IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4812 OF 2018

1. The Superintending Engineer,
The Maharashtra Electricity
Distribution Company Limited,
(MSEDCL), Circle Office,
Old Power House, Sale Galli,
Latur. District Latur.

2. The Executive Engineer,
The Maharashtra Electricity
Distribution Company Limited,
(MSEDCL), Circle Office,
Old Power House, Sale Galli,
Latur. District Latur. ...PETITIONERS

*VERSUS*

1. Pundlik Kondiba Pachpinde
Age 63 years, Occu: Retired.
R/o Yashwant Nagar, In front of
Yashwant School, Near Bhu-vikas
Bank, Nanded Road, Latur.
District Latur.

2. Baburao Ramji Dhakne,
Age 63 years, Occu: Retired,
R/o Bhagwan Baba Nagar,
Ambajogai Road, Latur,
District Latur.

3. Vaijnath Vishwanath Halge,
Age 64 years, Occu: Retired,

R/o Parshuram Park,
Barshi Road, Latur, Dist. Latur. ...RESPONDENTS

*Advocate for the petitioners : Mr. U. S. Malte*
*Advocate for Respondent Nos.1 to 3 : Mr. G. N. Kulkarni*

CORAM : PRAFULLA S. KHUBALKAR, J.
RESERVED ON : 22nd APRIL 2025
PRONOUNCED ON : 13th JUNE 2025

JUDGMENT :-

1. Heard. Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2. The petitioners have taken exception to the judgment and order dated 30.06.2017 passed by the learned Judge, Labor Court, Latur in Application (IDA) No. 41/2012 allowing the employees' application under Section 33 (C) (2) of the Industrial Disputes Act, 1947, by which the Labor Court has awarded an amount of Rs.1,89,000/-, Rs.2,60,000/- and Rs.1,63,080/- respectively to the respondents herein towards the claim for overtime wages together with 12% interest.

3. The facts leading to the instant petition are succinctly put as

under :

i. The respondents who are the original applicants, had worked on the post of Artisan A and filed proceedings under Section 33 (C) (2) of the Industrial Disputes Act, 1947, against the petitioners (MSEDCL Company).

ii. The respondent Nos.1 and 2 had retired on 30.06.2012 and respondent No.3 had retired on 31.08.2011.

iii. The respondents preferred an application (IDA) No.41/2012 claiming total amount of Rs.6,12,900/- along with 18% interest towards the claim for overtime wages from March 2010 till the respective dates of their retirement. The respondents Nos.1 and 2 have claimed that they became entitled for overtime work for 540 hours and respondent No.3 claimed overtime work for 360 hours and accordingly raised respective claims of Rs.1,89,000/-, Rs.2,60,000/- and Rs.1,63,080/- as unpaid amount of overtime wages. The respondents have claimed that earlier they were paid with overtime wages at the same rate and there was no dispute about their entitlement and the only issue remained was about the payment of the dues which was sought to be executed through

application under Section 33 (C) (2) of the Industrial Disputes Act, 1947.

iv. The respondents appeared and submitted their written statement denying the claim of the employees. The primary contention of respondents was about maintainability of application under Section 33(C)(2) alleging that there was no pre-existing right and the entitlement of the respondents was in dispute. The respondents also opposed the application by stating that the post of the respondents viz. Artisan-A was not included in 'line staff workers' and the employees were not entitled to seek benefit of the circular dated 26.06.2000 on which their claim was based.

v. The parties laid evidence in support of their claim. The employees *inter alia* relied on the documents demonstrating grant of sanction to their overtime wages.

vi. By judgment and order dated 30.06.2017, the Judge, Labor Court allowed the application of the employees declaring thereby that the employees have got an existing right and that they are entitled to receive the lump sum amounts towards their claim for overtime wages

together with 12% interest thereon from March 2010 till the date of their retirement.

vii. The petitioners have challenged this order by way of instant petition.

4. Advocate U. S. Malte, learned counsel for the petitioners made vehement submissions to contend that the impugned judgment and order is grossly illegal being passed in absence of any pre-existing right in favour of the employees. His primary contention is that the circular dated 26.06.2000 is not at all applicable to the respondents and the claim for overtime wages was never adjudicated. He vehemently submitted that there is ceiling of 75 hours for three months as stipulated by circular dated 26.06.2000 and accordingly instructions have been issued to subordinate officers of MSEDCL not to forward the proposals of claims which run contrary to the circular. He would therefore submit that the claim of the employees in absence of any adjudication deserved to be dismissed. He would submit that since there is dispute about the entitlement of the employees, the case did not fall within the purview of

Section 33 (C) (2) of the Industrial Disputes Act, 1947. In support of his submissions, the learned counsel for the petitioners would rely upon the judgment in the matter of ***Bombay Chemical Industries vs. Deputy Labour Commissioner and Another reported at (2022) 5 Supreme Court Cases 629*** and judgment in the matter of ***Vaibhav Laxman Suravkar and Another vs. Ultra Drytech Engineering Ltd. and Another reported at 2004 (2) Bom.C.R. 185.***

5. Per contra, Advocate G. N. Kulkarni, learned counsel for the respondent Nos.1 to 3 made strenuous submissions to oppose the petition. He submitted that the petition is devoid of substance and there are no grounds demonstrating any illegality in the impugned judgment and order. His primary contention is that the entitlement of the employees was well established in view of ample documentary evidence in the nature of official communications between the officers of the MSEDCL. He would advert my attention to the documents granting sanction by the Executive Engineer for the overtime wages in favour of the employees at Exhibit U-21 (dated 10.06.2010), U-22 (dated

12.07.2010) and U-23 (dated 08.10.2010), and would submit that the entitlement of the employees was never in dispute. He would submit that in view of earlier grant of overtime wages to these and similar employees, the only question remained in this matter was in the nature of execution of the entitlement. He would advert my attention to the Administrative Circular no. 468 dated 20.09.2013 at Exhibit U-37, which reflects policy of MAHAVITARAN to grant overtime wages to Artisans. To refute the contentions of the petitioners, he would place reliance on judgment passed by this Court in similar set of circumstances in the matter of ***Maharashtra State Electricity Transmission Co. Ltd (MSETCL) vs. Shivaji Tukaram Kumawat in WP/11248/2022***. He would also advert my attention to the order dated 12-08-2024 passed by the Hon'ble Supreme Court dismissing the Special Leave Petition ( Civil ) (Diary) nos. 10914/2024 in which the judgment in WP no. 11248/2022 was assailed. He would also submit that the right of the employees to claim overtime wages is recognized under Section 59 of the Factories Act, 1948 and it being a statutory right, cannot be denied to the employees. He would submit that the judgments relied upon by the petitioners are of no

assistance in view of peculiar controversy involved in the instant matter and therefore would urge to dismiss the instant petition.

6. I have considered the rival submissions of the parties and perused the papers including the record and proceedings of the IDA No.41/2012.

7. In view of controversy involved in the matter, the primary issue is about entitlement of the respondents-employees to raise claim under Section 33 (C) (2) of the Industrial Disputes Act, 1947. The crucial issue is about existence of any pre-existing right in favour of the employees, which needs no fresh adjudication. Once it is found that there is no need of any kind of adjudication of the claim, further question remains is only about execution part which may involve verification of the calculations.

8. In support of his submissions that there is no pre-existing right, the counsel for the petitioners has vehemently relied upon the circular dated 26.06.2000 which is a policy of the corporation related to

overtime wages. He had also relied upon the statutory provision under Section 59 of the Factories Act, 1948 to demonstrate that there has to be a specific adjudication for claiming statutory right.

9. Further, the petitioner's forceful contention is that the proceedings filed by the employees were beyond jurisdiction of Section 33 (C) (2) of the Industrial Disputes Act, 1947, in absence of any adjudication of their entitlement. Their submission is that the nature of proceedings under section 33 (C) (2) is executory rather than fact finding and in absence of any document in the nature of judgment or order, the employees cannot raise any claim under Section 33 (C) (2) of I.D. Act. In order to appreciate this contention let us have a look at the relevant provision under Section 33 (C) (2) of the Industrial Disputes Act 1947, which is reproduced below :

> Section 33 (C) (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] [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.*

10. The relevant statutory provision about overtime wages is referred to by both the parties. In order to appreciate the rival contentions, provision of Section 59 of the Factories Act, 1948 needs to be perused, which is reproduced below :

Section 59 : *(1) Where a worker works in a factory for more than nine hours in any day or for more than forty-eight hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages.*

*[(2) For the purposes of sub-section (1), "ordinary rate of wages" means the basic wages plus such allowances, including the cash equivalent of the advantage accruing through the concessional sale to workers of food-grains and other articles, as the worker is for the time being entitled to, but does not include a bonus and wages for overtime work.*

*(3) Where any workers in a factory are paid on a piece rate basis, the*

*time rate shall be deemed to be equivalent to the daily average of their full-time earnings for the days on which they actually worked on the same or identical job during the month immediately preceding the calendar month during which the overtime work was done, and such time rates shall be deemed to be ordinary rates of wages of those workers:*

*Provided that in the case of a worker who has not worked in the immediately preceding calendar month on the same or identical job, the time rate shall be deemed to be equivalent to the daily average of the earning of the worker for the days on which he actually worked in the week in which the overtime work was done.*

*Explanation.--For the purposes of this sub-section in computing the earnings for the days on which the worker actually worked such allowances, including the cash equivalent of the advantage accruing through the concessional sale to workers of foodgrains and other articles, as the worker is for the time being entitled to, shall be included but any bonus or wages for overtime work payable in relation to the period with reference to which the earnings are being computed shall be excluded.]*

*[(4) The cash equivalent of the advantage accruing through the concessional sale to a worker of foodgrains and other articles shall be computed as often as may be prescribed on the basis of the maximum quantity of foodgrains and other articles admissible to a standard family.*

*Explanation 1--"Standard family" means a family consisting of the worker, his or her spouse and two children below the age of fourteen years*

*requiring in all three adult consumption units.*

*Explanation 2.--"Adult consumption unit" means the consumption unit of a male above the age of fourteen years; and the consumption unit of a female above the age of fourteen years and that of a child below the age of fourteen years shall be calculated at the rates of 8 and 6 respectively of one adult consumption unit.*

*(5) The State Government may make rules prescribing--*

*(a) the manner in which the cash equivalent of the advantage accruing through the concessional sale to a worker of foodgrains and other articles shall be computed; and*

*(b) the registers that shall be maintained in a factory for the purpose of securing compliance with the provisions of this section.*

A perusal of this provision makes it clear that the right to claim overtime wages is recognized and has a statutory foundation, although regulated in the statutory framework.

11. In the light of above mentioned statutory provisions, let us now focus at the documentary evidence on the basis of which the respondents-employees have staked their claim. Amongst other documents, the respondents have relied upon the documents in the nature of sanction of overtime wages granted by the petitioner no.2-

Executive Engineer, which were sent for approval and necessary execution to the petitioner no.1-Superintending Engineer. The documents of sanction are part of record at Exhibit U-21 (dated 10.06.2010), U-22 (dated 12.07.2010) and U-23 (dated 08.10.2010). As regards these documents demonstrating sanction by the Executive Engineer, the petitioners although have not disputed them, however, raised contention that although there was sanction but there was no final approval by the Superintending Engineer and therefore the documents are inconclusive in nature. The respondents employees have also relied upon communications dated 29th July 2010 (Exh U-15), 4th August 2010 (Exh U-16) and 12th August 2010 (Exh U-17) issued by Executive Engineer of MSEDCL supporting the claim of employees on the post of Artisan A, for overtime wages. It is pertinent to note that these documents are not disputed and undisputedly these documents demonstrate sanction to the overtime bills of the respondents and thus the fact becomes clear that the respondents have in fact performed overtime work and became entitled for overtime wages. Thus there is no dispute about the fact that the employees have performed overtime

work, may be on account of insufficient staff or any other reason. Further there is no dispute about the rate at which the overtime wages are to be paid. Only because there was no approval by the Superintending Engineer, the effect of sanction to their entitlement does not get nullified. Crucial to note, the claim for overtime wages raised by the employees was sanctioned by the Executive Engineer and sent for approval to the Superintendent engineer and it was never rejected. As such the entitlement of the petitioners did not come under dispute. The contentions of the petitioner that there needed an adjudication to raise a claim under Section 33 (C) (2), are thus found to be unsustainable.

12. Petitioners have placed heavy reliance on circular dated 26th June 2000 to contend that the respondents are not entitled to the benefit of this circular to claim benefit of overtime wages. This circular is in the nature of instructions to regulate the grant of overtime wages by putting certain restrictions related to number of hours like 75 hours overtime work for a period of three months. This circular appears to be a fallout of the earlier liberal sanction of overtime wages imposing financial burden

on MSEDCL. However, pertinent to note despite this circular being in operation, the respondents have been paid the overtime wages till February 2010 and without any justifiable reason the respondents are deprived from overtime wages for the period from March 2010 onwards. As such the submission of the petitioners that the respondents who were working on the post of Artisan-A could not claim any benefit of the said circular stands contradicted in view of the earlier grant of benefits till February 2010.

13. I have carefully considered the documents relied upon by the respondents particularly the communications issued by the Executive Engineer at Exh U-15, U-16 and U-17 (referred above) which justify the claim of Artisan A for overtime wages. In the light of the undisputed documents demonstrating grant of sanction to the overtime wages as granted by the petitioner no.2 Executive Engineer at Exh U-21, U-22 and U-23 (referred above), I am of the considered view that the employees had got the right to claim the overtime wages. Thus, there existed a pre-existing right which was sought to be executed through the application

under Section 33 (C) (2).

14. To buttress his submission learned counsel for petitioner has pressed into service the judgment of the single bench of this court in the matter of **Vaibhav Laxman Suravkar (Supra)** and submitted that the labour court committed illegality in entertaining application under section 33 (C) (2) in absence of any pre-existing right. He submitted that without prior adjudication of the claim the application under section 33 (C) (2) was not maintainable. This submission is not convincing in view of the undisputed documents showing sanction of the overtime wages by the Executive Engineer. As regards the judgment in the matter of ***MSETCL vs. Shivaji Kumawat*** relied upon by the respondents, he submitted that since the issue which goes to the root of the matter about non-applicability of the circular dated 26.06.2000 to the post of Artisan-A was not considered, the said judgment is not of any assistance. It has to be noted that the said circular mentions ceiling on period of overtime wages and it also provides that the overtime wages be granted only in case of urgency of work. The counsel for petitioner submitted that the

circular makes reference to the posts of Drivers, Cleaners, Line staff and watch & ward staff restricting grant of over time to the barest minimum and the post of Artisan-A being not included, the said circular is not applicable to the respondents. I do not find force in this submission. The effect of circular dated 26.06.2000 was very much considered in the judgment in ***MSETCL vs. Shivaji Kumawat.*** Further, in view of the fact that overtime wages were already granted to the respondents till February 2010 and the claim for overtime wages for March 2010 onwards was actually sanctioned by the Executive Engineer of MSEDCL i.e. the petitioner no.2, there was no justifiable reason to deprive the respondents of their legitimate entitlements. Further, in the light of section 59 of the Factories Act recognizing the right to claim overtime wages, the circular cannot be pressed into service to deny the legitimate right of the employees. As such, the controversy involved in the instant matter is identical to the matter in ***MSETCL vs. Shivaji Kumawat*** and the reliance placed by the respondents is thus appropriate.

15. In order to highlight the legal position, learned counsel for

petitioners relied upon a recent judgment of the Hon'ble Supreme Court in the matter of ***Bombay Chemical Industries reported at (2022)5 SCC 629,*** (supra). Adverting attention of the court to this judgment he submitted that the labour court cannot adjudicate the dispute of entitlement in the garb of application under section 33 (C) (2) of the I.D. Act. He invited my attention to paragraph nos.8 and 9 of this judgment which highlights the legal position, which are reproduced below;

> *"8. As per the settled proposition of law, in an application under Section 33-C(2) of the Industrial Disputes Act, the Labour Court has no jurisdiction and cannot adjudicate dispute of entitlement or the basis of the claim of workmen. It can only interpret the award or settlement on which the claim is based. As held by this Court in Ganesh Razak, the Labour Court's jurisdiction under Section 33-C(2) of the Industrial Disputes Act is like that of an executing court. As per the settled proposition of law without prior adjudication or recognition of the disputes claim of the workmen, proceedings for computation of the arrears of wages and/or difference of wages claimed by the workmen shall not be maintainable under Section 33-C(2) of the Industrial Disputes Act. "[see MCD v. Ganesh Razak]*
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> *9. In Kankuben, it is observed and held that whenever a workman is entitled to receive from his employer any money or any benefit which is capable*

*of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach the Labour Court under Section 33-C(2) of the ID Act. It is further observed that the benefit sought to be enforced under Section 33-C(2) of the ID Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within the jurisdiction of the Labour Court exercising powers under Section 33-C(2) of the ID Act while the latter does not."*

Applying this legal position the Hon'ble Supreme Court concluded in paragraph no. 10 that since there was a serious dispute about the employment of the employee and in view of the dispute about the genuineness of the documents relied upon, the entertainment of the application u/s 33 (C) (2) of the Industrial Disputes Act was beyond jurisdiction. However, in the instant matter there is no dispute about the fact of performance of overtime work and also about the rate at which the overtime wages are to be paid. On the contrary, the fact of sanction of overtime dues by one responsible officer establishes the entitlement of the employees. As such, the judgment in the matter of Bombay Chemicals is of no valuable assistance to the petitioners.

16. The position of law as laid down in the matter of ***Bombay Chemical Industries (supra)*** is no more res integra. A perusal of provision of section 33 (C) (2) of Industrial Disputes Act shows that whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and is denied of such benefit, he can invoke the said provision. The entitlement can be demonstrated on the basis of undisputed documents in the nature of approved or sanctioned bills. In the instant matter the overtime bills were sanctioned by one responsible officer viz. the Executive Engineer and as such the entitlement of the employees was thus clear. The amount claimed is capable of being computed in terms of money and there is no dispute about the rate at which the overtime wages were claimed. Hence the application under Section 33 (C) (2) is perfectly held to be maintainable.

17. Having considered the controversy in the light of factual and legal issues involved, I do not find any need to interfere with the

impugned judgment and order. The impugned judgment and order is well reasoned. The learned Labour Court has taken into consideration the relevant factual and legal aspects. The impugned judgment and order needs no interference on any count. The petitioners have failed to demonstrate any illegality or perversity in the impugned judgment. The instant petition deserves to be dismissed.

18. For the reasons mentioned above, the writ petition is dismissed. No order as to costs. Rule stands discharged.

[PRAFULLA S. KHUBALKAR, J.]

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