

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO. 273 OF 2005

M/s. Trimac Machinery Manufacturing
Co. Pvt. Ltd., Plot No. R-609,
M.I.D.C., Rabale, Thane Belapur Road,
New Mumbai.

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APPELLANT
(Original Petitioner)

-: Versus :-

Brij Kishore Singh,
c/o Maharashtra Engineering & General
Kamgar Sanghatana,
111, Jienuka Co-operative Hsg. Society,
Road No.22, Wagle Industrial Estate,
Thane.

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RESPONDENT
(Original Respondent)

Mr. Avinash K. Jalisatgi, Advocate for the appellant.
None for the respondent.

**CORAM : NARESH H. PATIL AND
S. B. SHUKRE, JJ.
18th JUNE, 2015**

ORAL JUDGMENT

(Per Naresh H. Patil, J.)

1. This appeal arises against the order passed by the learned Single Judge in Writ Petition No. 1865 of 2005. The respondent filed an application on 24/11/2003 before the Labour Court, Thane under Section 33C (2) of the Industrial Disputes Act, 1947. The respondent claimed amount from the appellant as described in Annexure-B annexed to the said application preferred before the Labour Court. Annexure-B refers to the statement in

respect of unpaid overtime wages, privilege leave and bonus from 30/8/1999 to 29/10/2003.

2. The respondent examined himself before the Labour Court. In his statement before the Court, the respondent stated that he was required to work for 12 hours, i.e. 8.30 a.m. to 8.30 p.m. According to the deponent, the duty hours of workmen were of 8 hours, as per rule. In cross-examination, the respondent deposed that he had worked for 12 hours on duty for about two years without payment of overtime wages. He denied the suggestion that he never worked for 12 hours but worked only for 8 hours during the said period.

3. The appellant had examined one Mr. Jitendra Yadav, Director of the Company. This witness denied that the respondent had worked for 12 hours. The claim for payment of overtime wages was also denied. The witness stated that it was not correct to say that the respondent was working as Storekeeper. Being the store in-charge, according to the deponent, there was no question of working overtime.

4. Learned Presiding Officer of the Labour Court allowed the application in part by judgment and order dated 04/01/2005 and directed the appellant herein to pay an amount of Rs.2,25,000/- as overtime wages and privilege leave wages. The claim towards bonus was rejected. The said amount as directed by

the Labour Court was to be paid with interest @ 3% per annum from the date of application till its realisation.

5. The appellant preferred writ petition against the said order passed by the Labour Court. According to learned Counsel appearing for the appellant, amount of Rs.2,25,000/- was deposited with the Registry of this Court.

6. The learned Single Judge, while disposing of the writ petition, observed that considering the facts and circumstances of the case, it would be appropriate to direct the petitioner therein to pay Rs.1,11,000/- towards the claim for overtime wages and leave wages together with costs Rs.4,000/-. The respondent herein was allowed to withdraw an amount of Rs.1,15,000/- and the balance amount was allowed to be paid back to the appellant herein.

7. Learned Counsel for the appellant submits that as per the provisions of Section 33C (2) of the Industrial Disputes Act, the respondent was not entitled to claim overtime wages by way of determination or adjudication of the benefit of any allowances. The said claim was not determined by any judicial forum prior to the passing of the impugned order by the Labour Court.

8. Learned Counsel for the appellant further submitted that the workman was not entitled to put forward the claim under Section 32-C(2) of the Industrial Disputes Act in respect of a claim which is not based on an pre-existing right. The apprehension of

the learned Counsel is that in case the applications are allowed in this fashion, then the appellant-Company would face further difficulty in future. In support of his submission, learned Counsel placed reliance on two judgments of the Hon'ble Apex Court in the cases of; (1) **2006 AIR SCW 2044 – Union of India & another Vs. Kankuben (Dead) by L.Rs. & others, etc.,** and (2) **1975 I SCR 153-Central Inland Water Transport Corporation Ltd. Vs. The Workmen & another.**

9. In the case of *Union of India Vs. Kankuben* (supra) in paragraph 6 the Hon'ble Apex Court has observed thus;

“.....Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33-C(2) of the Act. The benefit sought to be enforced under Section 33-C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33-C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the

workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages.

Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages.”

10. We have perused the impugned orders and relevant record placed before us. Except the oral statement, the respondent did not place on record any material to support his claim that he

had worked overtime. The question raised by the appellant is as to whether the Labour Court was entitled to consider the application filed by the respondent claiming overtime wages under Section 33-C(2) of the Industrial Disputes Act in view of the principles laid down by the Apex Court and the facts of the case. We are of the view that the Labour Court was not entitled to consider such an application under Section 33-C(2) of the Act. The principles governing exercise of jurisdiction of the Labour Court under Section 33-C(2) of the Act are that a workman is entitled to receive from his employer any money or any benefit; (a) which is capable of being computed in terms of money, (b) employee must be entitled to receive from his employer the said benefit, and (c) such a benefit must have been denied by the employer. We do not find that such a benefit flowing from pre-existing right existed in this case for the respondent to claim. Hence, we hold that the Labour Court was not entitled to consider such a claim as raised by the respondent under Section 33-C(2) of the Industrial Disputes Act.

11. It seems that the learned Single Judge has taken a sympathetic view and while granting benefit to the respondent considered the peculiar circumstances of the case. Such benefit was granted by the learned Single Judge in the year 2005. We are hearing the present appeal after ten years. In view of the peculiar facts and circumstances and the considerable time which has

elapsed since determination of the application by the Courts, following order will meet the ends of justice.

The judgment and order dated 04/01/2005 passed in application (IDA) No. 542 of 2003 by learned Judge of 3rd Labour Court, Thane and also the order of learned Single Judge passed on 06/10/22005 in Writ Petition No. 1865 of 2005 are hereby quashed and set aside to the extent of declaration that the respondent was entitled to claim overtime wages and leave wages under Section 33-C(2) of the Industrial Disputes Act. However, we are not inclined to direct that the appellant shall recover the said amount from the respondent or respondent shall deposit the said amount with the Court registry.

Learned Counsel for the appellant submits that in case if the remaining amount out of Rs.2,25,000/- was not withdrawn, be allowed to be withdrawn by the appellant herein.

We grant liberty to the appellant as prayed above.

With the above modification, we partly allow the appeal. No costs.

(S. B. SHUKRE, J.)

(NARESH H. PATIL, J.)