
Punjab State Power Corporation Ltd. Vs Boota Singh and Others

C.W.P. No. 24817 of 2012

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Oct. 27, 2014

Acts Referred:

Constitution of India, 1950 " Article 136, 142#Factories Act, 1948 " Section 59#Industrial Disputes Act, 1947 " Section 10(1)(c), 33-C (2)#Limitation Act, 1963 " Section 14

Citation: (2015) 2 SCT 184

Hon'ble Judges: Rajiv Narain Raina, J

Bench: Single Bench

Advocate: Parminder Singh, Advocates for the Appellant; R.K. Arora, Advocates for the Respondent

Judgement

Rajiv Narain Raina, J.

In this writ petition, the petitioner has challenged an order passed by the Labour Court, Jalandhar in proceedings

under Section 33-C (2) of the Industrial Disputes Act, 1947 (for short "the Act") granting Rs. 66651/- along with 8% simple interest as money due

on account of extra wages for work performed overtime. In challenge to the award, the Corporation contends that the respondent No. 1 was

employed as a Driver of an Emergency Jeep in Power House, Mukerian Hydel Project, Talwara, District Hoshiarpur. He was paid the overtime

from the date of his appointment in terms of Section 59 of the Factories Act, 1948. This was till October 1996 whereafter the erstwhile Punjab

State Electricity Board, predecessor-in-interest of the Corporation stopped paying overtime allowance.

2. Aggrieved, the petitioner had moved an application in 1999 under Section 33-C (2) of the Act before the Labour Court, Jalandhar which was

allowed on February 08, 2005. The writ petition filed against the order of the Labour Court was dismissed by this Court on September 19, 2005.

In the Special Leave Petition carried to the Supreme Court against the order of the Division Bench, the converted appeal was dismissed in terms of

the signed order. Two separate orders were passed by the Supreme Court on July 21, 2010. One, dismissing the appeal in terms of the signed

order, the other being the signed order which reads as follows:-

Having heard learned counsel for the parties and having perused the record, we are of the opinion that this is not a fit case for interference under

Article 136 of the Constitution of India.

The Civil Appeal is, accordingly, dismissed. No costs.

However, the question of law is kept open.

We also make it clear that the impugned order of the High Court shall not operate as a precedent.

3. As a result, the ratio of the order of the Division Bench dated September 19, 2005 was not approved. Two issues were raised before the

Division Bench of this Court. One, with respect to entitlement to overtime as granted to employees similarly situated as the workman, while the

other, was grant of compensatory leave/rest days for work performed overtime. Having succeeded in the first round under Section 33-C (2) the

workman returned to the Labour Court by a fresh application for computation of money due for the period November 16, 1999 to November 12,

2005 claiming arrears of overtime. It may be noted that the first application was restricted to the period 1996 to 1999. It was the case of the

Corporation in defence in the Court a quo that the respondent-Driver was working in the Power House outside the factory and he was not being

paid any overtime allowance since a Driver get special pay of Rs. 300/- in view of the circular letter No. 18969 dated July 14, 1997 issued by the

Chief Auditor, Punjab State Electricity Board, Patiala. It was pleaded in defence by the Corporation that the respondent was allowed

compensatory rest in lieu of duty which was tabulated in detail before the Labour Court and has found its way verbatim in the order.

4. A perusal of the impugned order does not show an examination of the circular dated July 14, 1997 reflected therein and the letter dated

September 14, 1997 relied upon, a copy of which has been placed on record as Annexure P-3. This letter contains the policy decision that drivers

of vehicles are not entitled to overtime because special pay is paid for the duties performed by them at odd hours. The workman, in the present

case, claimed that for every additional working day, he was entitled to be provided with two leaves and if not, salary for the un-availed leave

deserves to be paid to him. It was the stand of the Corporation that it has never refused leave to the workman in lieu of working of any holiday.

Though in terms of the circular, he may not be entitled to any extra wages or overtime. A seachange has been brought about by the order passed

by the Supreme Court when the question of law arising from the earlier proceedings was kept open by specifically holding that ""we also make it

clear that the impugned order of the High Court shall not operate as a precedent"". In view of this order, the respondent-Boota Singh would be

certainly entitled to the monetary benefits arising out of the first execution proceedings but those benefits would not operate in continuum as a

precedent and, therefore, in the present proceedings the entire range of legal issues would necessarily have to be decided afresh and this Court

cannot remain dependant on anything said in the orders of the Division Bench after suffering the order of the Supreme Court in the case of the

petitioner himself.

5. The foremost of which arises for consideration of this Court is whether in the face of policy circular dated June 03, 1997 and July 14, 1997 can

it be said that the respondent has a pre-existing right to claim money due in proceedings under Section 33-C (2) of the Act without seeking to

undo the policy decision denying the claim for overtime duty. In the cross-examination of workman Boota Singh has candidly admitted that he was

getting compensatory rest against overtime duty but he volunteered to say that he was entitled to the double benefit. On a pointed question asked,

he replied that it was correct that he was claiming compensatory relief against overtime in writing but had neither claimed nor availed all such

leaves. If he has not availed leaves on his own volition then he may have deprived himself of a right to overtime but he cannot claim both the

benefits simultaneously. His cross-examination is at Annexure P-2.

6. It is well settled that proceedings under Section 33-C (2) are not creative of rights and the Labour Court would have no jurisdiction to declare

such rights in execution proceedings under Section 33-C (2) of the Act. Such claim can be laid only upon a reference under Section 10(1)(c) if the

workman elects to seek his remedy under the industrial law. If he is a Government servant, he can make such claims either before the civil court or

in writ proceedings but the result cannot be achieved before the labour court in the jurisdiction invoked. Though past transactions for the period

1996 to 1999 are not open to be disturbed as a result of the proceedings in the first round of litigation ending in the Supreme Court but the same is

not automatically true of the subsequent period with respect to the jurisdiction invoked as the orders passed by the Division Bench in favour of

Boota Singh are not to be treated as a precedent for anyone including the respondent for a subsequent period not covered by the previous

litigation. The order of the Supreme Court is clearly passed under Article 142 of the Constitution but binds both the parties and operates in

personam: No right as claimed by Boota Ram has been declared in rem.

7. I would, therefore, not find the impugned order passed by the labour court as a legally sustainable one mostly for the reason that the effect and

impact of the policy circulars supra have been noticed but not dealt with and considered. The correctness or otherwise of the policy circulars are

not open to dissection or departure in execution proceedings under Section 33-C (2) of the Act even though they may have existed at the time of

the first round of litigation especially when they were not noticed in the orders of the Division Bench from which the appeal was carried to the

Supreme Court and I would therefore, in the main, allow this petition and set aside the impugned order passed by the Labour Court, Jalandhar on

June 13, 2012. However, if the respondent wishes to question the circulars then he would be free to take appropriate proceedings, if advised or

are available in law other than to invoke the jurisdiction under Section 33-C (2) of the Act. Towards this end and in case litigation ensues then the

period spent for pursuing remedy under Section 33-C (2) of the Act would be treated as time spent bona fide pursuing remedy in a wrong forum.

It is expected that the Court in the third round of litigation, if any, would consider the request under Section 14 of the Limitation Act, in case made

by the respondent, in the light of the above broad principles but this order would not be taken in those proceedings as one having expressed any

definitive opinion on the merits of the claim arising out of the policy circulars of the Board which would be examined afresh as per law. Parties are

left to bear their own costs.