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**(1986) 08 CAL CK 0008**  
**In the Calcutta High Court**  
**Case No : Revisional Application No.**

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| Jitendranath Nath Brahmachari | Vs | APPELLANT  |
| Telecom Factory and Others    |    | RESPONDENT |

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**Date of Decision :** 25-08-1986

**Acts Referred:**

Constitution of India, 1950 — Article 227  
Payment of Wages Act, 1936 — Section 15, 15(3)

**Citation :** 91 CWN 1045 : (1994) 3 LLJ 152

**Hon'ble Judges :** Susanta Chatterjee, J; Mookerjee, J

**Bench :** Division Bench

**Advocate :** C.L. Ganguli, for the Appellant; Bose, for the Respondent

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## Judgement

Susanta Chatterji, J.—Both these two applications under Article 227 of the Constitution of India respectively by a large number of employees of the Government of India, Telecom Factory, Calcutta and by the Manager of the said factory, have been filed against the judgment dated 22nd January, 1986 passed by the learned Chief Judge, Court of Small Causes in an appeal preferred by the Manager of the said Factory u/s 17 of the Payment of Wages Act, 1935 against the order dated 29th August, 1984 u/s 15 of the said Act upon three applications of the employees passed by the authority under the said Act.

2. Three sets of the employees of the said Telecom Factory, Calcutta had filed three applications before the Authority under the Payment of Wages Act claiming, inter alia, that the Manager of the said Factory as the employer in calculating their over-time wages had deducted house rent allowances contrary to the provisions of the Payment of Wages Act. They had also prayed for, awarding compensation in terms of Sub-section (3) of Section 15 of the said Act. They were registered as P.W.A. Cases 125 of 1981, 134 of 1981 and 163 of 1981. The manager of the said Factory had contested the cases. The Payment of Wages Authority by his order dated 29th August, 1984 had disposed of all the said three cases by directing that the Manager Telecom Factory, Calcutta to deposit the unpaid

deducted over-time wages for the period from 9th July, 1963 to 20th October, 1979 together with compensation four times the claim in P.W.A. Case Nos. 125 of 1981 and 134 of 1981 and three times the claim in P.W.A. Case No. 163 of 1981.

3. The learned Chief Judge of the Court of Small Causes by his judgment under challenge uphold the award of compensation of arrear overtime wages for the aforesaid period but reduced the amounts of compensation payable by the employer to 10% of the amount of claim in each case. Before us neither the employees of the Factory nor the Manager disputed the amounts awarded as overtime wages by both the authorities under the said Act. While on behalf of the employees it was urged that the appellate authority had acted illegally reducing to 10% from four times the amounts of wages deducted in each case by the employer, on behalf of the Manager of the said Factory who was the employer, it was submitted that no compensation at all ought to have been awarded for the reasons mentioned hereinafter. In the present case for their works done beyond normal working hours, overtime wages were originally paid to the employees by taking into account their pay alone excluding all allowances including house rent allowances. Presumably in view of the directions contained in letter No. 5-14/60/WK dated 1st September, 1963 issued by the Assistant Director-General, Deptt of Communications and Civil Aviation, Ministry of Transport and Communications, Government of India, the employees of the Factory were paid their overtime wages on the basis of their pay alone excluding their house rent allowances. The Assistant Director-General (G.F. & S) Posts and Telegraphs by his subsequent letter No. 6-9/79-TF dated 29th October, 1979 had directed that both pay and allowances including the house rent allowance may be taken into account for determining the rate of overtime allowance for industrial workers of Telecom Factories. The said order was to take effect from the date of its issue and past cases were not to be reopened. The Assistant Director-General (T.F. & S), Government of India, Ministry of Communications , Post and Telegraphs Board by letter bearing No. 6-32/81-TF & S dated 13th October, 1981 conveyed the decision of the President of India that in supersession of the aforesaid letter dated 29th October 1979 orders contained therein would take effect from 9th July, 1963. Thus, under orders of the President of India with effect from 9th July, 1963 rate of overtime allowances to industrial workers of the Telecom Factories were to be calculated by taking into account both pay and allowances including House rent allowances of the workers.

4. In view of the aforesaid orders, the Manager of the Telecom Factory, Calcutta conceded the claim of the Industrial workers of the Factory for payment of balance amount of their overtime wages from 9th July, 1963 to 20th October, 1979 which was previously paid by taking into account their pay only and excluding house rent allowances. In case, any deduction had been made from the wages of an employee or any payment of wages has been delayed, under Sub-section (3) of Section 15 of the Payment of Wages Act, 1936, the Authority had a discretion to direct payment of such compensation as it may think fit not exceeding 10 times the amount deducted and not exceeding Rs. 25/- in case of

delayed payment. The appellate authority u/s 17 of the said Act has modified the first authority's order for payment of compensation at the rate of 4 times the deducted overtime wages and the appellate authority has awarded compensation at 10%. We would not be justified in setting aside the appellate authority's said order unless the appellate authority had thereby committed : any jurisdictional error.

5. Mr. C.L. Ganguli, learned advocate for the petitioner, has firstly submitted that the learned Chief Judge had failed to consider in the instant case the employer had illegally deducted from overtime wages to the workmen by not taking into consideration house rent allowance paid to them. The present case not being one of delay in payment of wages, proviso to Sub-section (3) of Section 15 of the Payment of Wages Act, 1936 was not attracted. Mr. Ganguli is right in his submission that in both Sub-sections (2) and (3) of Section 15 of the said Act a distinction has been drawn between any deductions made from the wages of an employed person and delay in payment of wages. In the instant cases, as already stated, without taking into considerations that amounts of house rent drawn for wages for overtime work done by persons employed in the Telecom Factory, Calcutta were initially paid to them. As per three aforesaid orders mentioned hereinbefore, both pay and allowance inclusive of house rent allowance drawn were to be taken into account in determining the rate of overtime allowance for industrial workers of the Telecom Factory. Even if the proviso of Sub-section (3) of Section 15 was not applicable, the Authority under the main part of Sub-section (3) of Section 15 has been given a discretion in awarding compensation. The statute has provided, inter alia, "together with payment of such compensation as the Authority may think fit not exceeding 10 times the amount deducted". In other words, the statute has only fixed the maximum amount of compensation in case of deduction from wages leaving the Authority to determine in each case such compensation as it may.

6. Mr. Bose, learned advocate appearing on behalf of the employer, has submitted that initially there was a bona fide doubt as to whether for the purpose of calculation of overtime allowances for industrial workers, Telecom Factories, the house rent allowances may be taken into consideration. Even after the expression wages in Clause (IV) of Section 2 was substituted by the Payment of Wages (Amendment) Act, 1957, no clear picture had emerged. On the other hand, the Assistant Director-General, Government of India, Ministry of Transport and Communication, Department of Communications and Civil Aviations by his memo No. 5-14/60-WK dated 9th July, 1963 had ordered that the overtime wages on the basis of their pay excluding all allowances. Only after the Assistant Director-General (T.F. & S), Posts & Telegraphs communicated the President's order that house rent allowance be taken into consideration in determining the rates of overtime allowance, house rent allowances become part of such overtime wages with prospective effect. It is significant that by the order mentioned in the letter dt. 29th October, 1979 the President of India did not initially direct payment of such allowance, with retrospective effect in supersession of the said

order, the President of India had decided that from 9th July, 1963 to 28th October, 1979 appears that overtime allowance be calculated by including house rent allowance (vide letter No. 6/32/81-T.F & S) dated 13th October, 1981 of the Assistant Director-General Government of India, Ministry of Communications and Civil Aviations, P & T Board. Therefore, only after the said order was made by the President of India, the workers of the Telecom Factories become entitled to claim that their house rent allowances be taken into account for determining the rates of their overtime allowances with effect from 9th July, 1963.

7. Mr. Bose has rightly pointed out that the Authority u/s 15(2) of the Payment of Wages Act, has a limited jurisdiction and could not have entertained claim involving complicated questions of law. The Supreme Court has repeatedly indicated the scope of the said jurisdiction of the Authority u/s 15(2) of the said Act (Vide A.V. D"costa Vs. B.C. Patel and Another, , Shri Ambica Mills Co. Ltd. v. Shri S.B. Bhatt and Anr.: 1961(1) LLJ 1 Payment of Wages Inspector, Ujjain v. Surajmal Mehra; 1969 (1) LLJ 762.

8. The only point mooted by both parties before us is whether the Chief Judge, the appellate authority, had acted lawfully in the exercise of his jurisdiction in awarding compensation at the rate of 10% in the three cases. Power u/s 15(3) of the Payment of Wages Act to award compensation is discretionary. The learned appellate authority was of the view that there was a bona fide dispute as to whether or not the house rent allowance was to be taken into account in calculating or determining the overtime allowance and that without specific orders in this behalf by the Government of India, the appellant Manager of the said factory was not in a position to take the house rent allowance into account in calculating the overtime allowances. The appellate authority further found that the Manager of the Factory did not act vindictively or mala fide. Therefore, according to the appellate authority, the compensation as allowed by the trial authority was excessive.

9. The appellate authority was not very wrong when it had observed that the Manager of the Factory could not take house rent allowance into consideration in calculating the overtime wages to the employees of the Factory except in accordance with the orders of the Government of India. We have already referred to the three Government orders regarding calculation of overtime wages. By the first order which was conveyed by the letter No. 5-14/68-WK dated 9th July, 1963 of the Assistant Director-General, Ministry of Transport and Communication, the house rent allowance was to be excluded while calculating the overtime wages payable to the workers of the Telecom Factories. Therefore, so long the said order remained in force, there could be no question of taking into consideration house rent allowance for determining the overtime wages to the employees of the Factory. Even when the Assistant Director-General (T.F & S) by his letter No. 6-9/79-TF dated 29th October, 1979 conveyed Government order that house rent allowance be taken into account for determining the rate of overtime wages it was expressly stipulated that the said order would take effect

not retrospectively but prospectively. But in spite of the said order, the employer did not take house rent allowance into account in paying overtime allowances at the full rate by inclusion of their house rent allowance with effect from 9th July, 1963, by authority of the President of India the order conveyed by letter No. 6-32/81-T.F. & S dated 13th October, 1981.

10. In our view, in fixing compensation at the rate of 10% the learned Chief Judge did not consider the following points. The expression "compensation" may mean:-

(1) Restitution which means return or restoration of the benefit received from the claimant, and

(2) Penal redress which denotes payment of damages for the loss suffered.

Compensation under Sub-section (3) of Section 15 of the Payment of Wages Act is not penal but is in the nature of a payment by way of recompensation for loss or privation by reason of deduction from the wages paid. In the instant case, even after issue of the Government order for inclusion of house rent allowance in the overtime wages with effect from 29th October, 1979, the employer did not forthwith pay overtime wages at the full rate. But all the instant cases, u/s 15 of the said Act were filed claiming deducted parts of overtime wages and compensation thereon. On 13th October, 1981 the President of India's decision for taking into account house rent allowance in calculating overtime wages was given retrospective effect from 9th August, 1963. But according to the appellate authority only in April/May, 1982 by notifying the notice board the employer had offered the employees payment of the deducted portion of the wages. But the employees were not individually offered the amounts in question. By awarding compensation at 10% the appellate authority itself presumably had taken into consideration only the conduct on the part of the Manager of the Factory in not paying overtime wages at the full rate. The Clause (i)(a) of Section 2 of the Payment of Wages Act, 1936 is not exhaustive but an inclusive one. In the wider sense, the Government of India was also to be considered the employer in relation to persons employed in the factory. Therefore, the Government of India itself had obligation to pay overtime wages at full rate without making unauthorised deductions. There was no explanation why the Government itself took such a long time in arriving at the decision to give effect to the order from 9.8.63.

11. In view of these facts, we remit the case back to the learned Chief Judge who is the appellate authority u/s 17 of the Payment of Wages Act for fresh determination of the compensation payable. At the same time, we are inclined to agree with the learned Chief Judge that in facts of this case order for payment of such compensation at three or four times be deducted from the amount of overtime wages made by the first authority was arbitrary and unreasonable. Therefore, just and fair compensation be determined afresh in accordance with law. We also may point out that Mr. Ganguli, learned advocate on behalf of the

workmen, was not right in contending that the compensation awarded must be always in multiples of the wages deducted subject to maximum laid down in Section 15(3) of the Payment of Wages Act. The appellate authority is free to fix such compensation at the proportionate rate which it may think to be fair and just. In exercise of our jurisdiction under Article 227 of the Constitution of India, we do not think it proper to fix the amount of compensation payable by the employer to the employees concerned. Therefore, we have decided to remit the case to the appellate authority.

12. We accordingly dispose of the Revisional Applications and set aside the order of the appellate authority so far as the same fixed the amount of compensation payable at 10% of the deducted wages. The appellate authority will re-hear the appeal in accordance with the law and may fix the amount of compensation payable by the employer to the employees concerned.

13. In the circumstances of the case, there will be no order as to costs.

Let a copy of this order be immediately communicated to the court below.

Mookerjee, J.

14. I agree

Application disposed off.