
(2007) 12 GAU CK 0040
In the Gauhati High Court

Nepal Chandra Das

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 05-12-2007

Acts Referred:

Factories Act, 1948 — Section 64

Citation : (2008) 1 GLT 190 : (2008) 2 LLJ 887

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Judgement

Hrishikesh Roy, J.—Heard Mr. S. Talapatra, learned Sr. counsel appearing for the petitioner. Also heard Ms. A.S. Lodh, learned Counsel appearing for the State respondents.

2. The petitioner who is engaged as a Pump Operator in the Gas Thermal Civil Sub Division, Baramuda is before this Court seeking a direction on the respondents to make payment of the outstanding overtime allowance for the period starting from fourth quarter ending in the year 1989 to the second quarter ending in the year 1993. The total amount claimed by the petitioner towards overtime allowance is Rs. 11,119/-.

3. Mr. S. Talapatra, learned Sr. counsel appearing for the petitioner has referred to the overtime statement dated 2.2.96 (Annexure-1) prepared by the Executive Engineer, Gas Thermal Civil Division, Rokhia which indicates the extra hours of service rendered by the petitioner and the total amount payable to him as overtime allowance. The learned Counsel has also referred to the certificates enclosed as annexures which recommend payment of overtime allowance to the Pump Operators.

Learned Counsel submits that there is no dispute about the actual overtime rendered by the petitioner and the only objection that is raised for refusing to make payment is reflected in the counter affidavit filed on behalf of the Government.

In the said counter affidavit, it is averred that overtime allowance cannot be paid to the petitioner because of the provisions contained in Section 64 of the Factories Act which prohibits more than 50 hours per quarter of overtime duty, without obtaining prior approval of the Chief Inspector of Factories. As the approval of the Chief Inspector for the abnormal high hours of overtime duty had not been obtained, the payment for such extra duty cannot be made to the petitioner.

4. With reference to the above objection raised on behalf of the State, it is contended on behalf of the petitioner that it is not the responsibility of the employee to seek approval of the Chief Inspector of Factories and the responsibility is of the employer to seek such approval, for making a person work beyond the permissible duty hours prescribed u/s 64 of the Factories Act. As it is the failure of the employer to obtain such approval and since there is no dispute that the petitioner was actually made to work for the extra hours, the employer cannot escape the liability to make the payment for the actual extra service rendered by the petitioner.

It is further contended that the provisions of Section 64 of the Factories Act may be relevant for the purpose of not engaging a person for excess hours of duty and to ensure protection of a person from over exploitation beyond their physical endurance, but such provision cannot be resorted to deny wage benefit to the employee who was made to work extra hours.

5. Ms. A.S. Lodh, learned Counsel appearing for the respondents submits that since the approval of the Chief Inspector of Factories was not obtained by the Executive Engineer under the provisions of Section 64 of the Factories Act, the Finance Department has refused to sanction payment and accordingly, the overtime wages could not be paid to the petitioner. Learned Government Advocate also contends that merely because such payments were earlier given by disregarding the provisions of Section 64 of the Factories Act, the same cannot now be given on the basis of past practice, which is prohibited by the statute. In support of her contention, learned Government Advocate has referred to the decision of the Supreme Court reported in State of Bihar and Others Vs. Kameshwar Prasad Singh and Another,

6. I have considered the submissions made by the rival counsels. From reading of the provisions of Section 64 of the Factories Act, it is clear that the said provision was enacted to give protection from over exploitation of an employee. Engaging persons for extra hours of work beyond a certain limit is prohibited, without obtaining prior approval of the Chief Inspector of Factories. Such approval is required to be obtained by the employer and naturally not by the employee.

7. In a case of breach of the said provision, appropriate proceedings may be drawn up against an employer but the said provisions cannot be resorted, in my view, to deny wages for overtime services obtained from an employee. In this case, it is not the stand of the Mate respondents that the petitioner had not

actually worked the extra hours and, in fact, the overtime statement under which the petitioner is making the claim is prepared by the Executive Engineer himself.

8. In view of above, I do not think that y the respondents are justified in denying overtime payment to the petitioner by resorting to the provisions of Section 64 of the Factories Act. Accordingly, this writ petition is allowed and the respondents are directed to make payment of the overtime allowance amounting to Rs. 11,119/- due to the petitioner. Such payment should be made quickly and preferably within a period of two months from today, failing which, the said amount would earn interest @ 6% per annum, from expiry of two months, till the payments are actually made. With the aforesaid directions, this writ petition is disposed of.