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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CR No. 6321 of 2015(O&M)
Date of Decision: 21.10.2016**

**Honda Motorcycle and Scooter India Pvt.
Ltd.**

....Petitioner

Vs

**Presiding Officer Industrial Tribunal
Cum Labour Court Circle-II Gurgaon and Anr.**

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Pawan Kumar Mutneja, Advocate
for the petitioner.

Ms. Abha Rathore, Advocate,
for respondent No. 2.

RAJ MOHAN SINGH, J.

[1] Petitioner has assailed orders dated 07.05.2015, vide which application filed by the petitioner for treating the issues of jurisdiction and maintainability to be preliminary issues was dismissed and re-casting of issues framed on 24.07.2014 was done by replacing the word reference by application.

[2] An application was filed by the respondent No. 2 under Section 33-C(2) of Industrial Disputes Act, 1947 claiming that the workers were entitled to overtime i.e. twice the total gross wages of the workers. The demand notice dated 11.07.2012 of the Union was involving the various demands.

There was a demand of overtime at item No. 21.

[3] There was a settlement under Section 12(3) of Industrial Disputes Act which was executed between the management and the workers Union for a period of 01.08.2012 to 31.07.2015. This settlement was to continue to have binding effect between the parties till its culmination as per provision of the Act. The settlement was provided for increase in wages and other benefits to workers including productivity link incentives. The stand of the petitioner was that the demand of overtime on gross wages was not a demand on which both the parties had entered into tripartite settlements for three years.

[4] During pendency of aforesaid settlement, an application under Section 33-C(2) of Industrial Disputes Act came to be filed. The stand of the petitioner-management was that despite the rejection of demand in question, the General Secretary of the Union in his individual capacity and under his own signature preferred the claim under Section 33-C(2) of the Act. Section 36 of the Act was relied along with Rule 4 of the Industrial Disputes (Punjab) Rules 1958 to submit that the claim made by the respondent No. 2 was wholly erroneous. The application in question was claimed to be vague inasmuch as that the same did not specify the dates on which the workers had put in overtime and also in respect of number of hours for which workers were put to work over and above the scheduled

time of duty. Section 59 of the Factories Act was resorted to for alleging that the claim made by the respondent No. 2 was erroneous. Section 59 of the Factories Act, 1948 is to the following effect :-

(i) Where a worker works in a factory for more than nine hours in any day or more than forty eight hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages.

(ii) For the purposes of sub-Section(1), "ORDINARY RATE OF WAGES" means the basic wages plus such allowances, including the cash equivalent of the advantage accruing through the concessional sale to workers of food grains and other articles, as the worker is for the time being entitled to but does not include a bonus and wages for overtime work.

[5] Perusal of the aforesaid section revealed that the provisions is in respect of entitlement of a workmen in respect of overtime to the extent of wages at the rate of twice his ordinary rate of wages.

[6] Learned counsel for the petitioner contended that

gross wages are not provided as per Section 59 of the aforesaid Act. The ordinary rate of wages means the basic wages plus the allowances including the cash equivalent of the advantage through the concessional sale to workers of food grains and other articles, as the worker is for the time being entitled to but does not include a bonus and wages for overtime.

[7] The claim made by respondent No. 2 was contested by the petitioner-management on the premise that respondent No. 2 was not entitled to invoke Section 33-C(2) of the Act as the workers were not entitled to the aforesaid relief which was beyond the scope of settlement. The application was filed on behalf of 1764 workers. In the absence of their particulars, the amount was not liable to be paid. The demand was claimed to be vague after filing the application by respondent No. 2. Following issues were framed by the Tribunal cum Labour Court on 07.05.2015 :-

- 1. Whether the respondent Company is liable to pay overtime at the double rate of gross salary to the worker as per the list of the workers annexed for which claim petition is liable to be answered in favour of worker?
OPW*
- 2. Whether this Court has no jurisdiction to entertain the present reference ? OPM*

3. *Whether the application is not maintainable ? OPM*

4. *Relief.*

[8] Thereafter, the petitioner filed an application on 30.04.2015 for re-casting of issues No. 2 and 3 as preliminary issues. The petitioner asserted that the application filed by respondent No. 2 was in respect of overtime of total gross wages of workers without supplying any details and documents having worked overtime. While framing issues, Tribunal inadvertently framed issue No. 3 i.e. “ *Whether the reference is not maintainable ?*” The management took preliminary objection in respect of maintainability of the application under Section 33-C(2) of the Act. It was also asserted that the claim of overtime under Section 33-C(2) of the Act was not maintainable. The re-casting of issue was sought in the following manner :-

1. *“Whether the respondent Company is liable to pay overtime at the double rate of gross salary to the workers ? OPW*

2. *Whether this Court has no jurisdiction to entertain the present application ? OPM*

3. *Whether the present claim application is not maintainable in the present form ? OPM*

4. *Relief.*

[9] Learned counsel for the petitioner vehemently

submitted that once the demand in question was not part of tripartite settlement between the parties under Section 12(3) of Industrial Disputes Act, therefore, application under Section 33-C(2) of Industrial Disputes Act was not maintainable as the same was in the nature of execution.

[10] Learned counsel relied upon **Central Inland Water Transport Corporation Ltd. Vs. The Workmen and Another (1974) 4 SCC 696** to contend that the claim of the respondent No. 2 was the subject matter of investigation for determination of all the rights claimed and the corresponding duty/liability of the management including whether the management was at all liable to grant the relief or not. The extent of the liability of the management was also required to be determined in the main proceedings. Since the proceedings under Section 33-C(2) of the Industrial Disputes Act are in the nature of executive proceedings, therefore, the determination of right of the respondent no. 2 was *sine qua non* before invoking Section 33-C(2) of the Act.

[11] Learned counsel for the petitioner also relied upon **D. Krishnan and another Vs. Special Officer, Vellore Cooperative Sugar Mill and another (2008) 7 SCC 22** to submit that there was a mark difference between the terminology of Section 33-C(1) and Section 33-C(2) inasmuch as that Section 33-C(1) dealt with money due to workman from

an employer under a settlement or award whereas Section 33-C(2) of the Act was wider in its application and visualized an entitlement with respect to money even if a pre-existing right was created by statute. It was asserted that an enquiry was required to be conducted for the determination of right of the respondent No. 2 before invoking Section 33-C(2) of the Act. Section 59 of the Factories Act has provided for the payment of overtime wages. Learned counsel submitted that whatever was due to respondent No. 2 in terms of Section 59 of the Factories Act already stood paid. The demand was over and above the settlement in which the demand was specifically turned down.

[12] On the other hand, learned counsel for respondent No. 2 has submitted that issue No. 1 was never in debate as per the application for re-casting of issues filed by the petitioner before the Tribunal cum Labour Court. Petitioner never claimed re-casting of issue No. 1. Under issue No. 1 only computation was to be made otherwise the management had already admitted the entitlement of the workmen in the proceedings wherein it was specifically recited that as per the own notice issued by the management, the management has bound itself to pay overtime @ on the gross salary of the workers. Admittedly, it is the legal right of the workman to get overtime dues as per Section 59 of the Factories Act and the management is also saying that they are paying the overtime to the workers as per

Factory Act and thus, the management is admitting their legal liability but their claim is that they have already paid workers overtime at the demanded rate. As per Section 33-C(2) , the workers are entitled to receive from the employer money/benefit as per the provisions of Section 59 of the Factories Act which is capable of being computed in terms of money.

[13] Learned counsel for the respondent relied upon the averments in Para No. 4 of the revision petition to submit that the management has admitted that the demand of overtime of gross wages was not a demand on which parties entered into settlement.

[14] Learned counsel for the respondent relied upon **Chief Mining Engineer, M/s East India Coal Co. Ltd., Bararee Colliery Dhanbad Vs. Rameshwar and others 1968 AIR (SC) 218** to submit that Section 33-C(2) takes within its purview cases of workmen who claimed that the benefit, to which they are entitled, should be computed in terms of money even though the right to the benefit on which their claim is based, is disputed by their employers. It is open to the Labour Court to interpret the award or settlement on which the workman's right rests. Learned counsel also emphasize that right to the benefit which is sought to be computed must be an existing one i.e. to say already adjudicated upon or provided for and must arise in the course of relationship between the industrial workman and his employer.

[15] Learned counsel again highlighted that since the scope of Sub Section (2) is wider than that of Sub Section (1) and is not confined to cases arising under an award, settlement or under the provisions of Chapter V-A, there is no reason to hold the benefit provided by statute or a claim made thereunder without there being anything contrary under such statute.

[16] Both the parties have tried to argue the main case. The principle grievance of the petitioner is that the Labour Court has decided issue No. 1 at the preliminary stage without there being any evidence on record. The claim in respect of issue No. 1 was dependent upon evidence which was to be led by both the parties in order to establish rights of workers, particularly when this demand was not forming the subject matter of settlement. Secondly, in the absence of material particulars with regard to nature of work, overtime with reference to dates and time, no such computation can be made by the petitioner. In any case, issue No. 1 required opportunity to both the parties to lead their evidence and thereafter this issue should have been adverted to by the Labour Court. In the light of requirement under issue No. 1 particularly when the nature of Section 33-C(2) of the Industrial Disputes Act is of executory nature, therefore, presence of adjudication of the rights and liabilities of the parties was *sine qua non* for resorting to execution under Section 33-C(2) of the Act. The claim in respect of Section 59 of the Factories Act has

already been met as per stand taken by the petitioner.

[17] This Court is not in a position to appreciate the claim and counter-claim of the parties at this juncture. It is found that the Tribunal has decided issue No. 1 at the initial stage without advertent to the claim and rival claims of the parties and without providing any opportunity of leading evidence to them. At this stage, without commenting anything upon merits of the case, as it may prejudice case of either side, it would be expedient to remand this case back to the Tribunal. Therefore, in view of the observation made hereinabove the impugned orders dated 07.05.2015 passed by Labour Court are hereby set aside and the case is remanded back to the labour Court with a direction to decide the issue No. 1 afresh after providing reasonable opportunities to the parties to lead their evidence within a stipulated time preferably within six months from the date of receipt of certified copy of this order.

[18] The issue regarding jurisdiction and maintainability, whether to be treated as preliminary issue on the basis of findings recorded under issue Nos. 1 and 2, shall also be re-adjudicated by the labour Court. In any case, the lower Court shall take conscious decision on all issues, firstly to adjudicate the entitlement of either side under issue No. 1 after reasonable opportunity of hearing to both sides and to lead evidence thereof. Secondly, the labour Court shall also be obligated to

decide whether in the facts and circumstances of the case, issue regarding jurisdiction and maintainability can be treated to be preliminary issues or not. The facts have been noticed hereinabove only for tracing out the controversy between the parties. Anything observed hereinabove shall not be construed to be an opinion on merits of the case. Labour Court shall proceed with the case and decide the same on merits preferably within a period of six months from the date of receipt of copy of this order.

[19] In view of aforesaid, this revision petition is disposed of.

(RAJ MOHAN SINGH)
JUDGE

21.10.2016

jyoti Y.

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No