

(1955) 07 BOM CK 0003

In the Bombay High Court

Case No : Special Civil Application No's. 793 to 800 of 1955

Bahadursingh Birsing and Others

APPELLANT

Vs

C.P. Fernandes and Others

RESPONDENT

Date of Decision : 06-07-1955

Acts Referred:

Constitution of India, 1950 — Article 227

Minimum Wages Act, 1948 — Section 13, 14, 20, 20(3), 3

Citation : AIR 1956 Bom 95 : (1955) 57 BOMLR 1020 : (1956) 1 LLJ 553

Hon'ble Judges : Shah, J;Bavdekar, J

Bench : Division Bench

Advocate : D.H. Buch, for the Appellant; R.T. Leuva, for the Respondent

Judgement

Bavdekar, J.—The eight applicants are watchmen employed by opponent No. 2, Messrs. Patel & Motichand Co., Ltd., a firm carrying on business as building contractors in the City of Bombay. u/s 3, Minimum Wages Act, 11 of 1948, the appropriate Government may fix,

"(a) a minimum rate of wages for time work (herein-after reared to as "a minimum time rate");

(d) a minimum rate (whether a time rate or a piece rate) to apply in substitution for the minimum rate which would otherwise be applicable, in respect of overtime work done by employees (hereinafter referred to as "overtime rate")."

This minimum rate, under the provisions of Section 4, may consist, in respect of employments which are called scheduled employments, an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any. Employment in building operations is one of the employments scheduled under the provisions of Section 3, and the Government of the State of Bombay has, in respect of this employment, fixed, in the first instance, a minimum rate of daily wages at Rs. 2-6-0 for a normal working day of nine hours, and for any overtime which the employee might work a minimum

rate of double the ordinary rates.

2. in case any employee is not paid a minimum rate, there is provision made by the Minimum Wages Act for the employee to approach an authority appointed by the State Government u/s 20, Minimum Wages Act. Such an authority has to determine, upon such an application, as to whether any employee has been paid the minimum rate of wages or not.

The eight applicants made eight applications to the authority constituted u/s 20, Minimum Wages Act contending that they had not been paid the minimum rate of wages by opponent No. 2. It was admitted that for every day the eight workers had worked, they had been paid wages at the rate of Rs. 2-8-0 per day; but the employees contended that they had worked overtime, and it was less than what they should have been paid for the normal working day and overtime during which the employees claimed that they had worked.

The authority constituted under the Minimum Wages Act has, upon a finding that the employees admitted that they had been paid at the rate of Rs. 2-8-0 per day, came to the conclusion that it had no authority to go into the question as to whether the employees had worked overtime or not, which was not admitted by opponent No. 2. The employees have thereupon made these applications to this Court under the provisions of Art. 227 of the Constitution.

3. Now, the only question in these eight applications is whether the authority constituted under the Minimum Wages Act was justified in refusing to go into the question whether the employees had worked overtime, when opponent No. 2 denied that they had done so.

4. it is quite clear, however, from the Minimum Wages Act itself that the authority constituted under that Act has ample power to decide the question as to whether the employees had worked overtime on any date upon which they claimed that they had done so. It is true that the jurisdiction of the authority is confined to deciding as to whether a minimum rate of wages has been paid; but the unit in this case is a day. The watchmen are paid daily wages.

Now, the Minimum Wages Act. In laying down what is the minimum rate of payment when the payment is on a daily basis, divides the payment into two parts. In the first instance, there is the payment for a normal working day of nine hours. The minimum prescribed for that is Rs. 2-6-0 per day. The Act then contemplates that they might work overtime, and for any overtime for which the employee might work, he is entitled again to be paid a minimum rate called the overtime rate, and in this case the prescribed overtime rate, is double the ordinary rate.

Now, the learned advocate, who appears on behalf of opponent No. 2, says that in case there was a dispute between the employees and the employer as to whether the employees had worked upon any particular date, the authority constituted under the Minimum Wages Act would have no jurisdiction to decide

that question. It is not necessary for the purpose of this application to go into that question; but I shall assume that the contention is a sound one.

But if it is not permissible for the Authority constituted under the Minimum Wages Act to go into that question, that is because in order to ascertain as to whether the minimum rate of wages has been paid or not, it is not necessary to go into the question of the number of days during which an employee has worked.

Once the minimum rate of wages has been prescribed per day, it is not a matter of any significance for how many days the employee has worked; but when the unit for which the minimum rate of wages has been prescribed is a day, and the minimum wages which had been prescribed for each day upon which the employee worked is divided into two parts, one, for the normal working day of nine hours, and the other, for the overtime during which the employee had worked, it is impossible to understand how it can be found whether the minimum rate of wages has been paid to an employee, unless one determines the question as to whether an employee has worked overtime on any particular date. ,

The overtime during which the employee works enters into the determination of the question of the minimum rate of wages paid per day, and that is why the Authority constituted under the Minimum Wages Act must go into the question as to whether the employee has worked overtime.

5. We, therefore, quash the order which had been passed by the learned Authority constituted under the Minimum Wages Act and direct him to proceed further with the applications of the late employees in accordance with the law. Opponent No. 2 will pay the costs of the applicants of these eight applications.

Shah, J. :

6. The question that falls to be determined in this group of applications is whether the Authority appointed u/s 20, Minimum Wages Act, 11 of 1948, is competent to entertain an application making a claim for overtime wages payable by the employer u/s 14 of the Act.

7. it is undisputed in these cases that the employment in which the petitioners are employed is a scheduled employment. It is also undisputed that the rates for normal working day of nine hours have been fixed under Sections 13 and 14 Minimum Wages Act. It is the case of the petitioners that in addition to the period of the normal working day, they were required to work overtime, and that they are entitled to overtime wages for such work.

The Authority under the Minimum Wages Act held that if the petitioners are proved to have worked overtime, they would, under the provisions of Section 14, Minimum Wages Act, be entitled to overtime wages. But he has held that an application u/s 20 of the Act is not competent for enforcement of a claim to overtime wages.

He observed that if the workman has been paid an amount per day which is not less than the amount fixed for a normal working day as the minimum wages, the Authority has no jurisdiction to entertain an application for any other payment which may be claimable by a workman. In coming to that conclusion, the Authority appears to have held that the jurisdiction conferred u/s 20 is restricted to hearing and deciding claims when the amount paid to the employee is less than the minimum rate of wages payable for a normal working day.

8. Now, Section 3 of the Act enables the appropriate Government to fix minimum rates of wages with reference to time work or to piece work, or when there is employment on piece work, at guaranteed time rate, and also to fix a minimum rate to apply in substitution for the minimum rate applicable in respect of overtime work done by employees. That clearly shows that the minimum rate which is contemplated to be fixed by the appropriate Government is not merely to be a minimum rate for a normal working day.

It can evidently be a minimum rate of wages related either to the time during which the workmen are required to work, or related to piece work, or related to piece work with a certain guarantee as to time, or related to overtime work. In assuming that he had jurisdiction only to consider whether payment was made at the minimum rate prescribed for a normal working day, and that he had no jurisdiction to decide the question whether overtime payment had or had not been made, the Authority appears to have assumed that an application can only lie u/s 20 of the Act for recovery of minimum rate of wages for a normal working day.

Section 20 requires the State Government to appoint an officer with judicial experience. Sub-Section (3) of Section 20 contemplates an inquiry to be made wherein opportunity is to be given to the parties likely to be affected by the order of being heard. If the only thing which the Authority appointed under the Minimum Wages Act is required to do is to ascertain the minimum rate fixed for a normal working day, it is difficult to appreciate why the Legislature should have provided for appointment of an officer with judicial experience, and should have made provision for a formal inquiry and for an opportunity of being heard to persons likely to be affected thereby.

Evidently the minimum rates of wages for normal working hours must be fixed by the Government under the rules with regard to each scheduled employment, and if the view which has appealed to the Authority is correct, the Authority would merely have to look at the rules to find out the amount payable to the employee, who makes" an application u/s 20 and to direct payment thereof.

But there appears to be no warrant for assuming that the jurisdiction conferred by Section 20 "to hear and decide all claims arising out of payment of less than the minimum rates of wages" is intended, notwithstanding the amplitude of the words used, to be so circumscribed that the authority has in exercise of that jurisdiction merely to find out the amount prescribed by the rules in respect of a

scheduled employment and to direct payment thereof.

Section 20 in terms authorises the Authority to hear and "decide all claims" arising out of payment of less than the minimum rates of wages to employees employed or paid in the area in which he functions. The Authority has, in our view, jurisdiction to decide to which class of scheduled employment the applicant belongs, what are the minimum rates prescribed for that employment, which minimum rate applies to him, whether payment has been made of less than the minimum rates, and whether the employer was justified in not making payment at the rate demanded by the employee.

In exercise of that jurisdiction the Authority is also entitled to decide whether the applicant has worked overtime, and to decide the overtime rate fixed under the Act, or under any other law of the appropriate Government for the time being in force and to award the higher rate. acceptance of the view which has appealed to the Authority involves the assumption that the Legislature authorised the appropriate Government to prescribe overtime rates under the Act, or under any other law in force, and imposed an obligation upon the employer to make payment accordingly, and then failed to provide machinery for recovery if the employer defaulted in honouring his obligation. In view of the scheme of the Act, and the amplitude of the jurisdiction, such an assumption cannot be made.

9. Order accordingly.