

## Faqir Chand Vs Food Corporation of India and Another

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** May 12, 2011

**Acts Referred:** Industrial Disputes Act, 1947 " Section 10, 33C(2), 4K  
Punjab Shops and Commercial Establishments Act, 1958 " Section 2, 3

**Citation:** (2011) 131 FLR 164 : (2011) 163 PLR 402

**Hon'ble Judges:** K. Kannan, J

**Bench:** Single Bench

**Final Decision:** Allowed

### Judgement

K. Kannan, J.

All these writ petitions address the same issue of the tenability of a circular on the basis of which overtime allowances

sought by the persons working in the office at Food Corporation of India were denied although the benefit was extended to other persons working

at godowns, field offices etc. of the Food Corporation. It is an admitted case that all the petitioners working at the district office at the Food

Corporation of India were also being paid overtime allowances upto the year 1982 and it had been resumed in the year 1987 after a hiatus during

the years 1982 to 1987. This allowance was withdrawn on the ground that the persons working in the office were not covered by the provisions of

the Punjab Shops and Commercial Establishment Act of 1958. It is a matter of fact that similar treatment meted out to the office staff at Delhi also

was resisted by the office staff with a similar grievance and there had been independent proceedings at their instance also.

2. The petitioners sought for computation of wages disallowed to them through an application u/s 33-C(2) of the Industrial Disputes Act before the

Industrial Tribunal at Chandigarh. It is again a matter of record that the staff at the office at Delhi had also filed similar applications before the

Tribunal at Delhi. The Tribunal at Delhi had allowed the applications declaring the petitioners before it as entitled to overtime allowances. The

Tribunal at Chandigarh dismissed it. It appears that the Management of Food Corporation of India had challenged the decision of the Industrial

Tribunal before the High Court at Delhi in CWP No. 2469 of 1986. It appears that the Food Corporation subsequently withdrew from the writ

petition and allowed the benefit of overtime allowances during the disputed period to the staff at the office of Food Corporation.

3. When the fact of parallel proceedings before the Industrial Tribunal at Delhi was brought to the attention of this Court, this Court (Justice TPS

Mann) had directed the Regional Manager, Food Corporation of India, to be present before the Court. He had come present before the Court as

per the directions and stated that they still wanted to persist in the contention on its own merit and he was not himself personally aware of how and

under what circumstances, the writ petition filed in CWP No. 1892 of 1988 was allowed to be dismissed as withdrawn. I had directed the counsel

to argue the case on merits.

4. The petitioners had two issues to contend with, (i) the applicability of a claim u/s 33-C(2) even when there was no established right and the

entitlement of the petitioners to seek for the overtime allowances When mere was no particular award granting to them their right and (ii) the

applicability of the provisions of Punjab Shops and Commercial Establishment Act to the persons working at the district office of the Corporation

to claim overtime allowances at par with the staff working in the field areas or the godowns.

5. As regards the contention that the application u/s 33-C(2) was not itself maintainable without prior adjudication, this principle admits of some

known exceptions. When the petitioners were claiming some benefits which they were receiving upto the year 1982 and they continued receiving

the same after the year 1987, they were seeking for the relief u/s 33-C(2) on the basis of the treatment which the Management itself applied to

employees granting to them overtime allowances. It becomes merely incidental whether the Food Corporation of India was entitled to rely on a

circular issued by the head office to deny to them the allowances. The validity of the circular itself is merely incidental and such incidental

adjudication is well within the scheme of an enquiry u/s 33-C(2). This point has been dealt with by the Hon"ble Supreme Court in Sahu Minerals

and Properties Ltd. Vs. Presiding Officer, Labour Court and Others, . The Hon"ble Supreme Court has ruled 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 through the right to

the benefit on which their claim is based is disputed by their employer. The case of The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.,

went to the extent of stating that "even an enquiry into the existence of the right itself is incidental to the main determination assigned to the Labour

Court u/s 33-C(2).

The claim u/s 33-C(2) clearly postulates that the determination of The claim u/s 33-C(2) clearly postulates that the determination of the question

about computing the benefit in terms of money may, in some cases, have to be preceded by an enquiry into the existence of the right and such an

enquiry must be held to be incidental to the main determination which has been assigned to the Labour Court by sub-section (2). As Maxwell has

observed ""where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially

necessary to its execution."" We must accordingly hold 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.

6. Garhwal Jal Sansthan Vs. Presiding Officer, Labour Court and Another, was a case applying the ratio of the above mentioned decision and

reinforcing the construction of law put forth in it. It dealt with a somewhat similar situation in that a benefit that existed previously was later denied

for ulterior reasons. After setting out the general law that the petition for computation was possible only for rights already adjudicated, the Court

marked out the exception thus: ""But here, in the present case, the question is slightly different and, the question is, whether the workman has the

right to receive the benefit which was already existing previously and which has been denied to the workman for ulterior reasons. The further

question is, whether such benefit which the workman otherwise would have received and denied wrongly by some ulterior motive, should the

workman be relegated to another forum by raising an industrial dispute u/s 10 or u/s 4-K or move an application straightway to the Labour Court

u/s 33-C(2)."" Dealing with the factual details the Court further held, ""The workman has claimed the benefit of the pay scale which was being given

to a Junior Fitter, which work he was performing. The fact that the workman was performing the work of Junior Fitter was found to be correct by

the Labour Court which fact has not been seriously disputed before this Court in a writ jurisdiction. The findings given by the Labour Court has not

been questioned before this Court. Secondly, at this stage the issue whether on a technicality the application of the workman should be thrown out

and the workman should be relegated to raise a reference u/s 10 before the same Labour Court and undergo the rigorous process of raising a

reference before the State Government, in my mind, is not justifiable. In the light of the aforesaid, the claim of the workman for payment of the

wages was maintainable for which he was validly entitled to and which is flowing from the benefit of the wages that was payable by the employer

on the post of Junior Fitter. In my view, the application of the workman was maintainable u/s 33-C(2) and the Labour Court has validly computed

the amount when it found that the nature of the employment which the workman was performing was that of a Junior Fitter. Consequently, the

calculation of the amount made by the Labour Court, being based on findings of fact, does not suffer from any error of law.

7. In the present case, it is not as if the petitioners were claiming overtime allowance for the first time and the Labour Court was required to make

an adjudication. They already had the benefit upto 1982 and again from 1987. During the interim period, they were denied the benefit. When the

workmen filed the petition u/s 33-C(2) and the Management denied their entitlement on the basis of some intra departmental circular, the decision

whether the circular was justified was purely an individual issue to the computation of wages. The application was, therefore, perfectly

maintainable.

8. The further point that has to be seen is whether such a distinction could be made to persons, who were working at the district office and the

persons, who were working in the godowns and field areas. The learned counsel appearing on behalf of the petitioners relies on the definitions

contained u/s 2(iv) and 2(xxv) that define ""commercial establishment"" and ""shop"" respectively, which are reproduced hereunder:-

(iv) ""Commercial establishment"" means any premises wherein any business, trade or business or profession is carried on for profit, and includes

journalistic or printing establishments and premises in which business of banking, insurance, stocks and shares, brokerage or produce exchange is

carried on or which is used as hotel, restaurant, boarding or eating house, theater, cinema or other place of public entertainment or any other place

which the Government may declare, by notification in the official Gazette, to be a commercial establishment for the purposes of this Act.

(xxv) ""shop"" means any premises where any trade or business is carried on or where services are rendered to customers and includes office store-

rooms, godowns, sale depots or ware-houses, whether in the same premises or otherwise used in connection with such trade or business but does

not include a commercial establishment or a shop attached to a factory where the persons employed in the shop are allowed the benefits provided

for workers under the Factories Act, 1948 (LXIII of 1948).

9. In the definition of ""shop"", it is seen that it means premises where a trader's business is being carried on and where service are rendered to

customers and includes offices as well. It is not now in denial that the petitioners were working in the district office of the Food Corporation of

India. What the enactment provides for and how an Act defines a "shop" cannot be scuttled by an intra-office circular. The applicability of the Act

itself is excepted u/s 3 only to "(a) offices of or under the Central or State Governments (except commercial undertakings), Reserve Bank of India,

any railway administration or any local authority." The Food Corporation of India cannot be taken to be an office under the Central or State

Government The Food Corporation of India, however, is established under the Food Corporation of India Act and a statutory body cannot be

made equivalent to an office of the Central or the State Government. If the exception to the applicability of the Act cannot be inferred under these

provisions, then the entitlement of the petitioners to overtime allowances cannot be denied.

10. Incidentally, the issue has also to be seen from the context of how the Corporation itself has allowed for overtime allowances to be provided in

terms of the decision taken by the Industrial Tribunal at Delhi for persons working at the offices of the Food Corporation of India. A public sector

undertaking cannot make invidious distinction to employees merely on geographical locations. Their stand in addressing the grievances of the

workers in one place cannot be different from the stand that could be taken elsewhere. All the activities of an instrumentality of the State shall stand

the test of reasonableness and non-discrimination under the precept of equality guaranteed under Article 14. This is an additional ground to support

a claim of the petitioners' entitlement.

11. The order passed by the Industrial Tribunal denying to the petitioners the entitlement is quashed. The amounts due to the petitioners shall

become liable to be paid by the Corporation forthwith.

12. All the writ petitions are allowed.