

(1959) 09 MAD CK 0016
In the Madras High Court
Case No : Writ Petition No. 284 of 1958

Associated Cement Co. Ltd. Madukkarai Cement Works,
Madukkarai

APPELLANT

Vs

Labour Inspector (Central), Coimbatore and Another

RESPONDENT

Date of Decision : 15-09-1959

Acts Referred:

Minimum Wages (Madras) Rules, 1953 — Rule 23
Minimum Wages Act, 1948 — Section 13, 2, 20(1)

Citation : AIR 1961 Mad 77 : (1960) 1 LLJ 192 : (1959) 1 MLJ 221

Hon'ble Judges : Rajagopala Ayyangar, J

Bench : Single Bench

Advocate : M.K. Nambyar and K.P. Adiga, for the Appellant; Addl. Govt. Pleader,
for the Respondent

Final Decision : Allowed

Judgement

Rajagopala Ayyangar, J.—This is a petition for the issue of a writ of certiorari to call for the records in Minimum Wages Petition No. 26 of

1956 on the file of the Labour Court at Coimbatore and quash an order passed by that Tribunal dated 20-12-1957.

2. The Associated Cement Co. Ltd. carrying on the business of manufacturing cement at Madukkarai is the petitioner. The proceedings out of

which this petition arises originated in an application u/s 20(2) of the Act filed by the Labour Inspector of the Central Government at Coimbatore

before the Labour Court -- which is the authority constituted u/s 20(1) of the Minimum Wages Act, 1948 -- for a direction under Sub-section 3 of

Section 20, on the allegation that the respondent there, the Associated Cement Co. Ltd., had paid less than the minimum rate of wages to certain

of the company's employees.

3. The workmen to whom according to the Labour Inspector wages less than the minimum wages had been paid were those employed in lime

stone quarries. The violation of the Minimum Wages Act and the rules made there under was stated to consist in failure to pay wages for the

weekly holidays for the period March 1954 to June 1956 to three employees whose names were set out in the annexure to the application. It was

common ground that the application was filed as a test case, and that there was a very large number of other employees to whom also payments

on the same basis had been made by the company.

4. There is no dispute that employment in stone-breaking or stone-crushing is an employment in a scheduled industry to which the Minimum Wages

Act would apply. A committee for the fixation of the minimum wages for stone-breaking and crushing operations had been set up by the

Government of Madras on 26th September 1950 u/s 5(a) of the Minimum Wages Act, and the Committee had, after an exhaustive enquiry, fixed

the minimum wages payable for workers in those industries. The basis upon which the Committee fixed this wage was to fix the minimum wage first

for a month on the basis of the minimum requirements of the worker for a month of 30 days and to calculate the daily wage by dividing this sum by

26.

It would thus be seen that the daily wage fixed had also taken into account payments for the weekly holiday to which the workmen were statutorily

entitled. Subsequently, a second Committee was appointed, constituted by the same members as the first Committee to fix the rate of minimum

wages for similar operations in mines, and the Committee submitted a report working out the minimum wage for workers in this industry on the

same basis, that is by fixing the minimum monthly wage on the basis of 30 days in a month and then dividing it by 26 so as to arrive at the daily

minimum wage for the worker.

The Government of Madras accepted the report of this Committee and passed a G. O. on 15-2-1952 fixing the minimum rates for employment in

stone-breaking carried on in mines. It is not necessary for the purpose of the points arising in this petition to go into the exact figures and hence I

am not mentioning them. Subsequent thereto the Government of Madras promulgated on 24-6-1953 rule 23 in conformity with this fixation of

minimum wages. Rule 23, which was promulgated by the Madras Government was in the same terms as rule 23 of the Central Rules 1950 on

minimum wages promulgated by the Central Government on 14-10-1950. Rule 23 ran:

(1) Unless otherwise permitted by the Government no worker shall be required or allowed to work in a scheduled employment, on the first day of

the week ("hereinafter referred to as the said day") except where he has or will have a holiday for the whole day on one of the three days

immediately before or after the said day. Every worker who shall be required or allowed to work in a scheduled employment on the said day shall

be paid wages equal to his average daily wages during the week he has last worked.

Provided that the weekly holiday may be substituted by another day;

Provided further that no substitution shall be made which will result in any worker working for more than ten days consecutively without a holiday

for a whole day.

(2) Where in accordance with the provisions of Sub-rule 1 any worker works on the said day and has had a holiday on one of the five days

Immediately preceding it, the said day shall, for the purpose of calculating his weekly hours of work, be included in the preceding week.

Explanation; For the purpose of this rule "week" shall mean a period of seven days beginning at midnight on Saturday night.

It is the proper construction of this rule that is in the main involved in this petition. Stated shortly the point arising is whether under this rule a

payment had to be made for Sundays also which was allowed to the workmen as a weekly holiday. The complaint of the Labour inspector

proceeded on the basis that wages were due for the weekly holiday of Sunday also under the terms of rule 23 and the Labour court, the authority

under the Minimum Wages Act, has accepted this interpretation and had passed a direction u/s 20(3) of the Act requiring the company to make

payments on that basis. It is the correctness of this decision and the legality of this direction that is challenged in this writ petition.

5. Two points were urged by Mr. Nambiar, the learned counsel for the petitioner, in support of the petition. The first was that the period in regard

to which there was a complaint of failure to pay wages covered March 1956 to

June 1956 and that the authority constituted u/s 20 of the Minimum

Wages Act had, on the law as it stood on those dates, no jurisdiction to make a direction in regard to the wages for weekly holidays. Section 20,

as it was originally enacted in 1948, vested "the authority" with jurisdiction to hear and decide matters arising out of the "Payment of wages less

than the minimum rates of wages to employees employed or paid in that area." (Section 20(1)). This Sub-section was amended by Central Act

XXX of 1957. (which received the assent of the President on 17-9-1957), by the introduction of the words

or in respect of the payment of remuneration for days of rest or for work done on such days under clause (b) or clause (c) of Sub-section (1) of

Section 13 or of wages at the overtime rate u/s 14.

Even the petition filed by the Labour inspector was before the date of this amendment. The question that was raised before the Tribunal was

whether the Tribunal had any jurisdiction to entertain an application relating to a failure to make a payment in respect of remuneration for days of

rest before the amendment came into force, and that since on the date covered by the complaint, as also the date when the petition was filed the

amendment had not come into force, the tribunal could only exercise the powers under the unamended Section 20(1) of the Minimum Wages Act.

The tribunal overruled this objection by stating that the amendment was declaratory and was, therefore, retrospective.

6. The learned counsel for the petitioner urged that this reasoning was unsound and that the tribunal had assumed jurisdiction on an erroneous

interpretation of the statute. The decision on this point would primarily depend upon the meaning of the expression "rates of wages" or rather the

expression "wages" occurring in Sub-section (I) of Section 20. It is common ground that the Tribunal had jurisdiction to entertain claims where

payment was made at less than the "minimum wage". If "wages" included the remuneration payable for days of rest, the jurisdiction of the authority

u/s 20(1) would naturally extend to entertain a claim as regards that species of remuneration.

"Wages" are defined in the Act by Section 2(h) to mean "all remuneration capable of being expressed in terms of money which would if the terms

of the contract of employment express or implied, were fulfilled, be payable to a

person employed in respect of his employment" or of work done in such employment"" (underlining (here in " ") mine). This is followed by certain items which are not to be treated as wages and the payment of remuneration in respect of days of rest is not one of the items so excluded. Section 13 of the Act enables the appropriate Government to provide for a day of rest in every period of seven days which shall be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such days of rest; as also to provide for payment for work for a day of rest at a rate not less than the overtime rate. The payment of remuneration for a day of rest would, therefore, be ""wages payable to a person employed in respect of his employment"" within the definition of Section 2(h). If such a payment constituted remuneration, and therefore, wages, it appears to me that even on Section 20(1) as It originally stood a payment for a day of rest would fall within the scope of Section 20(1) of the Act. In this view the interpretation placed by the Tribunal on the purpose of the amendment effected to Section 20(1) by Central Act XXX of 1957 would appear to be well founded.

7. The more substantial point, however, which Mr. Nambiar, the learned counsel for the petitioner, urged was in relation to the interpretation of rule 23 as promulgated by the Madras Government, which is in terms identical with rule 23 of the Central rules. The construction of this rule came up for consideration before a Bench of the Bombay High Court in the Trustees of the Port of Bombay v. The Authority under the Payment of Wages Act 1957 1 Lab L.J. 626, and the judgment of the Bench was delivered by Gajendragadkar J. as he then was. It is sufficient to refer to the head note of the report to understand the point decided. This head note runs: Rule 23 of the rules framed under the Minimum Wages Act (Act XI of 1948) provides that no worker shall be required or allowed to work in a scheduled employment on the first day of the week. In other words, the object of the rule is to allow the employment of a worker on a Sunday which is described as the first day of the week only if two conditions are satisfied: (1) the Central Government must permit such a course; and (2) if a worker is asked to work on a Sunday then he must have a holiday for a whole day on one of the five days immediately before or after the said day, for which he shall receive payment equal to his average wages during the

preceding week.

Negating the contention that if a workman is required to work on a Sunday he must receive payment as directed both for the Sunday on which

he works and for the holiday, which he is entitled to receive, it must be held that the expression "for which" in rule 23 refers to the holiday

mentioned in the earlier part of the clause. The words "for which" do not refer to the first day of the week but refers to the holiday in the preceding

clause.

8. This decision was cited to the Labour court, but by a process of reasoning, which I am not able clearly to understand, it refused to follow this

decision, and held that the interpretation which this Bench of the Bombay, High Court placed upon this rule, was not correct. I feel unable to agree

with this conclusion, of the Tribunal. I will extract only a short passage from the judgment of Gajendragadkar J. which expresses my own view of

the matter:

This rule provides that no worker shall be required or allowed to work in a schedule employment on the first day of the week. In other words,

the object of the rule is to allow the employment of a worker on a Sunday, which is described as the first day of the week, only if two conditions

are satisfied:

(1) the Central Government must permit such a course; and

(2) if a worker is asked to work on a Sunday then he must have a holiday for a whole day on one of the five days immediately before or after the

said day, for which he shall receive payment equal to his average daily wages during the preceding week.

This second condition involves that, whenever a workman is required to work on a Sunday, within the specified period he must be granted a

holiday and he must receive his wages as prescribed. The first proviso permits that the weekly holiday may be substituted by another day; and the

second proviso provides a valuable safeguard to the worker by directing that no substitution shall be made which would lead to the result that the

worker would work more than ten days consecutively without a holiday. The usual rule appears to be that every Sunday should be a day of

weekly rest. Rule 23 provides for an exception; it allows the employer to require or permit his workman to work on a Sunday, but since this

course amounts to depriving a workman of his legitimate and usual day Of weekly rest, the employer is required to obtain, the consent of the

"Central Government requiring the workman to work on a Sunday and he is also required to give the workman a holiday within the period

mentioned and pay wages to him as prescribed-..... .We are unable to appreciate how this rule can be pressed into service by the employees in the

present cases when it is common ground that they were neither required nor allowed to work on any of the Sundays in question"".

9. The construction which the Tribunal adopted on the terms of rule 23 was clearly erroneous, and this order u/s 20(3) based on such

interpretation is, therefore, vitiated by apparent error and has therefore to be set aside. It is not disputed that if rule 23 is interpreted as in the

judgment of the Bombay High Court, there has been no violation of the Minimum-Wages Act committed by the petitioner-company.

10. The writ petition succeeds and the rule nisi is made absolute. I have only to add that the Labour Inspector has not contested this petition. There

will be no order as to costs.