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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14105 OF 2016

Pioneer Embroideries Ltd.

... Petitioner

vs.

Narad Pd. Kushawaha & 9 Ors..

... Respondents

WITH

WRIT PETITION NO. 2640 OF 2017

WRIT PETITION NO. 7668 OF 2017

WRIT PETITION NO. 4789 OF 2017

WRIT PETITION NO. 4794 OF 2017

WRIT PETITION NO. 4795 OF 2017

WRIT PETITION NO. 7669 OF 2017

WRIT PETITION NO. 7670 OF 2017

WRIT PETITION NO. 7671 OF 2017

WRIT PETITION NO. 7672 OF 2017

WRIT PETITION NO. 7673 OF 2017

WRIT PETITION NO. 7674 OF 2017

WRIT PETITION NO. 2641 OF 2017

WRIT PETITION NO. 2581 OF 2017

WRIT PETITION NO. 2582 OF 2017

WRIT PETITION NO. 2686 OF 2017

WRIT PETITION NO. 5267 OF 2017

WRIT PETITION NO. 5108 OF 2017

Mr. V. P. Vaidya a/w. Mr. Mahendra Agavekar for the Petitioner.

Ms. Nutan R. Patankar a/w. Mr. V. P. Sawant and Mr. Prabhakar Jadhav i/b. Mr. V. P. Sawant for the Respondent.

CORAM : A.K. MENON, J.

DATE : 11th APRIL, 2018

P. C.

1. These 18 Writ Petitions raise a common question, that of liability to bear overtime claimed by workmen. The judgment dated 29th November, 2012 impugned in these petitions allows complaints before the Labour Court at Dadra and Nagar Haveli, Silvassa and a subsequent order dated 19th November, 2016 passed by the Civil Court upon remand by this Court. By consent of parties the facts in Writ Petition No. 14105 of 2016 are taken up for consideration..

The facts in brief are as under :

2. The petitioner is a company engaged in business of embroidery employing numerous persons. The respondents have filed separate applications under Section 33(C)(2) of the Industrial Disputes Act, 1947 (the said Act) contending that they had worked for an additional four hours each day from the date of their initial employment till the date of leaving employment, but were denied overtime wages. Evidence was only led on that behalf of one respondent employee.

3. The petitioners filed a Writ Petition No. 4619 of 2013 in this Court challenging the order dated 29th November, 2012. One of the contentions taken was that several records had been destroyed in a fire which took place on the first floor of the company where the salary registry, attendance register, overtime registers were maintained and which records were believed to have been destroyed. Although this was the initial contention it was later realized that the salary register,

overtime register were stored in the personnel department in the ground floor. The Labour Court passed orders dated 29th November, 2012 allowing the applications while holding them maintainable and directing payment of overtime wages along with 9% interest in the event of non payment within three months of the order. This Court vide order dated 26th February, 2015 permitted the petitioner to withdraw the petition with liberty to file a Review petition seeking review of the impugned orders. Maintainability of the review petition was kept open if the Review petitions were filed. The Labour Court was requested to decide the same on the basis of material on record. In the application for review the petitioners relied upon individual leave records, workman applications for employment and payment sheet of each workman for three years. It was case of the applicant / petitioner that the at least one of the employees was unable to attend work in view of his health and it was also found documents pertaining to his leave where his date of joining employment, leave applications which would indicate that the concerned workmen was on leave for the relevant period when overtime was been allowed. The impugned order concludes such claims.

4. It was contended, inter alia, that the settlement arrived at between the Management and the Union was governed by service conditions with the workers. All wages paid, excise records were relied upon which indicated that there were three shifts. A fresh hearing was therefore sought despite opposition. The review was opposed on the basis that it was not maintainable. Written arguments were filed on the aspect of maintainability. It was held that the review application is not

maintainable. They were sought to be relied upon. The impugned order held that the review application had not clarified as to where and in what circumstances the records were retrieved. The Labour Court held that it had become functus officio. There is no question of any review.

5. Mr. Vaidya learned counsel on behalf of the petitioner relied on the following judgments :

1. *D. Krishnan and Anr. vs. Special Officer, Vellore Co-operative Sugar Mill and Anr.* [(2008) 7 SCC 22]
2. *Gujarat Water Supply and Sewerage Board & Anr. vs. Ketanbhai Dinkarray Pandya, Amreli* [(2003) III 316].
3. *Municipal Corporation of Delhi vs. Ganesh Razzak and Anr.* [(1995) 1 SCC 235]
4. *Deputy Engineer, Zilla Parishad (Works) Sub-Division, Umred and Ors. vs. Shantaram Ramaji and Ors.* [1996 (5) BomCR 504]

6. Mr. Vaidya submitted that the review was maintainable. He submitted that in the case of *Shantaram Ramaji (supra)* it was held that the Labour Court not being a Civil Court under Article 137 of the Limitation Act would not apply. It had also held in paragraph 11 that in case where a claim is stale it would be appropriate to consider whether the claimant has furnished a satisfactory explanation in making a delayed claim. The Labour Court proceeded on the basis that law of limitation was not limited to the applications under section 33(C)(2) but the Labour Court had not applied its mind at all as to whether the claim of difference of wages had suffered from unexplained delay. In that case there was

no explanation, when the matter was remanded for fresh disposal. In that case there were 49 Writ Petitions which came to be partly allowed.

7. Mr. Vaidya relied upon *Ganesh Razzak (supra)* in which attention was invited to paragraph 13 to the effect that mere fact that workmen who were casual workers were to be paid wages at the same rate as regular workers were applying the principle of “equal pay for equal work”, but there was no adjudication of the dispute. The mere fact that some workmen had filed claim was indicative of the need for adjudication of claim before computation of such claim. The respondents claim was not based on any prior adjudication made in the Writ Petition filed by other workmen which was held to be not relevant for the purpose.

8. In *D. Krishnan (supra)* Mr. Vaidya relied upon observation of the Supreme Court in paragraph 17 to the effect that the pre-existing right is also mentioned in statute which provided for payment of overtime wages and that the Labour Court was called upon in that case to calculate amount due to the appellants. The Division bench of the Madras High Court has observed that though section 59 of the Factories Act act undoubtedly provided for extra payment as overtime wages. But according to Rule 78 -B of the Tamil Nadu Factories Rules, 1950 only an employee allowed to work overtime supported by an overtime slip would be entitled to claim overtime allowance. Thus it held that the mere reliance on documents filed by them was insufficient for determining factual basis of the issues involved under section 33(C) 2. Ms. Patankar submitted that in the instant case there was

requirement of issuing no such slips and therefore the ratio in *D.Krishnan (supra)* would not apply.

9. In *Gujarat Water Supply (supra)* Mr Vaidya relied upon the observation in paragraph 12 to submit that in that case 43 workmen were appointed in different posts on different dates and yet all of them claimed overtime from the same date. Each of the workmen had contended that they were serving with the Board for long time and that they were working for 12 hours a day instead of 8 hours yet not paid overtime for four hours. Only one witness is examined and all recovery applications were consolidated by the Labour Court. It was contended that no workman was made to work for 12 hours a day and there was no question of paying overtime. In paragraph 29 the Court observed that the right claimed by the workmen had not been admitted by the employer and there were disputed facts on aspect of actual working by workmen and it cannot be decided merely on mathematical calculations which need to be adjudicated by Competent Court. It was found that the single Judge of the Court had erred in upholding the award. The facts in that case were found to be similar to that of *Ganesh Razak (supra)*.

10. In the instant case the impugned order rejected the Miscellaneous Application filed by the petitioner by which the petitioner sought review of the order dated 29th November, 2004. Even in that application both parties argued on the basis of one viz. Miscellaneous Application No. 59 of 2015. Arguments in the Miscellaneous Application were adopted by both parties. The review was only sought on the basis that documents such as attendance register, leave register,

production register etc. could not be filed since they were totally destroyed in a fire. It appears that they came across the documents of the workmen which were retrieved from the excise department and which apparently showed that the company was working in three shifts. The review applicant / petitioner contended that these relevant documents could not be produced before the court since some of the documents were with the consultant of the company looking after the matters of excise and administration. Later they located the leave application signed by some workmen during 2001-2004. The review application came to be rejected since the Labour Court did not have power to review its own orders. It was also recorded that the material sought to be placed in review were already within the knowledge of the petitioner. It was therefore held that the application was not maintainable. The impugned order held that the document sought to be relied upon was not new evidence which the petitioner did not have despite exercise of due diligence at the time of the trial. The original application were decided in the year 2012 was actually initiated in the year 2004 and there was sufficient time for the review applicant to locate it and submit these records.

11. I have heard the parties at length. In the course of submissions it was pointed out that the Labour Court had taken cognizance of the facts and circumstances and one of the grounds was that all the applicants before the Labour Court had not deposed separately for themselves and that the order was passed on the basis of evidence of one witness. I find that the petitioner and the respondents had made a joint application to treat the evidence led as common evidence in all that case this deposition in Recovery Application No. 1 of 2004 was considered as

common for all Recovery Applications and the Labour Court had while passing orders of which review was sought proceeded on the basis of such evidence.

12. I find that the impugned judgment dated 29th November, 2012 records that there was no dispute between the parties about the fact that there were 200 workers employed and that they worked for eight hours per day in respect of which all dues were been paid. The dispute that arose was whether workers had been engaged for an additional four hours and whether they were entitled to claim overtime at the double wages. Jurisdiction of the Labour Court to entertain the application was also challenged. The Court held that the right to claim overtime wages was statutory right and the claim could be made under Section 33(C)(2). Reference is made to the deposition of the witness on behalf of the respondent. Paragraph 16 of the impugned judgment records that the production reports were signed by supervisors. It was further recorded that the computation of overtime is based on the records consisting of muster rolls, wage register, overtime register, notices and inspection reports of the factory inspector and the like.

13. Paragraph 17 records that all claims made were similar. Both parties filed a joint purshis that evidence recorded in the Recovery Application No. 1 of 2004 be treated as common to all. The company also examined two witnesses. The evidence led by the petitioner was found to be deficient. One witness was examined by the respondent and two on behalf of the petitioners and the deposition of these three persons was to be considered as common in all Recovery Applications. The Labour Court found that the evidence on behalf of the petitioners admits of the fact that

the officers in the company were working from 7.00 am to 7.00 pm and the workmen would naturally also be working for those many hours. It was found that the employer was purposely avoiding production of relevant documents such as attendance register, wage register, overtime register for the period 1994–2003. The fire had taken place on 1st February, 2007 and it was then contended that the documents were unavailable. Later it is stated that some documents have been retrieved from the office of the consultant and these documents are now sought to be relied upon. It is also admitted that the fire took place in 1st floor whereas records are retained in the personnel department in the ground floor. It is not possible to believe that the petitioner was unaware that such records would in the normal course be found in the personnel department which was admittedly located on the ground floor.

14. Furthermore, the Labour Court records that the company witness at first admitted that the destruction of these records were not mentioned in the insurance claim filed by the company and for this reason the Labour Court disbelieved the petitioners case and through adverse inference, overtime wages were computed in respect of workmen on a uniform basis. The petitioner has opposed the respondents claim at all stages and repeatedly over a period of time from 2004 when the applications were filed before the Labour Court. The only contention that deserves consideration whether all workers could have been said to have worked overtime. On this aspect it was open for the petitioner to insist on the workers leading evidence separately. However, a joint pursis has been filed for leading common evidence. Respondents have contended that they have tendered services

for 12 hours a day and thus entitled for four hours of overtime. There was no cross examination on this aspect. It is also not in dispute that in respect of workmen who had not worked the claim was not allowed. In the present case it is seen that the judgment in the case of *D. Krishnan (supra)* would be of no assistance to the petitioner since there are no rules or requirement set out by the petitioner as regards overtime slips. In *Shantaram Ramaji (supra)* reliance is placed on paragraph 11 which records that even though there is no limitation in filing making claim under Section 33-C(2) where a claim is made after a long lapse of time or made belatedly and or claim which has become stale could be entertained. It was held that *Inder Singh and Sons Ltd. vs. Their Workmen, [1961 Vol. II LLC 89]* it was held by the Supreme Court that the principle of Industrial adjudication demands that over-stale cases should not be encouraged or allowed unless there was satisfactory explanation for the delay. In that case the Labour Court had not applied its mind as to claim for difference in wages suffered from unexplained delay. Although Mr. Vaidya sought to contend that the present claim also hit by unreasonable delay I am unable to find any reason to hold against the respondent on this account. Delay is not one of the reasons that was agitated on behalf of the petitioners before the Labour Court and it is now sought to be set up for the first time before this Court. Besides the only point on which the petitioner sought review was for the purpose of production of documents. In fact the aspect of delay has not even been urged in the Writ Petition. The judgment in *Shantaram Ramaji (supra)* is of no assistance. Likewise the reliance placed in *Gujarat Water Supply, Ganesh Razzak and Shantaram Ramaji* are of no avail. In the circumstances this is

not a contention that can be entertained at this stage since it was never raised by the petitioner before the Labour Court. Furthermore, filing of a joint pursis and consensual reference to evidence recorded in case no. 1 of 2004 does not entitle the petitioner to seek to reopen that aspect of the matter. It is evident that this is but one more attempt on behalf of the petitioner to obstruct the workers claim. In the circumstances, I find no merit in the challenge of these petitions. Accordingly, I pass following order :

- (i) Writ Petitions are dismissed.
- (ii) Till 15th July, 2018 the respondent will not move the enforcement of the impugned orders.
- (iii) No order as to costs.

(A.K. MENON, J.)