

Jessop and Co. Vs M. Mukherjee

Court: Calcutta High Court

Date of Decision: Feb. 27, 1974

Acts Referred: Constitution of India, 1950 " Article 226
Industrial Disputes Act, 1947 " Section 17, 17A, 33C(1), 33C(2)

Citation: (1975) 1 ILR (Cal) 704

Hon'ble Judges: Sankar Prasad Mitra, C.J; Sabyasachi Mukharji, J

Bench: Division Bench

Advocate: Sankardas Banerji, R.N. Das and B.K. Ghose, for the Appellant;l. P. Mukherjee, P.K. Sanyal and D.K. Mukherjee, for the Respondent

Final Decision: Dismissed

Judgement

Sankar Prasad Mitra, C.J.

The Appellant before us made an application under Article 226 of the Constitution of India for appropriate

writs directed against an order passed by the Second Labour Court on March 13, 1967. The application came up for hearing before P.R.

Banerjee J. By his judgment dated January 24, 1972, the learned Judge has dismissed the application and discharged the Rule nisi that was issued.

The present appeal is against the judgment of P.K. Banerjee J.

2. It appears that an industrial dispute arose between Messrs. Jessop and Co., the Appellant and their workmen in 1957. On October 28, 1957,

this industrial dispute was referred to the Fourth Industrial Tribunal for adjudication. There were eight issues before the Tribunal of which issue No.

8 related to "overtime allowance".

3. The Fourth Industrial Tribunal gave its award on January 21, 1960, which was published in the Calcutta Gazette on February 25, 1960. With

regard to issue No. 8 the aforesaid award states that the overtime wages should be paid at 1½ times basic hourly wage for the workmen at the

Head Office. This decision thus enhances the rate of overtime wages from 1-25 to 1-50.

4. By reason of the provisions of Section 17A of the Industrial Disputes Act, 1947, the Fourth Industrial Tribunal's award became enforceable on

March 25, 1960. The Company started paying overtime allowance at the rate of times the basic wage in terms of the award. But the matter did not

rest there. It went to the Supreme Court and by its judgment delivered on August 2, 1963, in Civil Appeal No. 360 of 1961, the Supreme Court

observed:

We think that the same system of allowing overtime at $1\frac{1}{2}$ times the ordinary rate of wages, i.e. basic wages plus dearness allowance should be

followed for the Head Office also to bring it into line with the general pattern of overtime allowance. We, therefore, accept the contention and

allow overtime allowance at $1\frac{1}{2}$ times the ordinary rate of wages, i.e. basic wages plus dearness allowance for the workmen at the Head Office.

The decree of the Supreme Court on the basis of the above observation is as follows:

This Court in allowing the Appeal in part Doth Order: That the Award dated the 21st January, 1960, of the 4th Industrial Tribunal, West Bengal, in

Case No. VIII-207 of 1957 published in the Calcutta Gazette dated the 25th February, 1960, be and is hereby modified to the extent that the rate

of overtime allowance shall be at $1\frac{1}{2}$ times the ordinary rate of wages, i.e. basic wages plus dearness allowance for the workmen at the Head

Office and That the age of retirement for Clerical Staff and Subordinate Staff other than those who are Workers under the Factories Act be and is

hereby raised from 55 to 58 from the date of judgment herein, viz., 2nd August, 1963 and that save and except as above the appeal be and is

hereby dismissed.

It is to be observed that with regard to the age of retirement the date on which the Supreme Court's order was to come into operation was

specifically fixed, viz. August 2, 1963, but nothing was stated by the Supreme Court as to the date on which the other portions of the award

including the modification regarding overtime allowance would come into operation.

5. The Company after the Supreme Court judgment has been paying overtime allowance at 11 times the basic wage plus dearness allowance from

the date of the Supreme Court's judgment, but the workmen were not satisfied with these payments. They wanted the State Government to refer

the matter to a Labour Court. The State Government by its order dated March 2, 1966, made u/s 33C(2) of the Industrial Disputes Act, 1947,

referred the disputes aforesaid to the Second Labour Court. Before the Second Labour Court certain preliminary issues were raised. The issues

were as follows:

(i) Is the petition u/s 33C(2), Industrial Disputes Act, maintainable in its present form?

(ii) Is the petition barred by limitation?

(iii) Does the order of the Hon^{ble} Supreme Court passed in appeal against the award of the Fourth Industrial Tribunal take effect from the date of

the award, i.e. 25.2.60, or the date of the decree in appeal, i.e. 21.8.63?

(iv) Are the Petitioners entitled to raise any dispute as to overtime hours for the purpose of computation of the monetary benefits u/s 33C(2),

Industrial Disputes Act.

6. Before we proceed any further let us refer to the provisions of Section 33C(1) and (2) of the Industrial Disputes Act, 1947. These are as

follows:

33C. Recovery of money due from an employer. (1) Where any money is due to a workman from an employer under a settle-orient or an award

or under the provisions of Chapter V-A (i.e. Chapter on Lay-off and Retrenchment), the workman himself or any other person authorised by him

in writing in this behalf,...may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the

recovery of the money due to him and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount

to the Collector who shall proceed to recover the same in the Same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the

employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the Applicant had sufficient cause

for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of 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.

7. Mr. Sankardas Banerji, appearing on behalf of the Appellant, has argued before us that in the instant case Section 33C(2), under which the

order of reference to the Second Labour Court was made, had no application. The Supreme Court determined that overtime allowance would be

paid at $1\frac{1}{2}$ times the basic wage plus dearness allowance. There is no dispute as to the quantum of basic wage and dearness allowance; there is

no dispute as to normal working hours. In these circumstances, the workmen should have applied to the appropriate Government u/s 33C(1).

They did not do so. Their application u/s 33C(1) became barred by limitation after the expiry of one year from the date of the award. They cannot

now raise imaginary disputes and try to come within the scope of Section 33C(2). Mr. Banerji has contended further that u/s 17 of the Industrial

Disputes Act, 1947, every award has to be published in the manner as the appropriate Government thinks fit. In our case, the awards are to be

published in the Calcutta Gazette. The date of commencement of the award is the date of its publication u/s 17. The Supreme Court's judgment

modifying the Overtime allowance as aforesaid was not published in the Calcutta Gazette and is not, therefore, enforceable. Mr. Banerji also

contends that the Supreme Court's judgment, if enforceable at all, can be enforced from the date on which the judgment was delivered and not

from the date of the award.

8. We shall now deal with these arguments of Mr. Banerji one by one. Sub-sections (1) and (2) of Section 33C have been judicially construed on

a number of occasions. For our purpose in this appeal the principles decided appear to be as follows:

(1) Where any money is due under a settlement or an award or under the provisions of chap. V-A, Section 33C(1) will be attracted.

(2) The money due u/s 33C(1) may be a specified amount or may have to be arrived at by arithmetical calculation or verification simpliciter. In

other words, in cases where there is no dispute as to the amount or as to its computation, Section 33C(1) would apply.

(3) Section 33C(2) is more comprehensive than Section 33C(1). It applies not only to cases of a settlement or award or to cases under chap. V-A

of the Act but to other cases as well.

(4) When money due is not specified or the benefit capable of being computed in terms of money has not been determined, Section 33C(2) would

be attracted inasmuch as the Labour Court, by a process of computation to be found out and applied by it, has to determine the amount of money

due. In other words, in cases of disputes as to calculation or computation of money due or benefit capable of being computed in terms of money,

Section 33C(2) has to be invoked.

(5) Section 33C(2) also enables a labour Court to enquire into and decide upon the right to receive the money to be computed provided that the

determination of that right is incidental or ancillary to computation.

9. In support of the above propositions references may be made to Punjab National Bank Limited Vs. K. L. Kharbanda, , The Central Bank of

India Ltd. Vs. P.S. Rajagopalan etc., , Kays Construction Co. (P) Ltd. Vs. State of Uttar Pradesh and Others, and Chief Mining Engineer East

India Coal Co. Ltd. Vs. Rameswar and Others, .

10. In the present appeal, we have to see whether there were any disputes between the employer and the workmen relating to computation or

calculation of money due to the workmen by way of overtime allowance. The first dispute that strikes us is the dispute as to the date of

commencement of the Supreme Court's modified order. The Appellant's contention is that the Supreme Court's order is to be enforced from

August 2, 1963, when the order was passed. The Respondents' contention is that the Supreme Court's modification takes effect from March 25,

1960, when the award of the Fourth Industrial Tribunal became enforceable. The Second Labour Court has decided the issue in favour of the

Respondents and the Appellant in its application under Article 226 challenged this order of the Second Labour Court as erroneous. We have

looked into the Supreme Court's judgment at pp. 55 to 60 of the Paper Book. Reading the judgment as a whole it seems to us that the Supreme

Court's intention was that all the provisions of the award including the modifications made by it would be effective from March 25, 1960, when the

award became enforceable u/s 17A of the Industrial Disputes Act except with respect to issue No. 4 relating to retiring age. So far as issue No. 4

is concerned, the Supreme Court has specifically stated that its decision as to retiring age shall come into force from the date of its judgment. In this

view of the matter it seems to us that the Second Labour Court came to a correct conclusion.

11. We shall now deal with the dispute as to working hours. Mr. Banerji has drawn our attention to pp.22 and 35 of the Paper Book in the

Supreme Court appeal. At p. 22 we have para. 38 of the written statement of the workmen represented by the Jessop's Employees' Union. In

this paragraph it is stated:

That the working hours for the clerical staff of the company are from 9-40 a.m. to 5. p.m. with half an hour recess on Monday to Friday and from

9-40 a.m. to 1 p.m. on Saturday, while the subordinate staff have got to work 3 hours more in a week over the said schedule working hours,

without any overtime wage being paid....

At p. 35 we have para. 30 of the written statement of the company. In this paragraph it is stated:

...The Mercantile Tribunal Award fixed the working hours at 38 hours per week exclusive recess and the Company accordingly fixed the working

hours at the Head Office from 9-40 a.m. to 5-00 p.m. with half an hour's break and from 9-40 a.m. to 1-30 p.m. on Saturdays. These working

hours of the Company were further confirmed by a subsequent Tribunal....

Nothing is stated about the working hours of the subordinate, staff.

12. In view of these pleadings Mr. Banerji's contention is that there is no dispute as to working hours and as such, there is no difficulty in

computation of over-time allowance when both the basic wage and the dearness allowance are known. We are unable to accept this contention of

Mr. Banerji. The workmen in para. 12 of their written statement before the Second Labour Court (p. 82 at pp. 84 and 85) have stated that the

Company has been calculating over-time allowance on the basis of 208 working hours per month for drivers and 240 working hours per month for

the subordinate staff. According to the workmen for all the members of the subordinate staff the working hours should be 165 hours per month

and over-time allowance should be paid on that basis. The Company in para. 13 of its written statement (p. 73 at p. 77) has denied the statements

and allegations made in para. 12 of the workmen's written statement. The Company has particularly denied the allegations that the Company has

paid over-time allowance to its subordinate staff on the basis of any erroneous or wrong method of calculation.

13. It appears, therefore, that when the matter was before the Supreme Court, the employees' union made out the case that the subordinate staff

had to work for three hours more in a week. The Company did not deny that statement. In fact, the Company said nothing about the working

hours of the subordinate staff, but while making payments in terms of the Supreme Court's order the Company was paying over-time allowance to

drivers on the basis that their working hours were 208 per month and to the other members of the subordinate staff on the basis that their working

hours were 240 per month. The workmen were contending that in all cases the working hours should be 165 per month. It is apparent that as to

the working hours should be 165 per month. It is apparent that as to the working hours of the subordinate staff there is a dispute and until this

dispute is settled by the Second Labour Court as an incidental issue, computation of over-time allowance to subordinate staff by the Second

Labour Court is not possible.

14. From what we have stated above it is clear that this is not a case of calculation or computation of money payable by the employer to the

workmen simpliciter. Before the calculation or computation can take place the dispute (a) as to the date from which over-time allowance is to be

paid and (b) as to the working hours of the subordinate staff have to be settled. On these facts, it does not appear to us that Section 33C(1) of the

Industrial Disputes Act, 1947, could be invoked and the order of reference u/s 33C(2) seems to be justified

15. We would now deal with the last contention of Mr. Banerji, viz., that in the absence of a Gazette notification" of the Supreme Court's order

the said order cannot be enforced. Section 17 of the Industrial Disputes Act, 1947, is as follows:

17. Publication of reports and awards.--(1) Every report of a Board or Court together with any minute of dissent recorded therewith, every

arbitration award and every award of a Labour Court, Tribunal or National Tribunal shall, within a period of thirty days from the date of its receipt

by the appropriate Government, be published in such manner as the appropriate Government thinks fit. (2)....

16. u/s 17A the award published u/s 17 shall become enforceable on the expiry of thirty days from the date of its publication.

17. Now, Section 17 requires publication of reports of a Board or Court and awards of Labour Courts, Tribunals or National Tribunals. The

section does not require publication in the manner prescribed by the State Government of a judgment or order of the Supreme Court. In this view

of the matter, in our opinion, there was no necessity for any publication in the Calcutta Gazette of the Supreme Court's order made on August 2,

1963. We find support for this proposition in the Supreme Court's judgment in the case of the The Management of Hotel Imperial, New Delhi and

Others Vs. Hotel Workers" Union, . This contention of Mr. Banerji is, therefore, overruled.

18. In the premises, for reasons aforesaid this appeal is dismissed.

19. There will be no order as to costs.

Sabyasachi Mukharji J.

20. I agree.