
(1991) 07 BOM CK 0084

In the Bombay High Court

Case No : Writ Petition No. 1913 of 1985

Model Mills, Nagpur

APPELLANT

Vs

Labour Court, Nagpur and others

RESPONDENT

Date of Decision : 17-07-1991

Acts Referred:

Factories Act, 1948 — Section 59
Industrial Disputes Act, 1947 — Section 33(2)

Citation : (1993) 2 LLJ 51 : (1992) 1 MhLj 904

Hon'ble Judges : M.S. Deshpande, J

Bench : Single Bench

Advocate : R.B. Puranik, for the Appellant; S.D. Thakur, for the Respondent

Judgement

1. By this petition under Articles 226 and 227 of the Constitution, the petitioner challenges the order passed by the Labour court Nagpur on May 10, 1985 u/s 33-C(2) of the Industrial Disputes Act, 1947, directing payment of overtime wages at a rate double than the ordinary rate of wages purportedly u/s 59 of the Factories Act.

2.38 employees of the petitioner filed an application u/s 33-C(2) of the Industrial Disputes Act for the recovery of difference in overtime wages which they were entitled to u/s 59 of the Factories Act and those actually paid from the year 1960 to December 1978. Overtime wages were paid to the 38 employees who were working as clerks up to May 1973 at the rate which was prescribed by Mangalmurti Award and from June 1, 1973 onwards they have been paid overtime wages at the rate of twice the ordinary rate of wage as per Section 59 of the Factories Act, rate 1 1/2 times the ordinary rate of wages for the overtime work put in between 42 and 48 hours and twice the ordinary rate of wages for overtime work put in beyond 48 hours per week.

3. The Labour Court did not accept the contention that the overtime between 42 and 48 hours could not be overtime in view of the provisions of the Factories Act, but that contention raised in this behalf before the Labour Court was not pursued

by Shri R. B. Puranik, the learned counsel for the petitioner. His contention was that as there was no provisions under the Indian Factories Act regarding the payment to be made for overtime wages for the overtime work less than 48 hours per week, the respondents were not entitled to be paid at that rate for the overtime work between 42 and 48 hours, but they were entitled to be paid at the rate specified by Mangalmurti Award which was equal to the ordinary basic wage. According to him, it was only the overtime work which was put in excess of 48 hours that would come within the purview of Section 59 of the Factories Act for which overtime wage at double the ordinary wage would become payable. On the other hand, it was contended on behalf of the respondents that having regard to the provisions of the Indian Factories Act and the Rules framed thereunder any overtime work beyond 42 hours of the prescribed weekly hours which was to be put in by the employees would come within the purview of Section 59 of the Factories Act obligating the petitioner to pay double the rate of ordinary wages for the overtime work put in.

4. It is necessary to notice the provisions of the Factories Act which have a bearing on the points raised. u/s 51 of the Factories Act, no adult worker shall be required or allowed to work in a factory for more than 48 hours in any week and u/s 54 subject to the provisions of Section 51, no adult worker shall be required or allowed to work in a factory for more than nine hours in any day, provided that subject to the previous approval of the Chief Inspector, the daily maximum specified in the Section may be exceeded in order to facilitate the change of shifts. Section 59 makes provision for extra wages for overtime and under sub-section (1) where a worker works in a factory for more than nine hours in any day or for more than forty eight hours in any week, he shall, in respect to overtime work be entitled to wages at the rate of twice his ordinary rate of wages. Sub-section (2) provides that for the purpose of sub-section (1), ordinary rate of wages means the basic wages plus such allowances, including cash equivalent of the advantage accruing through the concessional sale to workers of foodgrains and other articles, as the worker is for the time being entitled to, but does not include a bonus and wages for overtime work.

5. According to Shri. Thakur, the learned counsel for the respondents, the statutory limit referred to in sub-section (1) of Section 59 should be understood in the context of Rule 96 of the Maharashtra Factories Rules, 1963 under which for any work done by a worker beyond the normal specified period of work he should be issued overtime slips indicating the actual period of overtime worked by him, though in place of such daily slips the Chief Inspector may permit weekly slips to be issued.

6. It is important to notice that Section 51 only puts a maximum limit on the hours of work for which the worker shall be allowed to work in a factory that being 48 hours in a week and Section 54 requires that the daily work shall not exceed 9 hours in any day. Both these provisions permit the employer to substitute for the day or for the week such hours of work which would fall within

the maximum limits provided. Rule 96 describes the hours of work which may be prescribed for the day or for the week by the employer as the normal specified period of work. It is, therefore, clear that though Section 59 may not directly refer to such extra hours of work, over and above the normal specified period of work the extra work which is put in beyond the normal specified period will be overtime work. This position is settled by the decision of the Supreme Court in 1985 (2) Labour Law Journal 33, M/s. Philips India v. Labour Court, Madras, where it has been laid down while examining the provisions of Tamil Nadu Shops and Establishments Act, 1947 that even though the expression "overtime" is not defined in the Act, its connotation is unambiguous and in no uncertain terms it means in the context of working hours, the period in excess of the working hours. Shri R. B. Puranik, the learned counsel for the petitioner, stated that in view of the decision of the Supreme Court which was not available when the Labour Court decided this matter, he would proceed on the basis that the work beyond 42 hours which is prescribed by the petitioner, but is less than 48 hours as prescribed by Section 51 of the Factories Act would be overtime and that wages shall have to be paid for this period of overtime work, but in his submission, they would not be at the same rate as prescribed by Section 59 of the Factories Act i.e. at a rate double than the ordinary rate of wages.

6A. This question was also considered by the Supreme Court in the aforesaid case. There the employers M/s. Philips India and State Bank of India had prescribed the rate of overtime wages at 1 1/2 times of ordinary wages for overtime work in excess of its prescribed hours of work and up to the maximum permissible under the Statute and that rate was not interfered with.

7. The submission of Shri Thakur is that the scheme of Tamil Nadu Shops and Establishments Act, 1947 is materially different from that of the Factories Act and he in particular referred to Section 14(1) of that Act which runs as follows :

"Daily and weekly hours of work (1) Subject to the provisions of the Act, no person employed in any establishment shall be required or allowed to work for more than eight hours in any day and forty-eight hours in any week :

Provided that any such person may be allowed to work in such establishment for any period in excess of the limit fixed under this sub-section subject to payment of overtime wages, if the period of work, including overtime work, does not exceed ten hours in any day and in the aggregate fifty-four hours in any week."

In substance sub-section (1) of Section 14 of Tamil Nadu Act provides for what Sections 51 and 54 of the Factories Act separately provided. With regard to the Proviso to Section 14(1), it was urged that the limits set out by the proviso was the limit of the prescribed hours of work. This submission does not appear to be correct, because sub-section (1) sets down the statutory ceiling for the hours of work that may be prescribed for the day or for the week, and the reference in the proviso is not to the hours prescribed by the employer subject to the maximum provided by the Statute, but to the statutory ceiling provided by sub-

section (1) and it is in that context that the employer's liability to pay the overtime wages would arise. The Tamil Nadu Act was also silent with regard to the rate at which overtime wages should be paid up to the statutory limit provided by sub-section (1) of Section 14 over and above the prescribed period of the work. The position under the Factories Act, considered in the context of sections 51, 54 and 59, is in no way different and it is difficult to accept the submission of Shri Thakur that the schemes of the two Acts being materially different, the ratio of the decision in M/s. Philips India cannot be applied to the situation obtaining in the present case.

8. Reference was made by Shri Thakur also to the observations in Indian Oxygen Ltd. Vs. Their Workmen, . But it is not necessary to refer to those observations because in para 21 of M/s. Philips India Limited, the Supreme Court has dealt with the proposition laid down in Indian Oxygen Limited, and neither of those observations lend any assistance to the respondents here in the matter of the rate of wages which would be payable for the overtime work between the prescribed period of wages and the statutory limits set down under Sections 51 and 54 of the Factories Act. The consequence which would flow from Section 59 would apply only to the overtime wages over and above the statutory limits set down by that Section. It is therefore, not possible to accept the view of the learned Judge of the Labour Court that for the entire period of overtime work beyond 42 hours per week wages should be paid at the rate of double the ordinary rate of wages.

9. With regard to the rate which is fixed by Mangalmurti Award, the contention was that, that rate is even less than the rate in the Factories Act and what is contemplated by section 59(2) is ordinary rate of wages, which means basic wages plus such allowances as are mentioned therein, and since Mangalmurti Award provides only for the payment of merely the basic wages without the allowances, that rate would be less than the rate provided by Section 59 of the Factories Act. Now, Section 59(2) would apply only to the case which will be covered by sub-section (1) and not to any other case such as the one we have here which is less than 48 hours per week, but in excess of 42 hours per week, and therefore, the argument based on the meaning given to "ordinary rate of wages" by sub-section (2) to that expression in sub-section (1) would not lend any assistance to the respondents.

10. It was then contended that the reasonableness of the Mangalmurti Award should be considered because it is inconsistent with the provisions of Factories Act. In the application u/s 33-C(2) of the Industrial Disputes Act made before the Labour Court, the only ground raised was that as per provisions of the Factories Act, the respondents were entitled to overtime wages at the rate of twice the ordinary rate of wages for the extra work of overtime work done by them in excess of 7 hours a day, and therefore, they were entitled to be paid the difference of their wages and/or benefits. In the written statement filed by the present petitioner, it was specifically mentioned that overtime wages were paid

on pro rata basis calculated on basic wages for 26 hours in excess of 182 hours per month and this was in terms of Mangalmurti Award which is still in force and binding upon the parties. It was urged that in any case, the period referred to in the petition up to May 1973 and up to April 1974 was irrelevant for the reasons stated. In respect of this no challenge was raised by the respondents by making proper pleadings either with regard to the unreasonableness of the provision made by the Mangalmurti Award or on the ground of its inconsistency with Section 59 of the Factories Act. No other material was also placed on record to show where the inconsistency lay and though Shri Thakur stated that arguments were advanced before the Labour Court on this aspect it is apparent that the arguments could not have been entertained unless a foundation was laid in the pleadings. What fell, therefore, to be considered was only the applicability of Mangalmurti Award to the overtime wages. With regard to the period between 48 hours and 42 hours, it cannot be said that there is any conflict between the terms of Mangalmurti Award and the statutory requirement u/s 59(1) of the Factories Act, as the latter is entirely silent on this aspect. The respondents cannot, therefore, succeed on the ground either of unreasonableness of Mangalmurti Award, a point not raised in the pleading, or on the ground of inconsistency.

11. In result, the order passed by the Labour Court is modified in that the overtime wages shall be calculated for the overtime period between 42 and 48 hours a week in terms of the entitlement under Mangalmurti Award and in respect of the overtime period in excess of 48 hours per week at the rate of twice the ordinary rate of wages as mentioned in Section 59(1) of the Factories Act. The Labour Court shall work out the entitlements of the respondents on these lines within three months. Rule made absolute in these terms. No order as to costs.