

(1968) 11 BOM CK 0004

In the Bombay High Court

Case No : Special Civil Application No. 1774 of 1966

Barretto (I.C.)

APPELLANT

Vs

Dhambe (A.S.) and Others

RESPONDENT

Date of Decision : 21-11-1968

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1969) 2 LLJ 306

Hon'ble Judges : N.L. Abhyankar, J;D.P. Madon, J

Bench : Division Bench

Judgement

Madon, J.—This petition under Art. 227 arises out of certain orders passed under the Payment of Wages Act, 1936.

2. The petitioner carried on business as contractors for supplying labour for loading and unloading ships belonging to the British India Steam Navigation Company, Ltd. Respondents 3 to 62, who were all employees of the petitioners, filed applications before the authority under the Payment of Wages Act claiming overtime wages at double the rate for the second shift worked by them. Respondent 2, the authority, negated all contentions raised on behalf of the petitioners except the contention that the said respondents were not entitled to overtime wages at double the rate and allowed the said respondents overtime wages at one and a half times the rate. As the petitioners had already paid to the rate. As the petitioners had already paid to the said respondents wages for the overtime work put in by the said respondents at the ordinary rate, the authority directed the petitioner to pay to the said respondents the difference between the amounts paid the petitioners for overtime wages and the amount for overtime wages at one and a half times the ordinary rate. Against the said order the petitioners filed an appeal to the Court of Small Causes at Bombay. This appeal was dismissed by respondent 1. The petitioner has now filed this petition under Art. 227 to set aside the said two orders.

3. Though several grounds have been taken in the petition, only one ground has

been urged before us by Sri Shetye, learned counsel for the petitioners. This ground is that there was no evidence on record to show how many hours of work were put in by the said respondents in the second shift. In its judgment the authority has pointed out that the petitioners had not disputed the facts relating to the extra shifts alleged to have been done by the applicants and had conceded the same to be correct. On this point the appeal Court observed as follows in its judgment :

"It was argued by the learned advocate for the appellants that there is no evidence on record to show that the respondents were required to work for more than 9 hours in any day and 48 hours in any week. So, they cannot claim any overtime wages. It is in the evidence that the respondents were required or allowed to work in one or more shifts of eight hours each. It is true that there is no evidence on record to show for how many hours in a day or in a week the respondents have worked. But in the absence of such evidence we will have to assume that the respondents have worked for the number of hours according to the shifts they had attended to. There is no substance in the contention that though the respondents attended one shift or more shifts, they were not required to do work for the whole period of the shift. Moreover, there is no evidence to substantiate this contention."

4. It is really not necessary to go either to the pleadings or to the evidence on record to ascertain whether the said respondents had worked for the whole of the second shift. It is an admitted fact that the petitioners have paid to the said respondents overtime wages for the whole of the said second shift at the ordinary rate which obviously they would not have done had the said respondents not worked for all the hours in the second shift. This itself is sufficient to show that the contention urged before us is without any substance.

5. Accordingly, this petition fails and is dismissed with costs. Rule discharged.