

(1989) 12 AHC CK 0056
In the Allahabad High Court
Case No : C.M.W.P. 9555 of 1979

New Victoria Mills Ltd.

APPELLANT

Vs

Labour Court I and Others

RESPONDENT

Date of Decision : 12-12-1989

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)
Uttar Pradesh Industrial Disputes Act, 1947 — Section 4(1)
Industrial Disputes Act, 1947 — Section 33C(2)
Uttar Pradesh Industrial Disputes Act, 1947 — Section 4(1)
Industrial Disputes Act, 1947 — Section 33C(2)
Uttar Pradesh Industrial Disputes Act, 1947 — Section 4(1)

Citation : (1994) 3 LLJ 1138 : (1990) 1 UPLBEC 152

Hon'ble Judges : B.N. Misra, J

Bench : Single Bench

Advocate : T.N. Tiwari, for the Appellant; K.P. Agarwal, Standing Counsel and A.K. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Misra, J.

1 M/s. New Victoria Mills, .unit of National Textile Corporation Ltd., is the petitioner. Respondent Nos. 3 to 15 are the workmen of the Corporation and Respondent No. 2 is the union representing the workmen. The Corporation has filed this petition under Article 226 of the Constitution praying for quashing the order, dated 7th June 1979 (Annexure 6) and its corrigendum, dated 21st August 1979 (Annexure 7); passed by the Presiding Officer, Labour Court (I) U.P. at Kanpur in Misc. Case No. 84 of 1978.

2. The facts may be briefly stated. Respondents 3 to 15 were working under the Corporation as clerks in various departments. Before 14th October 1976 the clerical staff of the Corporation including Respondents 3 to 15 were required to work 42 hours in a week, i.e. seven hours per day. However, in the exigencies of

service the Corporation decided to increase the working hours from 7 to 7 1/2 hours per day (Monday to Saturday). Accordingly a notice u/s 4-1 of the U.P. Industrial Disputes Act was given for changing the working hours from 7 to 7 1/2 hours per day with effect from 8th November 1976. The revised working hours remained in force from 8th November 1976 to 3rd June 1977 and from 4th June 1977 the Corporation reduced the working hours from 7 1/2 hours per day to 7 hours per day, i.e. Monday to Saturday. Respondents 3 to 15 filed applications u/s 33C(2) of the Industrial Disputes Act, 1947 (Central) for computation and payment of their wages for the period 7th November 1976 to 3rd June, 1977 during which period they had put in 7 1/2 hours work per day. The claims of the aforesaid respondents were registered as Misc. Case No. 84 of 1978. The Corporation appeared before the Labour Court and filed its reply which is Annexure 3 to the writ petition. The stand of the Corporation is that Respondents 3 to 15 were not entitled to any overtime wages as they had not worked for more than 48 hours a week or 8 hours per day as provided in Section 59 of the Factories Act. The further case of the Corporation was that the revised working hours during the period from 8th November 1976 were not in excess of the weekly hours as provided in Section 51 of the Factories Act or in excess of the daily hours as provided in Section 54 of the said Act. The claim for extra wages was resisted by the Corporation on the aforesaid grounds and also on the ground that as the change in the working hours was effected in due compliance of the provisions contained in Section 4-1 of the U.P. Industrial Disputes Act, 1947, the concerned workmen, namely, Respondents 3 to 15 were not entitled to any overtime or extra wages.

3. The Labour Court on consideration of the rival stands of the parties held that though Respondents 3 to 15 were not entitled to any overtime wages, they were entitled to extra wages for the extra half hour work per day put in by them during the period from 8th November 1976 to 3rd June 1977; Learned counsel appearing for the petitioner Corporation has vehemently urged that as the change in the working hours at the rate of half an hour per day effective during the period from 8th November 1976 to 3rd June 1977 was in due and full compliance of the statutory requirements the Corporation was entitled to take extra work from Respondents 3 to 15 but was not liable to pay either overtime wages or any extra wages to the said workmen. This point had been urged before the Labour Court and in the penultimate paragraph of the order passed by the Labour Court (Annexure 6), there is a full discussion on this point. I find myself in entire agreement with the reasons noted by the Labour Court and I have nothing more useful to add to what has been stated therein. It is worthy of note that though the change in working hours was brought about by the Corporation in due compliance of the statutory requirements, no statutory provision nor any case law has been cited before in support of the proposition that in respect of the extra half an hour work which was taken from the workmen by the Corporation, the concerned workmen were not entitled to proportionate extra wages. The Corporation has not filed any material or document to show

that according to the contract of employment between the Corporation and its employees, it was open to the Corporation to take extra work from the workmen without incurring the liability of making proportionate extra payment. In paragraph 23 of the writ petition it is stated that the Corporation has not been given any opportunity for adducing oral or documentary evidence. This allegation is not supported by any material and therefore must be rejected. As already noted, the Corporation had appeared before the Labour Court, filed its written statement and had participated in the proceedings.

4. Learned Counsel appearing for the petitioner Corporation has cited a decision of the Supreme Court in the case of the The Oil and Natural Gas Commission Vs. The Workmen, , wherein it was held (P. 24):

"The management must in our opinion have full power and discretion in fixing the working hours of the administrative staff within the limits prescribed by the statute. When the change in the working hours is covered by Section 9-A read with the First Schedule of the Act, compliance with the said section would undoubtedly be necessary for its sustenance. In the present case, as already observed, Section 9-A is not attracted. When the administrative office at Baroda was temporarily located about a couple of kilometers away awaiting completion of its permanent abode, the factory was in the process of being constructed and there was no question of fixing the working hours of the administrative office on a permanent basis. Perhaps there was not even enough work for the office staff to keep them occupied for more than 6 1/2 hours per day. It was only when the factory was completed and the administrative staff attached to it shifted to its own building at the factory site, that the management apparently on an overall assessment of its requirements fixed 8 working hours per day. This, in our opinion, was within the competence of the management...."

5. I find nothing in the aforesaid decision of the Supreme Court which helps the petitioner in the present case. Here the position is accepted that it was within the competence of the Corporation to increase the working hours and in fact the working hours were increased from 7 to 7 1/2 hours per day during the period from 8th November 1976 to 3rd June 1977. Now the question is whether for this extra work Respondents 3 to 15 were entitled to be paid proportionate extra wages. The Labour Court has dealt with this question at great length and has found that Respondents 3 to 15 are entitled to proportionate extra payment for the extra work taken from them. I find no reason to interfere with the findings and decision of the Labour Court.

6. In the result, this petition, which has no merit, is dismissed. Parties will, however, bear their own costs.

7. With the dismissal of the writ petition, interim orders dated 23rd November 1979 and 14th March 1980 stands vacated.