Before Jawahar Lal Gupta & N. C.Khichi, JJ

M.C.GIDDERBAHA,—*Petitioner*

versus

LABOUR COURT, BHATINDA & OTHERS,—*Respondents*

LPA No. 768 of 1992

The 22nd May, 1998

Industrial Disputes Act, 1947-S. 33 C (2)—Payment of Wages Act, 1936-S.15(2)-Entitlement of workmen to holiday on Saturdays determined by an award of Industrial Tribunal dated 30th June, 1972—Validity of award subsisting—Deputy Commissioner, Ludhiana, by order dated 12th August, 1986 approving proposal that the employees shall have to work 6 days a week-Executive order cannot supersede the Industrial Award in absence of any evidence indicating that award has been terminated either by notice of fresh settlement between parties—Since rights of parties determined, application under section 33C (2) was maintainable for computing money due for Saturdays—Application cannot be thrown out as time barred since limitation not prescribed under section 33C(2)-Limitation prescribed under section 15(2) of the 1936 Act does not militate against the provisions of the Industrial Disputes Act—Workmen held entitled to holidays on Saturdays.

Held that the dispute between the workmen and the employer had been referred by the State Government to the Industrial Tribunal in the year 1969. This dispute had been decided,—*vide* award dated 30th April, 1972. It had been categorically held that the Beldars "are entitled to holidays on Saturdays." Thus, the controversy between the parties had been adjudicated upon. The rights of the workmen had been determined. In this situation, it cannot be said that the workmen were not entitled to move the labour Court for the computation of the amount due to them. The entitlement of the workmen to have holiday on Saturdays had been determined. They were made to work in spite of the award. Thus, they were entitled to claim that wages for working overtime be paid to them. These wages could be computed by the Labour Court.

(Para 7)

Further held that Section 19 of the Act *inter alia* provides that the award given by the competent Court "shall continue to be binding on the parties until a period of two years has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award." In these cases, there is no evidence to indicate that any notice for the termination of the award had been given. No new settlement had been arrived at. In this situation, it is clear that the award was still in force and effective. It continued to bind the parties. Resultantly, the mere passing of an order by the Commisioner of the Corporation could not have the effect of obliterating the award or defeating the rights of the workmen.

(Para 9)

Futher held that the sequence of events, thus, clearly negatives the claim made on behalf of the employer that the period of limitation as prescribed under the Payment of Wages Act should be read into the provisions of S.33C(2) of the Industrial Disputes Act.

(Para 17)

Further held that it does not appear to be possible to hold that the provisions of Article 137 would be attracted to an application under section 33C(2) of the Industrial Disputes Act, 1947. The legislative policy appears to be that even if the workman does not come to the Court immediately on the accrual of wages or even within the period of limitation prescribed under Article 137, his right should not be defeated. The workman's money is lying in trust with the employer. He can recover it at any time. No third party rights accrue. Thus, no period of limitation has been prescribed.

(Paras 20 & 21)

G.K. Chatrath, Sr. Advocate with Dalbir Singh and Alka Chatrath, Advocate *for the Appellant*

Jasbir Singh, Advocate *for Rsspondents Nos. 2 to 48.*

JUDGMENT

Jawahar Lal Gupta, J. (O)

(1) This is a bunch of 24 cases. There are 23 Civil Writ Petitions. Civil Writ Petition No. 11611 of 1989 has been filed by the Worker's Union. The 22 cases *viz.* CWP Nos. 12002-12022 & 9374 of 1992 have been filed by the Municipal Corporation, Ludhiana, to challenge the orders passed by the Labour Court in proceedings under section 33C(2) wherein the claim of the workmen for the award of wages on account of being called upon to work on

holidays has been upheld. Such a challenge having been negatived in a case by the learned Single Judge, the Municipal Committee, Gidderbaha has filed LPA No.768 of 1992. The facts may be briefly noticed.

(2) On 27th August,1969, the Punjab Government had made a reference to the Industrial Tribunal, Punjab. One of the disputes which had been referred to the Tribunal was—

> "Whether the Beldars should be given holidays on every Saturday on the lines given to other employees of the Committee ?"

(3) This dispute was decided in Reference No. 56 of 1969. *Vide* award dated 30th April, 1972, it was held that "the Beldars, who are Class IV employees, are entitled to holidays on Saturdays....." More than 14 years later, on 12th August, 1986, the Deputy Commissioner, Ludhiana, who was also the Administrator of the Municipal Corporation, approved a proposal that the employees shall have to work for six days in a week. Presumably, in view of the pendency of this proposal, it appears that the Corporation had stopped paying the dues (on account of overtime) to the employees who were asked to work on Saturdays. As a result, a large section of the employees approached the labour court through separate petitions under section 33C(2). Claim for wages on account of working overtime was made. This claim having been upheld, the Corporation has filed the aforementioned 22 writ petitions. The Workers Union has filed CWP No. 11611 of 1989 to challenge the validity of the order dated 12th August, 1986 passed by the Administrator of the Corporation to have a six day's week. Such a claim was also made by Municipal Committee, Gidderbaha. Learned Single Judge having dismissed the writ petition, it has filed LPA No. 768 of 1992.

(4) On behalf of the appellant as well as the petitioner-Corporation, the arguments have been addressed by Mr. G.K. Chatrath, Senior Advocate and Mr. M.M. Kumar, Advocate. Learned counsel have submitted that in proceedings under Section 33C(2), only a pre-existing right can be enforced. The court has only to compute the wages found due and order payment. However, the court cannot determine the entitlement of the employees. Learned counsel have urged that in these cases, the court has gone into the issue of determining the entitlement of the employees which was

beyond the scope of proceedings under section 33C(2). Secondly, it has been urged that the claim made by the respondent-workmen was barred by limitation. In LPA No.768 of 1992, the claim relating to the period from the year 1984 to 1989 was raised in 1990. In the 22 Civil Writ Petitions, the claim for the period from the year 1982 to 1986 was made in the year 1986. Relying on the provisions of section 15(2) of the Payment of Wages Act, 1936, it has been urged by the counsel that the workmen were debarred from making the claim in view of the fact that the period of limitation had already expired. Still further, it has been urged that the order passed by the Labour Court, Ludhiana does not consider the fact that the employer had passed an order on 12th August, 1986 by which it was declared that there would be a six days week. Thus, the employees were no longer entiled to claim wages for working on Saturdays. Still further, learned counsel have urged that in view of the decision of Full Bench in *Hari Chand and others* v. *The State of Punjab and others* (1), the employees working in the Octroi section are not entitled to claim extra wages merely on the ground that those working in the Administrative section of the Corporation were not required to attend to any duties on Saturdays.

(5) On behalf of the respondent-workmen, it has been urged by Mr. V. G. Dogra that the parties are bound by the award given by the Industrial Tribunal. According to this award, the Beldars were entitled to a holiday on Saturday. The award given by the Tribunal on 30th April, 1972 was binding and in force. It was not obliterated or rendered ineffective by the executive order passed by the Administrator of the Corporation. Still further, it was contended that Section 33C(2) of the Industrial Disputes Act does not prescribe any period of limitation. The Parliament had not made any provision in this behalf in spite of the fact that such a provision had existed in the Payment of Wages Act and limitation had also been prescribed by an amendment of the provision of section 33C(1). Still further , it was also contended that the order passed by the Administrator on 12th August, 1986 was not binding on the workmen as no notice for termination of the award had been given and no new settlement had been arrived at. This argument was also adopted by Mr. Govind Goel who appeared for the Workers Union in CWP No. 11611 of 1989. Learned counsel also contended that the decision of the Full Bench in Hari Chands case (supra) is not applicable as there was no pre-existing determination of the dispute between the parties by the Tribunal.

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(6) In view of the arguments raised by the counsel for the parties, the following questions arise for consideration:—

(i) Were the petitions filed under section 33C(2) by the respondent-workmen competent ?

(ii) Were the petitions barred by limitation ?

(iii) Was the claim made by the workmen not maintainable in view of the order dated 12th August, 1986 passed by the Administrator of the Municipal Corporation, Ludhiana ?

Reg: (i)

(7) So far as the 22 writ petitions filed by the Municipal Corporation, Ludhiana are concerned, it is the admitted position that the dispute between the workmen and the employer had been referred by the State Government to the Industrial Tribunal in the year 1969. As already noticed, this dispute had been decided,— *vide* award dated 30th April, 1972. It had been categorically held that the Beldars "are entitled to holidays on Saturdays." Thus, the controversy between the parties had been adjudicated upon . The rights of the workmen had been determined. In this situation, it cannot be said that the workmen were not entitled to move the labour court for the computation of the amount due to them. The entitlement of the workmen to have holiday on Saturdays had been determined. They were made to work in spite of the award. Thus, they were entitled to claim that wages for working over-time be paid to them. These wages could be computed by the Labour court. There was no controversy with regard to the rate at which the wages had to be paid. Thus, it cannot be said that the workmen were not entitled to approach the Labour Court under Section 33C(2) of the Industrial Disputes Act.

(8) Mr. Kumar, counsel for the Municipal Corporation, Ludhiana contended that the right of the workmen to claim extra wages stood annulled by the order dated 12th August, 1986 passed by the Commissioner. On the other hand, it was contended by the counsel for the workmen that an award by the competent court cannot be annulled by a mere executive order.

(9) Counsel for the workmen appears to be right. section 19 of the Act *inter alia* provides that the award given by the competent court "shall continue to be binding on the parties untill a period of two years has elapsed from the date on which notice is given by

any party bound by the award to the other party or parties intimating its intention to terminate the award." In these cases, there is no evidence to indicate that any notice for the termination of the award had been given. No new settlement had been arrived at. In this situation, it is clear that the award was still in force and effective. It continued to bind the parties. Resultantly, the mere passing of an oder by the Commissioner of the Corporation could not have the affect of obliterating the award or defeating the rights of the workmen. Thus, the contention raised on behalf of the Corporation cannot be accepted.

(10) Learned counsel for the petitioners referred to the decision of the Full Bench in Hari Chand's case (supra). In this case, the issue before the Bench was—"Whether the employees working on the octroi side in the Municipal Committees are entitled to National, Festival, Gazetted and other holidays and lunch breaks at par with their counterparts working in the offices of the commitees.? "This issue was decided by the Full Bench against the employees. It was held that the employees working at the barriers cannot in the very nature of things justifiably demand a luncheon interval so as to leave the barriers unmanned nor can the barriers be closed for any period. The mode and manner in which the octroi staff works is different from those working in the office and for this reason as well the former cannot claim parity in all matters with their counterparts working in the office. "These observations of the Full Bench are undoubtedly against the workmen. If there had been no award by the Industrial Tribunal which had become final, it may have been possible to accept the contention raised on behalf of the Municipal Corporation. However, the award of the Industrial Tribunal having attained finality, the petitioner-Corporation cannot derive any advantage from the judgment. It appears clear that in Hari Chand's case, the issue had not been referred to the Industrial Tribunal and as such, there was no binding award. Still further, the decision by the Full Bench cannot over-ride the award of the Industrial Tribunal which is inter parties. Resultantly, it is no advantage to the Corporation.

(11) In view of the above, it is held that there was a binding award between the parties. In view of that award, the workmen were entitled to wages for the duties performed by them on Saturdays. This award was unaffected by the unilateral order issued by the Commissioner on 12th August, 1986. As a result, the claim made by the workmen would not be affected by the order dated

12th August, 1986. This would be the position in CWP Nos. 12002 to 12022 of 1992 and 9374 of 1992.

(12) The position in so far as LPA No. 768 of 1992 is concerned is slightly different. In this case, it is the admitted position that there was no binding award between the employer and the workmen. On this basis, it was rightly contended by Mr. G.K. Chatrath that in the absence of a pre-existing right, the Labour Court was not competent to go into the dispute and hold that the workmen were entitled to the payment of extra wages. Learned counsel even referred to certain decisions.

(13) Mr. Chatrath appears to be right in his contention. The function of the Labour Court while considering a petition under section 33C(2) is not adjudicatory. It is in the nature of carrying out execution of a binding settlement or an award, Since there was no pre-existing settlement or award, the workmen were not entitled to claim the benefit of higher wages by filing a petition under section 33C(2).

(14) Learned counsel also contended that in view of the judgment of Full Bench in *Hari Chand and others* v. *The State of Punjab and others* (supra), the persons working in the Octroi Section of the Committee were not entitled to claim wages for working overtime. In cases where there is a pre-existing award, the rights of the parties stand determined. The Full Bench decision which is not inter parties shall not affect the rights accruing from the passing of the award. So far as the case of appellant in LPA No. 768 of 1992 is concerned, there was no award and as such, the employer was not liable.

(15) In view of the above, the first question is answered for the workmen in the 22 writ petitions mentioned above. However, in LPA No. 768 of 1992, the answer would be against the workmen as there was no pre existing right.

Reg: (ii)

(16) It was contended on behalf of the petitioners-appellant-Municipal Corporation that section 15(2) of the Payment of Wages Act, 1936 prescribes that the workman can make the claim within one year of the date on which the wages are denied to him. Even for the purposes of claim under section 33C(2), a similar restriction

should be applicable. To illustrate : it was contended that if a claim for wages for the period from the year 1984 to 1989 was allowed to be raised in the year 1990, it may become difficult for the employer to manage its financial resources. On the other hand, it was submitted on behalf of the workmen that section 33C(2) prescribes no period of limitation. The provisions of the Payment of Wages Act cannot be read into the Industrial Disputes Act. The Parliament had amended the provision of section 33 C(1) in the year 1964 *vide* Act No. 365 of 1964. The fact that a similar provision was not made in Clause (2) is clearly indicative of the legislative intent and thus, the plea of limitation should be rejected.

(17) Admittedly, the Payment of Wages Act was promulgated in the year 1936. Initially, it was provided that an application for claiming wages which had been wrongly deducted shall be made within six months. Later on, the period was changed to 12 months *vide* Act No. 53 of 1964. The Industrial Disputes Act was promulgated 11 years after the enactment of the Payment of Wages Act. In spite of that, no period of limaitation had been prescribed. Still further, the provision of section 33C was actually introduced in the year 1956 viz. almost 20 years after the promulgation of the Payment of Wages Act. Still, no period of limitation was prescribed in regard to the proceedings before the Labour Court. This omission was not accidental. In fact, the subsequent events viz. the introduction of limitation of one year in section 33C(1) by Act No. 36 of 1964 clearly indicates that the Parliament did not make a similar provision in clause (2) intentionally. The sequence of events, thus, clearly negatives the claim made on behalf of the employer that the period of limitation as prescribed under the Payment of Wages Act should be read into the provisions of sectioon 33C(2) of the Industrial Disputes Act.

(18) On behalf of the employer, an attempt was made to contend that even if the provisions of Payment of Wages Act are held to be inapplicable, Article 137 of the Limitation Act would be applicable. It applies to applications made under any Statute. Thus, the claim beyond a period of three years as prescribed under Article 137 should be treated as barred by limitation.

(19) Article 137 embodies a residuary clause. It contemplates the prescription of a period of limitation for an application in regard to which no period of limitation has been prescribed in Articles 118 to 136.

(20) It is undoubtedly correct that by virtue of this provision in the Limitation Act, an application "for which no period of limitation is provided...." has to be filed within three years from the date "when the right to apply accrues". In *the Kerala State Electricity Board, Trivandrum* v. *T.P. Kunhaliumma* (2), it was *inter alia* held that the provisions of Article 137 are not restricted to the applications under the Code of Civil Procedure. An application "under Article 137 would be petition or any application under any Act" submitted to a civil court. In spite of these observations, it does not appear to be possible to hold that the provisions of Article 137 would be attracted to an application under Section 33C(2) of the Industrial Disputes Act, 1947. In *The Bombay Gas Co. Ltd.* v. *Gopal Bhiva and others (3),* it was held that the limitation under the Payment of Wages Act cannot be introduced in case of a petition under Section 33 C (2). In *Chief Mining Engineer, M/s East India Coal Co., Ltd. Bararee Colliery Dhanbad* v. *Rameshwar and others (4),* it was noticed that limitation had been provided for a petition under Section 33 C (1) but such a provision had not been made in case of applications under Section 33 C (2). In *Nityanand M. Joshi and another* v. *The Life Insurance Corporation of India and others* (5), it was said that the "labour Court is not a court within the Indian Limitation Act, 1963".

(21) In view of these pronouncements, it follows that no period of limitation has been prescribed for filing a petition under Section 33C (2). Thus, the claim of the workmen in the present cases cannot be defeated on the ground of limitation. It may be added that Section 33C (2) primarily deals with the computation of wages due under a settlement or an award. if the wages are not paid by the employer to the employee for a long time, the employer suffers no loss. He only utilises the money which is rightfully due to the workman. The legislative policy appears to be that even if the workman does not come to the court immediately on the accrual of wages or even within the period of limitation prescribed under Article 137, his right should not be defeated. The workman's money is lying in trust with the employer. He can recover it at any time. No third party rights accrue. Thus, no period of limitation has been prescribed.

(2) A.I.R. 1977 S.C. 282
(3) A.I.R. 1964 S.C. 752
(4) A.I.R. 1968 S.C. 218
(5) A.I.R. 1970 S.C. 209

(22) In view of the above, the second question is answered against the employer and in favour of the workmen. It is held that the petitions were not barred by limitation.

Reg. (iii)

(23) In so for as the third question is concerned, it was contended on behalf of the employer that the Commissioner having issued an order declaring a six days week, the award of the Labour Court could not be enforced. It has already been observed that an award continues to be in force till it is duly altered in accordance with the provisions of section 19(6). That being so, the order issued by the Commissioner could not adversely affect the rights of the workmen. No notice as contemplated under the provisions of section 19(6) was ever given by the employer. Thus, the rights of the workmen shall not be adversely affected by mere issue of the order by the Commissioner. Even otherwise, in our view, the award given by the competent court cannot be annulled by a mere executive order. In these cases, no notice of termination of the award had been given. No new settlement had been arrived at. Consequently, the award was not affected by the order of 12th August, 1986.

(24) The third question is, thus, answered in favour of the workmen.

(25) In view of the above, CWP Nos. 12002 to 12022 and 9374 of 1992 are dismissed. LPA No.768 of 1992 is allowed. It is conceded by Mr. Govind Goel, Advocate that in view of the above, CWP No. 11611 of 1989 is rendered infructuous. It is, accordingly, disposed of No costs.

R.N.R.

Before Swatanter Kumar, J

M/S NAGPAL STEEL LTD. & ANOTHER,—*Petitioners*

versus

ARJUN DEV VERMA & ANOTHER,—*Respondents*

C.R. No. 3663 OF 1997

The 19th March, 1998

Code of Civil Procedure, 1908—Order 38 Rl.5—Security to be furnished—Specific allegation that defendants are disposing of