

Nityananda M. Joshi & Ors vs Life Insurance Corporation Of India & ... on 25 April, 1969

Equivalent citations: 1970 AIR 209, 1970 SCR (1) 396, AIR 1970 SUPREME COURT 209, 1970 LAB. I. C. 269, 1969 2 LBLJ 711, 1969 2 SCJ 749, 36 FJR 324, 20 FACLR 153, 1970 MAH LJ 439, 1970 (1) SCR 396, 1972 BOM LR 184, 72 BOM L R 184

Author: S.M. Sikri

Bench: S.M. Sikri, R.S. Bachawat, V. Ramaswami

PETITIONER:

NITYANANDA M. JOSHI & ORS.

Vs.

RESPONDENT:

LIFE INSURANCE CORPORATION OF INDIA & ORS.

DATE OF JUDGMENT:

25/04/1969

BENCH:

SIKRI, S.M.

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SIKRI, S.M.

BACHAWAT, R.S.

RAMASWAMI, V.

CITATION:

1970 AIR 209 1970 SCR (1) 396

1969 SCC (2) 199

CITATOR INFO :

F 1977 SC 282 (10,11,21)

F 1985 SC1279 (3)

D 1987 SC2195 (7)

ACT:

Industrial Disputes Act (14 of 1947), s. 33C(2)-Applications for computing benefit of holidays in terms of money-Maintainability.

Indian Limitation Act (36 of 1963), Art. 137-Applications to Labour Court-If covered by Article.

HEADNOTE:

The appellants (employees of the respondent) filed applications against the respondent, under s. 33C(2) of the Industrial Disputes Act, 1947, for computing in terms of money, the benefit of holidays, and for recovering the amount. The Labour Court dismissed the applications insofar as the claim was for a period beyond three years, on the ground that the applications were barred under Art. 137 of the Limitation Act, 1963.

In appeal to this Court, the respondent supported the order of dismissal also on the ground that the applications were not maintainable under s. 33C(2) because, the sub-section does not indicate the mode in which the question as to the amount at which the benefit should be computed, may be decided.

HELD : (1) The applications fell squarely within s. 33C(2) of the Industrial Disputes Act. Under the sub-section, the rule-making authority has to make a suitable provision for indicating the mode in which the money-value of the benefit should be computed. Such a provision is made in r. 62(2) of the Industrial Disputes (Central) Rules, 1957, which prescribes the form for the application for the determination of the amount. [398E-H]

(2) The scheme of the Indian Limitation Act, 1963 is that it only deals with applications to ordinary courts and, as the Labour Court is not such a court, it erred in holding that the applications were barred by Art. 137 of the Limitation Act. [397G-H; 398A-B]

[The ground of decision in *Town Municipal Council, Athani v. The Presiding Officer, Labour Court, Hubli*, [1970] 1 S.C.R. 51 that applications to courts under provisions of law other than those off the Civil Procedure Code are not included within Art. 137 of the Limitation Act, 1963, doubted. [398B-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION Civil Appeals Nos. 301 to 319 and 1105 of 1969.

Appeals by special leave from the order dated April 16, 1968 of the Central Government Labour Court, Bombay in Applications Nos. LCB-28 of 1965 etc. Madan Mohan, for the appellants (in all the appeals).

C. K. Daphtary, O. P. Malhotra and K. L. Hathi, for respondents Nos. 1 and 2 (in all the appeals). The Judgment of the Court was delivered by Sikri, J. These appeals by special leave are directed against the order of the Central Government Labour Court, Bombay, holding that the applications filed by the appellants against the Life Insurance Corporation of India under s. 33C(2) of the Industrial Disputes Act, 1947, were barred under art. 137 of the Limitation Act, 1963, insofar

-as the claim was for period beyond three years. In holding this the Labour Court followed the decision of the Full Bench of the Bombay High Court in *The Manager M/s. P. K. Porwal v. The Labour Court*(1). The Bombay High Court held that applications filed under s. 33C(2) of the Industrial Disputes Act prior to its amendment by Central Act XXXVI of 1964 were governed by the period of limitation laid down in art. 137 of the Limitation Act, 1963, and this article applied to applications under laws other than those contained in the Civil Procedure Code, 1908. This Court in *Town Municipal Council, Athani v. The Presiding Officer, Labour Court, Hubli* (2) has dissented from the decision of the Bombay High Court and has held that art. 137 of the Limitation Act, 1963, does not apply to applications under s. 33C(2) of the Industrial Disputes Act. This Court gave two reasons for coming to this conclusion. The first ground was that in spite of the changes made in the Indian Limitation Act, 1963, no drastic change was intended in the scope of art. 137 so as to include within it all -applications irrespective of the fact whether they had any reference to the Code of Civil Procedure or not. This Court held that in spite of the changes the interpretation of art. 181 of the Limitation Act, 1908, by this Court in *Bombay Gas Co. Ltd. v. Gopal Bhiva and Others*(3) would

-apply to art. 137 of the Limitation Act, 1963. The second ground given by this Court was that it is only applications to Courts that are intended to be covered under art. 137 of the Limitation Act, 1963.

In our view art. 137 only contemplates applications to Courts. In the Third Division of the Schedule to the Limitation Act, 1963, all the other applications mentioned in the various articles are applications filed in a court. Further s. 4 of the Limitation Act, 1963, provides for the contingency when the prescribed period for any application expires on a holiday and the only contingency contemplated is "when the court is closed". Again under s. 5 it is.

(1) 70 Bom. L.R. 104. (2) [1970] 1 S.C.R. 51. (3) [1964] 3 S.C.R. 709.

only a court which is enabled to admit an application after the prescribed period has expired if the court is satisfied that the applicant had sufficient cause for not preferring the application. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963. It is not necessary to express our views on the first ground given by this Court in *Town Municipal Council, Athani v. The Presiding Officer Labour Court, Hubli*(1). It seems to us that it may require serious consideration whether applications to courts under other provisions, apart from Civil Procedure Code, are included within art. 137 of the Limitation Act, 1963, or not.

The learned counsel for the respondent contends that the appeals should fail on -another ground. He says that these applications were filed under S. 33C(2) of the Industrial Disputes Act, while they should have been filed under S. 33C(1). He further says that, at any rate, no application can be filed under S. 33C(2) because the sub-section does not mention how the question is to be decided. There is no force in these submissions.

It is plain from the wording of sub-s. (1) and sub-s. (2) of s. 33C that the former sub-section deals with cases where money is due to a workman from an employer under a settlement or an award or

under the provisions of Chapter VA, while the latter subsection deals with cases where a workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money. In the present case applications were filed 'by the employees against the respondent for computing in terms of money the benefit of holidays and for recovering the amount. This case falls squarely within sub-s. (2) of S. 33C. -There is no award or settlement under which the benefit of holidays 'had already been computed. It is true that sub-s. (2) of S. 33C does not indicate the mode 'in which the question as to the amount of money due or as to the amount at which the benefit should be computed, may be decided. But the sub-section had left it to the rule-making authority to make a suitable provision. This is indicated by the expression "subject -to any rules that may 'be made under this Act" in sub-s. (2) of S. 33C. Rules have been made and r. 62(2) of the Industrial Disputes (Central) Rules, 1957, provides "Where any workman or a group of workmen is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money, the workmen or the group of workmen, as the (1) [1970] 1 S.C.R. 51.

case may be, may apply to the specified Labour Court in Form K-3 for the determination of the amount due or, as the case may be, the amount at which such benefit should be computed." According to this rule an application in Form K-3 can clearly be made.

In the result the appeals are allowed and the order of the Labour Court set aside insofar as the Labour Court held that the applications were barred by art. 137 of the Limitation Act. The Labour Court will now pass the final order in accordance with law. The appellants will be entitled to their costs, one hearing fee.

V.P.S.

Appeals allowed.