

(2013) 02 P&H CK 0248
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 9597 of 1992

Jagdish Kumar and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 18-02-2013

Acts Referred:

Citation : (2014) 140 FLR 515

Hon'ble Judges : Ajay Kumar Mittal, J

Bench : Single Bench

Advocate : Gurinder Pal Singh, for the Appellant; S.S. Pattar, Senior DAG, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kumar Mittal, J.—The petitioners have approached this Court under Article 226/227 of the Constitution of India assailing the order dated 27.6.1992 (Annexure P-3) whereby recovery was sought to be effected from them on account of payment made to them for overtime work done. Additionally, the instructions dated 29.8.1991 (Annexure P-2) issued by respondent No. 2 have also been assailed. Briefly the facts necessary for adjudication of the present petition as narrated therein are that the petitioners were working as Cashiers, Assistant Cashiers and Gunmen to safeguard the cash section of the General Manager, Haryana Roadways, Hisar-respondent No. 3. It has been claimed that the working conditions of the petitioners are governed by the provisions of the Motor Transport Workers Act, 1961 (in short "the Act") and they fall within the definition of Motor Transport Workers as defined u/s 2(h) of the Act. According to the petitioners, section 13 of the Act prescribes the working hours which are required to be performed by each worker on a particular day or during the week. On the basis of the aforesaid provision, a motor transport worker is allowed to work for not more than eight hours in a day or 48 hours in a week. It has further been averred that u/s 26 of the Act, in case any adult motor transport worker works for more than eight hours on any day as prescribed u/s 13 of the Act, the

worker is entitled to wages at twice the ordinary rate of wages in respect of overtime work or the work done on the day or rest, as the case may be. It has further been contended that the order, Annexure P-3, for recovery of the amount which had already been paid to the petitioners on account of overtime work could not be legally done. Further, it was urged that Annexure P-2 issued by the Transport Commissioner was in violation of the statutory provisions as referred to in sections 13 and 26 of the Act.

On the other hand, learned State Counsel contended that as per Annexure P-2, the ministerial staff was not entitled to any overtime allowance and in such a situation the payment which had been made to the petitioners was being recovered back vide order, Annexure P-3.

2. After hearing learned Counsel for the parties, I find that the present writ petition deserves to succeed. It would be expedient to refer to certain relevant provisions of the Act. Section 2(h) of the Act defines motor transport worker. It reads thus:

2(h) "motor transport worker" means a person who is employed in a motor transport undertaking directly or through an agency, whether for wages or not, to work in a professional capacity on a transport vehicle or to attend to duties in connection with the arrival, departure, loading or unloading of such transport vehicle and includes a driver, conductor, cleaner, station staff, line checking staff, booking clerk, cash clerk, depot clerk, time-keeper, watchman or attendant, but except in section 8 does not include--

(i) any such person who is employed in a factory as defined in the Factories Act, 1948 (69 of 1948);

(ii) any such person to whom the provisions of any law for the time being in force regulating the conditions of service of persons employed in shops or commercial establishments apply.

3. Section 13 of the Act prescribes the number of hours which an adult motor transport worker is required or allowed to put on any day or in any week. It is in the following terms:--

No adult motor transport worker shall be required or allowed to work for more than eight hours in any day and forty-eight hours in any week:

Provided that where any such motor transport worker is engaged in the running of any motor transport service on such long distance routes, or on such festive and other occasions as may be notified in the prescribed manner by the prescribed authority, the employer may, with the approval of such authority, require or allow such motor transport worker to work for more than eight hours in any day or forty-eight hours in any week but in any case for more than ten hours in a day and fifty-four hours in a week, as the case may be:

Provided further that in the case of a breakdown or dislocation of a motor

transport service or interruption of traffic or act of God, the employer may, subject to such conditions and limitations as may be prescribed, require or allow any such motor transport worker to work for more than eight hours in any day or more than forty-eight hours in any week.

4. Section 26 of the Act which prescribes the quantum of payment for overtime work is as under:--

26. 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.

5. A perusal of section 2(h) of the Act clearly spells out that Cashiers, Assistant Cashiers and Gunmen are included in the definition of Motor Transport Workers as according to it, Cash Clerks and watchmen or attendant fall within the ambit of Motor Transport Workers. Once that is so, the Motor Transport Workers are required or allowed to work for 8 hours a day or 48 hours in a week. On combined reading of sections 13 and 26 of the Act, it emerges that if the Motor Transport Workers are required or allowed to work for more than eight hours on any day or 48 hours on any Week, they are entitled to wages at the rate specified thereunder. Thus, it cannot be said that the payment which had been made to the petitioners for overtime work was an amount to which they were legally not entitled to.

6. No reliance could be placed by learned State Counsel on Annexure P-2 as learned State Counsel was unable to refer to any provision under which the Transport Commissioner, Haryana had issued Annexure P-2. In view of the above, the present writ petition is allowed and the order dated 27.6.1992, Annexure P-3, is quashed.