A. JAIN.

Before K. Kannan, J.

FAQIR CHAND,—*Petitioner*

versus

FOOD CORPORATION OF INDIA AND ANOTHER,—*Respondents*

C.W.P. No. 9800 of 1990

12th May, 2011

Constitution of India—Art. 14 & 226/227—Shops and Commercial Establishment Act, 1958 —Ss. 2(iv) and 2(xxv)—Industrial Disputes Act, 1947—S. 33(C)(2)—Overtime allowance denied to petitioners on basis of circular whereas same benefit extended to other persons working at field office, godowns etc.—Overtime allowance being paid up to 1982 and then again from 1987—Allowance withdrawn on ground that persons working in office not covered by provisions of 1958 Act—Application filed before Tribunal which was dismissed — Similar application filed before Tribunal at Delhi which was allowed—Petition filed in Delhi High Court against said order but Food Corporation of India withdrew from petition and benefit was allowed to Staff at Delhi.

Held, Definition of a shop defined under the Act cannot be scuttled by an intra office circular. Food Corporation of India is an enactment of a Statute and a statutory body cannot be made equivalent to the office of a Central or State Government. Since the exception to the applicability of the Act cannot be inferred then entitlement of the petitioners to overtime allowance cannot be denied.

(Para 9)

Further held, that a Public Sector Undertaking cannot make invidious distinction to its employees merely on geographical locations. Activities of an instrumentality the State shall stand the test of reasonableness and non discrimination under the precept of equality guaranteed under Article 14.

(Para 10)

Surjit Singh Senion Advocate, with Vikas Singh and Jagdev Singh, Advocate, *for the petitioners*

Gitish Bhardwaj, Advocate, for Arun Walia, Advocate, *for respondent No. 1*

K. KANNAN, J. (ORAL)

(1) 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 up to the year 1982 and it had been resumed in the year 1987 after the *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 This allowance was withdrawn on the ground that the persons working in the office were not covered by the provisions of the Punjab Shops and Commercial Establishment Act of 1958.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 under Section 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 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 under Section 33-C(2) even when there was no established right and the entitlement of the petitioners to seek for the overtime allowances when there was no particular award granting to them their right and (ii) the applicability of the provision 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 under Section 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 up to the year 1982 and they continue receiving the same after the year 1987, they were seeking for the relief under Section 33-C(2) on the basis of 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 under Section 33-C(2). This point has been dealt with by the Hon'ble Supreme Court in **Sahu Minerals and Properties Limited** *versus* **Presiding Officer, Labour Court (1).** 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 entited should be computed in terms of money, even through the right to the benefit on which their claim in based is disputed by their employer. The case of **Central Bank of India,** *versus* **P. S. Rajagopalan etc. (2),** 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 under Section 33-C(2). The claim under Section 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** *versus* **Prisiding Officer, Labour Court, Derhadun and another** MANU/UC/003/2010 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*

(1) (1976) 3 SCC 93

(2) AIR 1964 SC 743 = 1964 SCR 140

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 under Section 10 or under Section 4-K or move an application straightway to the Labour Court under Section 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 workman should be relegated to raise a reference under Section 10 before the same Labour Court and undergo the rigorous process of raising reference before the State Government, in my mind, is not justifiable. In the right of the aforesaid, the claim of the workman for payment of the wages was maintainable for which he was validly entitled to and which 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 under Section 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 up to 1982 and again from 1987. During the interim period, they were denied the benefit. When the workmen filed the petition under Section 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 under Section 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 carrried on or which is used as hotel restaurant boarding or eating house, theater, cimema 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.
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> (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 under Section 3 only to "(a) offices of or under the Central of 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 Corpopration 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.

M. JAIN.

890/HC ILR—Govt. Press, U.T., Chd.