

(1983) 05 OHC CK 0002

In the Orissa High Court

Case No : O.J.C. No's. 35 to 44 and 46 to 51 of 1978

District Transport Manager (Administration), Orissa State
Road Transport Corporation

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 13-05-1983

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 33C(2)

Motor Transport Workers Act, 1961 — Section 13, 19, 19(1), 19(2), 26

Citation : (1983) 56 CLT 175

Hon'ble Judges : P.K. Mohanti, Acting C.J.; B.K. Behera, J

Bench : Division Bench

Advocate : Sushil Kr. Patnaik, for the Appellant; D.P. Mohapatra, A.G.A. for Opp. Party No. 1, Jagannath Das and K.N. Jena for Opp. Party No. 2 in OJC Nos. 38 and 48/78, for the Respondent

Final Decision : Allowed

Judgement

B.K. Behera, J.—In these writ applications under Articles 226 and 227 of the Constitution of India, which have been heard analogously and will be governed by this common order, challenge is by the District Transport Manager (Administration) of the Orissa State Road Transport Corporation to the orders passed by the Presiding Officer Labour Court. Orissa Bhubaneswar, u/s 33C(2) of the Industrial Disputes Act, 1947 in favour of the motor transport workers, each of whom figures as the opposite party No. 2 in the cases before us, computing their claims for extra wages for doing work on rest days in addition to the monthly rated wages u/s 26 of the Motor Transport Workers Act, 1961 (for short, the Act). According to the Labour Court, each workman shall, in respect of the work done on the day of rest, be entitled to twice his ordinary rate of wages in addition to the wages he is to receive for the day of rest which in other words, would mean that for work done on the day of rest, the workman would be entitled to get thrice the ordinary rate of wages for that day.

2. The impugned orders are sought to be assailed on two grounds:

(a) As the workman had not preferred their claims before their controlling authority and their claims had not been rejected the computation u/s 33-C(2) of the Industrial Disputes Act has been made without jurisdiction as there had been no Industrial disputes between the management and the workmen.

(b) The computation made by the Labour Court is in violation of the provision made in Section 26 of the Act.

3. Only two of the workmen figuring as the opposite party No. 2 in each of the cases have appeared through their counsel in this Court in O.J.C. Nos. 38 and 48 of 1978. The other workmen, inspite of service of notices on them, have not entered appearance. It has been submitted by the learned Counsel for the workmen who have appeared in this Court that the contention with regard to want of jurisdiction of the Labour Court is not sound in law and no such objection having been raised before that court, the management is not to be allowed to raise this question for the first time in this Court. As to the second contention, reliance has been placed on two decisions of the Supreme Court and two Bench decisions of the Madhya Pradesh High Court, to be referred to hereinafter and it has been submitted that the computation is to be done as laid down therein.

4. The Petitioner had not taken the stand before the Labour Court that it had no jurisdiction to entertain the applications and had not raised the question of want of jurisdiction as would clearly appear from the impugned orders and what is also important is the fact that in the writ applications before us, no such ground has been taken. Having submitted to the jurisdiction of the Labour Court without raising any objection in this regard at the stage of hearing, the Petitioner should not now be allowed to take this ground. In *Sohan Singh and Others Vs. General Manager, Ordnance Factory, Khamaria, Jabalpur and Others*, the Supreme Court dealt with the matter in which the Appellants had made an application before the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur, u/s 33-C(2) of the Industrial Disputes Act. The applications were allowed and certain directions were given by the Labour court for quantification of the claims of the Appellants. The High Court in the writ application had not examined the merits of the order of the Labour Court. It set aside that order on the ground that on the facts and in the circumstances of the case, the applications u/s 33-C(2) were not entertainable by the Labour Court. The Supreme Court observed and held:

We think that the view taken by the High Court on the facts of this case is not correct because the jurisdiction of the labour court was not challenged by the Respondents in that court. Issue No. 4 settled for trial by the labour court was in the following terms:

Whether the applicants were transferred to Ordnance Factory Khamaria on same terms and conditions of service which they had at Meerut and they willingly accepted the reduced pay and new assignment in Khamaria. Ordnance?

The High Court seems to have taken the view that the trial of such an issue was beyond the competence of the labour court but it has rightly been pointed out on behalf of the Appellants that instead of challenging the competence of the jurisdiction of the labour court to try issue No. 4, the Respondents went to trial, submitted to its jurisdiction and when a decision was given against them by the labour court, they, for the first time, challenged its jurisdiction to try that Issue in the High Court. On the facts of this case, therefore, we are satisfied that the High Court ought not to have entertained the point of jurisdiction urged on behalf of the Respondents and set aside the order of the labour court on that ground alone.

In view of the principles laid down by the Supreme Court and the fact that no point with regard to the want of jurisdiction of the Labour Court had been raised before it at the time of hearing and as this ground has not been raised even in the writ applications, no such ground should be allowed to be raised in these certiorari proceedings.

5. This takes us to the second contention as to the quantification of the wages in respect of the work done on a day of rest.

6. Section 26 of the Act reads:

Extra wages for overtime.- (1) Where an adult motor transport worker works for more than eight hours in any day in any case referred to in the first proviso to Section 13 or where he is required to work on any day of rest under Sub-section (2) of Section 19, he shall be entitled to wages at the rate of twice his ordinary rate of wages in respect of the overtime work or the work done on the day of rest as the case may be.

(2). Where an adult motor transport worker works for more than eight hours in any day in any case referred to in the second proviso to Section 13, he shall be entitled to wages in respect of the overtime work at such rates as may be prescribed.

(3) Where an adolescent motor transport worker is required to work on any day of rest under Sub-section (2) of Section 19, he shall be entitled to wages at the rate of twice his ordinary rate of wages in respect of the work done on the day of rest.

(4) For the purposes of this section, ordinary rate of wages in relation to a motor transport worker means his basic wages plus dearness allowance.

Section 19 of the Act provides:

Weekly rest,- (1) The State Government may, by notification in the official Gazette, make rules providing for a day of rest in every period of seven days which shall be allowed to all motor transport; workers;

(2) Notwithstanding anything contained in Sub-section (1), an employer may, in order to prevent any dislocation of a Motor Transport Service, require a motor

transport worker to work on any day of rest which is not a holiday so, however, that the motor transport worker does not work for more than ten days consecutively without a holiday for a whole day intervening,

(3) Nothing contained in Sub-section (1) shall apply to any motor transport worker whose total period of employment including any day spent on leave is less than six days.

After a discussion regarding the purpose for which provision has been made for payment of extra wages on the days of rest, the Labour Court held:

In view of the above discussion I would hold that the applicants are entitled to wages at the rate twice their ordinary rate of wage's in respect of the work done by them on days of rest and this has got nothing to do with the wages paid to them as monthly rated employees of the Corporation.

7. At the hearing of the writ applications, the learned Counsel for both the sides have invited our attention to the principles laid down in two Bench decisions of the Madhya Pradesh High Court as to how the wages payable in such cases are to be computed. As provided in Section 26(4) of the Act, "ordinary rate of wages" in relation to a motor transport worker means his basic wages plus dearness allowance. The employer is under a legal obligation for making payment to the workman in respect of the work done on a day of rest as provided in Section 26(1) of the Act.

8. In *M.P. Motor Karmachari Sangh and Ors. v. The Depot Manager, M.P. State Transport Corporation* 1975 (3) F.L.R. 273, a Division Bench of the Madhya Pradesh High Court has laid down:

...Thus Section 19 in Sub-section (1) lays down the requirement of one full day's rest during every period of 7 days but then in Sub-section (2) it enables the employer to call upon a worker to work also on such day of rest subject to the conditions already pointed out, In this manner an attempt has been made to ensure weekly rest for each worker while providing means to avoid dislocation of transport service. Sub-section (1) of Section 26, however, is enacted for a different purpose and is concerned only with the wages of the workman. There is nothing in Sub-section (1) of Section 26 to read any limitation therein subject to which alone the benefit has been given to the worker. In the absence of any express limitation being provided in Sub-section (1) of Section 26, it has to be seen whether such limitation, can be imported by reference to Sub-section (2) of Section 19 on which the employer relies to support his contention. In our opinion, Sub-section (2) of Section 19 is of no assistance in this respect since those two provisions operate in distinct sphere. Sub-section (2) of Section 19 enables the employer to call upon a workman even on a notified day of rest subject to the conditions mentioned therein in order to avoid dislocation of transport service and to that extent it overrides the provisions in Sub-section (1) of Section 19 which enjoins a duty on each employer to give one full day's rest to every worker in every period of 7 days. Thus, Section 19 deals only with the

period for which the worker can be required by the employer to work at a stretch without any holiday. On the other hand Sub-section (1) of Section 26 provides for a consequence when a workman has been called upon by his employer to work on a notified day of rest. The consequence is that for working on the notified day of rest in such a manner, the workman becomes entitled to twice the ordinary wages for that day since ordinarily the workman was entitled not to work on that day....

In *Kripa Shanhar Verma v. The Depot Manager, Jabalpur Depot. M.P. State Road Transport Corporation and Ors.* 1979 Lab. I.C. 1071. The Madhya Pradesh High Court has held:

Wages are remuneration which are payable to a person in respect of his employment of work done in such employment. The cases where a workman is paid at daily rate present no difficulty. However, when payment is made on monthly scale of pay, the daily rate of wages for a worker can be obtained only by dividing the amount of basic wages and dearness allowance for 30 days by 26. This is done because the workman is entitled to 4 days as weekly rest during which period he does not work. A workman actually gets monthly wages for the work done only for 26 days. Thus for a workman it is the actual receipt for 26 days which is his monthly scale of pay, i.e., 30 days wages. Therefore, a day's wages should mean the result obtained by dividing the monthly basic pay plus dearness allowance by actual number of working days, i.e. 26 days. According to Section 19(2) of the Act, it is double this daily wages which a transport worker is entitled to if he works on a day of rest....

As the transport worker gets monthly wages only for the actual number of working days, it is clear that for the weekly day of rest he is not paid any amount. The monthly scale of pay admissible to him is the amount for the work done for 26 days in the month. He is, therefore, not paid for the day of rest. Necessarily, therefore, when a transport worker works on the day of rest, he is entitled to double the daily rate of wages which is to be calculated in the manner stated above. The State Industrial Court, Respondent No. 3 was not right in saying that the workers were already paid a single days wage for the day of rest and in addition are entitled to only a single day's wage if they worked on the day of rest. The Industrial Court is further not right in calculating the daily wages by dividing the monthly scale of pay by 30. We are therefore, of opinion that the order passed by the Industrial Court and also the one passed by the Respondent No. 2, i.e., the Authority appointed under the Payment of Wages Act for Jabalpur area (Annexures B and C) are not in accordance with law and must be quashed. We hold that the workers represented by the Petitioner shall be paid at double the rate of daily wages as indicated by us above for work done on a day of rest. We further direct that the Authority (Respondent No. 2) shall now calculate the wages accordingly.

In *Delhi Cloth and General Mills Co., Ltd. Vs. Workmen and Others etc.*, the Supreme Court has laid down:

...The expression average of the basic wage can only mean the wage earned by a workman during a month divided by the number of days for which he has worked and multiplied by 26 in order to arrive at the monthly wage for the computation of gratuity payable....

Relying on the aforesaid principle laid down In the earlier case, the Supreme Court, in Shri Digvijay Woolen Mills Ltd. v. Mahendra Prataprai Buch 1980 Lab. I.C. 1052, held:

...Ordinarily of Course a month is understood to mean 30 days, but the manner of calculating gratuity payable under the Act to the employees who work for 26 days a month followed by the Gujarat High Court can not be called perverse. It is not necessary to consider whether another view is possible. The High Court summa (sic) the petition of the Appellant in both the appeals before us and uphold the decision of the authorities, under the Act. We are also not inclined to interfere with the decision of tire High Court because it seems to us that the view taken by the authorities is not in any way unreasonable or perverse, Incidentally, to indicate that treating monthly wages as wages for 26 working days is riot anything unique or unknown, we may refer to a passage from the judgment of this Court in Delhi Cloth and General Mills Co., Ltd. Vs. Workmen and Others etc., which disposed of several appeals arising out of an award made by the Industrial Tribunal. Delhi....

9. No decision of this Court in this regard has been placed before us by either side. We would respectfully adopt the views recorded by the Madhya Pradesh High Court and the manner of calculation of the wages for the days of test indicated in the two cases. The learned Counsel appearing for the management and the workmen and the learned, Additional Government Advocate have submitted before us that the Labour Court may be directed to compute within a specified time the wages keeping in view the principles laid down by the Supreme Court in the aforesaid cases and the decisions of the Madhya Pradesh High Court, referred to above In our view the impugned orders passed without legally and properly examining the scope and import of Section 26 of the Act cannot be allowed to stand.

10. We would accordingly allow the writ applications, quash the impugned orders and direct the Presiding Officer of the Labour Court to compute the wages for the days of test keeping in mind the principles referred to and the observations made in this order within three months from the date of its communication. In the circumstances of the case the parties ate left to beat their own costs in the proceedings before us.

P.K. Mohanti, A.C.J.

11. I agree.