etc. apparently the only argument advanced before this Court was that s. 25FF applied to that case having regard to the fact that the terms of employment under the new employer were not less favourable than those immediately applicable to them before the transfer, and the Court proceeded to hold that the Labour Court was competent to determine the compensation."

15. Thus it is clear that all the dispute relating to claim which may be computed in terms of money are not necessarily within the terms of the Section 33(C)(2) of the ID Act. The right to the benefit which is https://www.mhc.tn.gov.in/judis W.P.Nos.24642 to 24683 of 2009 sought to be computed under 33(C)(2) of the ID Act, must be an existing one, that is to say, already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between an industrial workman and his employer. Since the scope of sub Section (2) is wider than that of sub Section (1)

and the sub section is not confined to cases arising under an award, settlement or under the provisions of Chapter V-A, there is no reason to hold that a benefit provided for under a statute or a scheme made thereunder, without there being anything contrary under such statute or 33(C)(2) of the ID Act, cannot fall within sub Section (2).

16. In the case on hand, the claimants failed to prove that they had worked more than eight hours in a day. They also failed to prove that they had worked in the weekly holidays, national and festival holidays. Therefore, the disputed question of fact cannot be decided under Section 33(C)(2) of the ID Act. Hence, the above judgement is not applicable to the case on hand. When the claimants made claim under Section 33(C)(2) of the ID Act, they must establish their right in the proceedings. https://www.mhc.tn.gov.in/judis W.P.Nos.24642 to 24683 of 2009

17. Insofar the maintainability of the computation petition under Section 33(C)(2) of the ID Act is concerned, the question of whether the claimants had worked over time or not and whether they are entitled double the wages, cannot be decided in the computation petition under Section 33(C)(2) of the ID Act, since the nature of Labour Court under Section 33(C)(2) of the ID Act is in the nature of executing Court and consequently it would not have the jurisdiction to decide the issue. It is relevant to extract the provisions of Section 33(C) (1) & (2) of Industrial Disputes Act, hereunder:

> "33C. Recovery of money due from an employer:-
>
> (1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter V-A or Chapter V-B, the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue.

https://www.mhc.tn.gov.in/judis W.P.Nos.24642 to 24683 of 2009 (2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months." Thus it is clear that where any money is due to the workmen from an employer under settlement or award or under the provisions of Chapter V–A or Chapter V–B, the workmen can very well make claim for recovery of the said money due. Therefore, the Labour Court had passed the common award without jurisdiction and it is liable to be quashed.

18. Further, the claim of double wages for over time and holidays can be claimed only after adjudication. It is not a benefits to be claimed under Section 33(C)(2) of the ID Act. Therefore, the computation petition itself is not maintainable before the Labour Court. In this regard it is relevant

to rely upon the judgment of the Hon'ble Supreme Court of India in the case of D.Krishnan and another Vs. Special Officer, https://www.mhc.tn.gov.in/judis W.P.Nos.24642 to 24683 of 2009 Vellore Cooperative Sugar Mill and another reported in (2008) 7 SCC 22, wherein it is held that the proceedings under Section 33(C)(2) of the Industrial Disputes Act could only be effective in case of a pre-existing right and as the claim of the workman was disputed, it is not a matter for decision under this provision.

19. It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India in the case of H.P.State Electricity Board and another Vs. Ranjeet Singh and Others reported in (2008) 4 SCC 241, wherein insofar as bonus is concerned, the Hon'ble Supreme Court of India held that the Labour Court can decided only the matters specified in the Second Schedule. The bonus is not covered by the Second Schedule. The question of entitlement to bonus could not have been decided by the Labour Court. In case of pre-existing rights, there must be agreements by both sides about existence of such rights. If there is disagreement, this has to be decided by the competent authority. Therefore, the computation petition filed under Section 33(C)(2) of Industrial Disputes Act is not maintainable to claim double wages on overtime and double wages for weekly and national & festival holidays.

https://www.mhc.tn.gov.in/judis W.P.Nos.24642 to 24683 of 2009

20. That apart, the petitioner is the government company registered under the provisions of the Companies Act and it is wholly owned by the government of Tamil Nadu. The petitioner requested the government to make sufficient provisions or suitable notification to exempt the petitioner's retail shops from the applicability of the provisions of the Tamil Nadu Shops and Establishment Act. The government of Tamil Nadu by its communication dated 22.02.2010, informed the Commissioner of Labour, Chennai that as per sub Section 1(A)(a) of Section 17-C of the Tamil Nadu Prohibition Act, 1937 (Tamil Nadu Act X of 1937), the petitioner is a corporation wholly owned and controlled by the State government. It is clear that the petitioner is an establishment under the State government and consequently, the provisions of the Tamil Nadu Shops and Establishment Act are not applicable in view of the exemption contained in Clause (c) of sub Section (1) of Section 4 the said Act. Therefore, the claim of the claimants under the Tamil Nadu Shops and Establishment Act, against the petitioner is not applicable. Hence, this Court has no hesitation to interfere with the award passed by the Labour Court under Article 226 of the Constitution of India.

https://www.mhc.tn.gov.in/judis W.P.Nos.24642 to 24683 of 2009

21. Accordingly, common award dated 26.10.2009, passed by the first respondent in Claim Petitions Nos. 560 to 601 of 2007, is hereby set aside and all the Writ Petitions are allowed. Consequently, connected miscellaneous petitions are also closed. There shall be no order as to cost.

13.09.2023 Internet: Yes Index : Yes/No Speaking/Non Speaking order rts
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