



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.01.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.9571 of 2012

and

M.P. (MD)Nos.1 of 2012 and 1 of 2014

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Bharath Petroleum Corporation
Limited,
Through its Manager Ganapathy,
23D, S.N.High Road,
Tirunelveli.

... Petitioner

vs.

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.A.Uchimakalli

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the proceedings of the first respondent in Claim Petition No.52 of 2008, dated 20.02.2012 and to quash the same.

For Petitioner : Mr.P.Balamurugan
for Jeyapaul Associates
For R1 : Labour Court
For R2 : Mr.S.M.Mohan Gandhi

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorari, to call for the records relating to the proceedings of the first respondent in Claim Petition No.52 of 2008, dated 20.02.2012 and to quash the same.

2.The second respondent was working as Pump Operator under the petitioner Corporation. The second respondent voluntarily absented from duty from 07.04.2007 without any intimation. Thereafter, the second respondent filed a Claim Petition under Section 33C(2) of the Industrial Disputes Act, 1947, claiming Rs.64,584/- (Rupees Sixty Four Thousand Five Hundred and Eighty Four only) payable as overtime wages for the period between April 2004 to March 2007. The case of the second respondent is that since he was working as a Pump Operator for a monthly salary of Rs.2,596/- (Rupees Two Thousand Five Hundred and Ninety Six only) for the past ten years and the petitioner Company is covered under the Minimum Wages Act, the Company is liable to pay overtime wages for three years between April 2004 to March 2007. Since the petitioner Corporation refused to pay the same and dismissed the second



respondent with effect from 07.04.2007, the second respondent filed a Claim Petition before the Labour Court.

3.The learned Counsel appearing for the petitioner Corporation submitted that the appropriate Government is Central Government and the second ground that was canvassed was that no petition was filed to quantify the amount as stated in Section 33C (2). However, rejecting this contention, the Labour Court has passed an award. Aggrieved over the same, the petitioner Corporation has filed this Writ Petition.

4.The second respondent had filed a petition seeking to withdraw the 50% of the award amount and the petition is still pending. The second respondent reiterated the contention stated before the Labour Court.

5.Heard MrP.Balamurugan, learned Counsel appearing for the petitioner and Mr.S.M.Mohan Gandhi, learned Counsel appearing for the second respondent.

6.The first contention of the petitioner Corporation is that the petitioner Corporation is Central Government and therefore, the second respondent cannot invoke the jurisdiction of Labour Court. However, the said contention is rejected, since the petitioner Corporation is Bharath Petroleum Corporation Limited, which is only an undertaking of Central Government and the Corporation cannot be considered as Central Government. The second contention raised by the petitioner is that a petition ought to be filed to establish his right and thereafter quantify. Then only, the Claim Petition can be filed under Section 33C for recovering the amount from the employer. Under 33 C Subclause 2, the provision states:

"33-C: (2) Where any workman is entitled to receive from the employer any money or benefit which is capable to 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:

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.

(3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a Commissioner who shall, after



taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the Commissioner and other circumstances of the case."

7. It has been specifically stated under sub clause 3 that for the purpose of computing the money value, the Labour Court shall appoint a Commissioner and the Commissioner by taking evidence if necessary, then ought to submit the report before the Labour Court. Thereafter, the Labour Court shall determine the amount.

8. The Learned Counsel appearing for the 2nd respondent has relied on a judgment rendered by the Andhra Pradesh High Court in Rajendranagar Municipality Vs. B.V. Perraju and Others dated 14.07.1995 reported in 1995 (2) ALT 320 wherein it is stated in the said judgment that in effect, a benefit conferred on a workman in a statute even if denied, could be an existing right which could be entertained and determined under section 33 (C) (2) of the Industrial Disputes Act. The equation and analogy similarly applies to the claim of a workman for overtime wages under the provision. However, in the same judgment it has been stated that,

"the enquiry under section 33 (C) (2) in such cases would have to be preceded by an enquiry into the existence of the right and such an enquiry is incidental to the main determination which has been assigned to the Labour Court by sub section (2)".

9. The "preceded by an enquiry into the existence of the right" is covered under 33 (C) (3), wherein it has been clearly stated that for computing the money value of a benefit the Labour Court ought to appoint a Commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the Commissioner and other circumstances of the case.

10. Therefore the determination under 33 (C) (3) is sine qua non to allow the claim petition filed under 33 (C) (2). Since this has not been followed by the Labour Court in the present case, this Court deems it fit to remit the matter back to the Labour Court. The second respondent is at liberty either to file a fresh petition or to file any interlocutory petition. The Labour Court is directed to determine the entire issue under 33 (C) (3) first and then determine the claim petition under 33 (C) (2). Since the Claim Petition is in the year 2007, the Labour Court is directed to complete the said exercise within a period of twelve weeks from the date of receipt of a copy of this order.



11. Accordingly, the Writ Petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

Tmg

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

The Presiding Officer,
Labour Court,
Tirunelveli.

+1 CC to M/s.J.DAVID GANESAN, Advocate (SR-1616[F]
dated 12/01/2022)

Order made in
W.P. (MD)No.9571 of 2012
10.01.2022

PK (CO)
GC (03.02.2022) 4P 3C