

(1967) 04 MP CK 0002

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 262 of 1966

Gurusharan Singh Brijbhusan Singh

APPELLANT

Vs

Manager, Rewa Transport Services and Others

RESPONDENT

Date of Decision : 05-04-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 2
Madhya Pradesh Minimum Wages Rules, 1951 — Rule 27
Minimum Wages Act, 1948 — Section 20
Motor Transport Workers Act, 1961 — Section 13, 2
Payment of Wages Act, 1936 — Section 15

Citation : AIR 1968 MP 10 : (1968) 17 FLR 4 : (1968) 1 LJ 259 : (1968) 1 LLJ 143

Hon'ble Judges : S.P. Bhargava, J; R.J. Bhawe, J

Bench : Division Bench

Advocate : Gulab Gupta, for the Appellant; R.K. Tankha, for the Respondent

Final Decision : Dismissed

Judgement

Bhawe, J.—The petitioner is working as a conductor with the Rewa Transport Services. Rewa (respondent No. 1). The petitioner's application for recovery of overtime wages was dismissed by the Authority appointed under the Payment of Wages Act by order dated 19th September 1964. An appeal preferred by the petitioner was also dismissed by the Industrial Court M. P., by its order dated 2nd March 1966. The petitioner by this petition under Article 226 of the Constitution seeks a writ of certiorari for quashing the said two orders and for issuance of a suitable direction to the Authority under the Payment of Wages Act to determine the overtime wages and to direct the payment thereof.

2. Motor transport is a "scheduled industry", and the minimum wages for the workers in the industry have been fixed by the State of Madhya Pradesh under the M. P. Minimum Wages Fixation Act, 1962. Section 4 of the Act has made Section 4A, Section 5 & Sections 12 to 30A of the Minimum Wages Act, 1948, and the Rules framed thereunder, applicable to the minimum rate of wages fixed under the State Act. Thus, for all practical purposes, in the matter of minimum

wages the petitioner is governed by the Minimum Wages Act, 1948. Section 13 of the Minimum Wages Act empowers the appropriate Government to fix the number of hours of work which shall constitute a normal working day, inclusive of one or more specified intervals and other matters. But Section 13 of the Motor Transport Workers Act, 1961, has already covered this field and hence the State Govt. has nothing to do in this matter. Section 14 of the Minimum Wages Act then provides that an employer shall pay the worker for every hour or part of an hour for which the worker is required to work in excess of the normal working day at the rate fixed under the Act or under any law of the appropriate Government Rule 27 framed by the State Government under the Minimum Wages Act fixes such rate Section 13 of the Motor Transport Workers Act also provides for payment at a fixed rate for overtime work under certain circumstances.

Section 13 of the Motor Transport Workers Act provides that no motor transport worker shall work for more than eight hours in any day or forty-eight hours in any week. In case of long distance routes or on festive or other occasions, the employer may allow the worker to work for more than eight hours with the previous approval of the appropriate authority, or in case of breakdown or such other causes also the worker may be allowed to work for more than eight hours. In these cases the employer is required to pay overtime wages as prescribed u/s 13 of the Motor Transport Workers Act. But in those cases where the matter is not covered by Section 13, the only provision under which overtime wages can be claimed is Rule 27 framed under the Minimum Wages Act. In fact, the petitioner had relied on Rule 27. Shri Tankha, learned counsel for the respondent No. 1, urged that Section 13 of the Motor Transport Workers Act totally prohibits employment of a worker for more than eight hours a day excepting the special circumstances mentioned under that section and as such no claim for overtime wages can be made. This submission we shall consider hereafter. For the present, we shall assume that the petitioner is entitled to claim overtime wages under Rule 27 framed under the Minimum Wages Act. If this is so, in our opinion, the Pay-ment of Wages Authority had no jurisdiction to entertain the application of the petitioner.

3. Our reasons are these: Section 20 of the Minimum Wages Act provides that the appropriate Government may appoint

"the authority to hear and decide for any specified area all claims arising out of the payment of less than the minimum rates of wages or or of wages at the overtime rate u/s 14 to employees employed or paid in that area."

Thus, all claims for payment of less than minimum wages or less than the wages at overtime rate must be made to the Authority appointed u/s 20 of the Minimum Wages Act. In Surajmal Mehta Vs. Authority under Payment of Wages Act and Another, a Division Bench of this Court held:

"The Industrial Disputes Act is a special Act dealing with investigation and settlement of Industrial Disputes and matters provided by various provisions of

that Act; the Payment of Wages Act is also a special Act regulating the Payment of Wages to certain class of persons employed in any industry and its main purpose is to determine the claims of workers arising out of deductions from their wages or delay in the payment of their wages Both these Acts being special Acts, Sections 2(vi)(d) and 15 of the Payment of Wages Act cannot be construed so as to curtail the operation of Section 33C(2) of the Industrial Disputes Act".

This principle of law is attracted in the present case also. Whether the petitioner is entitled to overtime wages or not will have to be determined on the interpretation of various provisions of the Minimum Wages Act as modified by the Motor Transport Workers Act, 1961 Sections 20 and 21 of the Minimum Wages Act provide a complete machinery for determination of the claim for overtime wages and the recovery thereof. The proper authority to determine the claim is, therefore, the authority appointed under the Minimum Wages Act, and not one appointed under the Payment of Wages Act. The petitioner moved the wrong authority and on this ground alone the petition is liable to be dismissed

4. Apart from this technical ground, on merits also the petitioner's claim is not well founded. The petitioner says that in his capacity as a conductor he is required to go from Rewa to various places along with the stage carriage. The stage carriage halts at the destination for a considerable time. In some cases he returns the same day, but in other cases he is required to stay overnight and returns the next day. According to the petitioner, he is on duty from the time he leaves Rewa till he returns to Rewa along with the stage carriage. His working hours thus extend from 12 to 36 hours. The petitioner says that under the Motor Transport Workers Act Section 13 the "hours of work" are fixed at eight hours in a day and forty-eight hours in a week. The work done by the petitioner beyond these hours is overtime work and that the petitioner is entitled to payment for that work under the Minimum Wages Act, Rule 27. The petitioner thus claimed Rs. 160 for 283 hours put in by him in excess of the prescribed hours.

5. "Hours of work" are defined u/s 2(f) of the Motor Transport Workers Act. The definition is as under:

"2..... ..

(f) "hours of work" means the time during which a motor transport worker is at the disposal of the employer or of any other person entitled to claim his services and includes-

- (i) the time spent in work done during the running time of transport vehicle;
- (ii) the time spent in subsidiary work; and
- (iii) periods of mere attendance at terminals of less than fifteen minutes;

Explanation--For the purposes of this clause-

(1) "running time" in relation to a working day means the time from the moment a transport vehicle starts functioning at the beginning of the working day until

the moment when the transport vehicle ceases to function at the end of the working day. excluding any time during which the "running of the transport vehicle is interrupted for a period exceeding such duration as may be prescribed during which period the persons who drive, or perform any other work in connection with the transport vehicle are free to dispose of their time as they please or are engaged in subsidiary work:

(2) "subsidiary work" means work in connection with a transport vehicle, its passengers or its load which is done outside the running time of the transport vehicle including in particular-

(i) work in connection with accounts, the paying in of cash, the signing of registers, the handing in of service sheets, the checking of tickets and other similar work

(ii) the taking over and garaging the transport vehicle:

(iii) travelling from the place where a person signs on to the place where he takes over the transport vehicle and from the place where he leaves the transport vehicle to the place where he signs off:

(iv) work in connection with the upkeep and repair of the transport vehicle: and

(v) the loading and unloading of the transport vehicle:

(3) "period of mere attendance" means the period during which a person remains at his post solely in order to reply to possible calls or to resume action at the time fixed in the duty schedule";

It has been found by the Payment of Wages Authority that the running time of the stage carriage on which the petitioner worked did not exceed eight hours in a day as defined under the Act. It cannot, therefore, be said that the petitioner spent more than eight hours during the running time of the transport vehicle. It will, therefore, have to be seen if the petitioner was engaged in subsidiary work or spent any time at terminals for mere attendance. The last item, namely, the time spent at terminals, is confined to 15 minutes and has reference to the period spent at the post of duty to resume work at the fixed time in the duty schedule. The petitioner does not claim that his case comes under this item. It is thus clear that he can claim overtime wages only if his case comes within the item of "subsidiary work".

6. It is not disputed that the only duty of the conductor is to Issue tickets to the passengers during the journey and to look after the passengers. As soon as the journey ends and the passengers quit the stage carriage, the conductor has no other duty to perform. But the petitioner claimed before the Payment of Wages Authority that there was no arrangement at the terminal for handing over the cash collected by him and that he remained in charge of the cash till he returned to Rewa and this is why he claimed that he remained on duty from the time he left Rewa till he returned back. At the evidence stage, the petitioner tried to

introduce a new claim, namely, that he was required to be in charge of the stage carriage at the terminals along with the driver. This claim should not have been allowed to be introduced at the evidence stage, and we are not inclined to consider it. Apart from the mere work of the petitioner, no foundation has been laid for basing his claim on that ground. From his evidence it is not clear as to whether for all the time both the driver and the conductor remained in charge of the stage carriage or whether there was any division of work. It is impossible to believe that the petitioner remained in charge for all the hours the stage carriage halted at the terminals. No claim can, therefore, be sustained on the vague allegation of the petitioner that he was required to be in charge of the stage carriage and on the vague basis that he has made out. We shall, therefore confine our enquiry to the original claim made by the petitioner, namely, that he remained in charge of the cash. The question to be determined, therefore is can this be called "subsidiary work"?

7. It is not a work in connection with the transport vehicle, its passengers or its load which is done outside the running time of the transport vehicle. The work of keeping the cash thus does not come within the main part of Clause (2) of the Explanation u/s 2(f) of the Motor Transport Workers Act. Mere keeping of the cash with oneself cannot also be said to be work done in connection with accounts, the paying in of cash, the signing of registers, the handing in of service sheets, the checking of tickets and other similar work. The petitioner's case is that there was no arrangement at the terminals to hand over charge. It is thus clear that he was not required to do any work at the terminals with respect to any of the matters enumerated above. Thus, Sub-clause (i) of Clause (2) of the Explanation is not attracted. Sub-clauses (ii) and (iii) are also not attracted, as there was no question of taking over and garaging the transport vehicle and travelling from the place where one reports to duty to the place where the vehicle is stationed. In any case this will not account for more than 15 minutes at the terminals or at the headquarters at Rewa. The petitioner's case is also not covered by the other sub-clauses under Clause (2) underneath the Explanation. It is thus clear that it cannot be said that the petitioner has put in any "hours of work" in excess of the number prescribed by Section 13 of the Motor Transport Workers Act. The essence of the definition is that the worker must be at the disposal of the employer or of any other person to claim his services during certain hours. The definition also emphasises the fact that the hours spent on duty have relation to the running time of the transport vehicle. From the mere fact that at the terminal the petitioner remained in charge of the cash of his master, it cannot be inferred that the petitioner remained at the disposal of the employer and was not free to utilize the time during which the stage carriage halted at the terminal in any manner he liked. This is the reason why the petitioner tried to introduce at the evidence stage a further ground that he was also required to guard the stage carriage during the halt. For the abovesaid reasons, we are of the view that the petitioner failed to establish that he had worked in excess of the "hours of work" fixed under the Motor Transport Workers

Act and the petition is liable to be dismissed.

8. It may also be mentioned that there, is a complete prohibition u/s 13 of the Motor Transport Workers Act from employ-Ing any worker for hours in excess of the hours prescribed u/s 13. Any overtime work done in excess of the hours prescribed under S 13 shall be work done in violation of the Act, and a claim based on such a violation cannot be sustained under the Minimum Wages Act or the Payment of Wages Act.

9. The petition thus fails and is dismissed with costs. Hearing Rs. 100. The outstanding amount of the security deposit, if any after deduction of costs, shall be refunded to the petitioner.