

(2002) 07 BOM CK 0089

In the Bombay High Court

Case No : Writ Petition No. 2736 of 1995

Pune Municipal Corporation

APPELLANT

Vs

Suryakant Pandurang Dharwad

RESPONDENT

Date of Decision : 12-07-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)
Minimum Wages Act, 1948 — Section 14

Citation : (2002) 5 BomCR 7 : (2002) 95 FLR 559 : (2002) 4 MhLj 56

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : R.G. Ketkar, for the Appellant; Seema Sarnaik, for the Respondent

Final Decision : Allowed

Judgement

R.J. Kochar, J.—The Pune Municipal Corporation has challenged the common order dated 25-1-1994 passed by the Labour Court in the applications filed by various employees, individually, as reflected in the title of the common order, u/s 33C(2) of the Industrial Disputes Act, 1947, claiming wages for the period for the days i.e. 22nd March, 1986, 23rd March, 1986, 26th March, 1986 and 28th March, 1986 at double the rate as over time wages for the work done on those days. According to the employees, those days were weekly holidays for them but they had worked on those days and, therefore, they were entitled to get wages at double the rate. The employees have given computation of the total claim which is mentioned in the annexure to the impugned order on page 33 of the paper book. The total number of claimants is 161 who have claimed overtime wages for the aforesaid days. The respondent herein is one of them. The petitioners filed their written statement to oppose the claims of the employees. It was the case of the petitioners that by a circular dated 16th October, 1985, the Municipal Commissioner had notified that some employees will be required to work on the weekly holidays so that the pay bills of the municipal employees could be prepared to save the payment of overtime wages and instead such

employees would be given alternative additional holidays. By another specific circular dated 19th March, 1986 all the employees in the audit section were informed that to expedite the preparation of the payment of dearness allowance payable to the employees, the employees would be required to work on 22nd, 23rd, 26th and 28th March 1986. They were also informed that for their working on those holidays, they would be given two holidays per weekly holiday. According to the petitioners, in lieu of four weekly holidays, the employees were given 8 alternative additional holidays. It was the case of the petitioners that the work which was required to be done was in the interest of the employees as they were to be paid the difference in D. A. allowance and H.R.A. as such that work was required to be completed and, therefore, the employees of the audit section were required to work on those four weekly holidays and in lieu, to enjoy eight other alternative additional holidays. The petitioners further contended that the employees working in various departments, who were concerned with the working of the preparation of the said bills had reported for work on those days and they had properly worked and had enjoyed alternative weekly holidays in accordance with the circular dated 19th March, 1986. The petitioners further contended that the employees of the audit section had also worked on those days. Subsequently, however, they refused to avail of the alternative additional holidays and they claimed overtime wages at double the rate on the ground that they had worked on the weekly holidays and, therefore, they were entitled to get overtime at double the rate of their wages and that they could not be compelled to work on weekly holidays without giving them overtime charges. According to the petitioner, the Corporation had acted in the spirit of saving the avoidable expenditure so that the saved funds could be used or utilised for the civic purposes to provide better civic amenities to the people. The petitioner finally submitted that their action was in public interest. The petitioner, therefore, prayed for dismissal of the application.

2. The learned Labour Court framed a point for determination as to whether the applicants were entitled to get overtime wages for the work done on the holidays and answered the same on the basis of the pleadings and evidence, affirmatively in favour of the employees.

3. Aggrieved by the said order of the Labour Court, the petitioners have filed this present petition. Shri Ketkar, the learned Advocate for the petitioners, submitted that except the employees of the audit section, all the other concerned staff had reported for work and had worked on the four holidays and had availed of the alternative holidays as offered under the aforesaid circular. Shri Ketkar submitted that the said circulars were sent to all the Heads of Departments and they were also displayed on the notice board of the Corporation. Shri Ketkar also submitted that the employees of the audit section also reported for work along with the other employees in different sections without any objection and without any condition. Shri Ketkar further submitted that when these employees of the audit section reported for work they did not put the condition that they will not avail of the alternative holidays and that they would claim overtime wages for the work

done by them on the weekly holidays. Shri Ketkar, therefore, submits that the employees were not entitled to get any overtime wages. According to the learned Advocate, the Municipal Commissioner had powers to streamline and organise the working of the corporation in accordance with the exigencies of the work u/s 67 of the Bombay Provincial Municipal Corporations Act, 1948. He also submitted that there was no provision under the said Act for payment of any overtime wages. He further pointed out that the petitioner Corporation was exempted wholly from the provisions of the Bombay Shops and Establishments Act, 1948 as stipulated in Schedule 2, Entry III from 24th August, 1949. Shri Ketkar, further submitted that the employees had no existing right to claim overtime wages, either under the I. D. Act or Bombay Shops and Establishments Act, According to Shri Ketkar, in reply to the submissions of Ms. Sarnaik, the provisions of the Minimum Wages Act, 1948 were also not applicable. He submitted that there was absolutely no pleading or averments in the application to show as to on what basis or under which law the employees were claiming overtime wages.

4-5. Ms. Sarnaik, the learned Advocate for the respondent, supported the impugned judgment and order of the Labour Court. She submitted that this Court should not interfere with the said judgment under Article 227 of the Constitution of India. She further submitted that the claim of the employees for overtime wages was legal, proper and justified. She submitted that there was a past practice of payment of overtime wages under similar circumstances. The employees were paid at double the rate as and when they were called upon to work overtime. According to the learned Advocate, the claim of the employees was u/s 14 of the Minimum Wages Act. The Learned Advocate in support of her claim relied upon a judgment of the Supreme Court in the case of Y.A. Mamarde and Nine Ors. and Ghanshyam and Others Vs. Authority under the Minimum Wages Act (Small Causes Court) Nagpur and Another, . Ms. Sarnaik further pointed out that though the employees had factually reported for work and had worked on the aforesaid weekly holidays, they had not received individually the circular calling upon them to work on the holidays and, therefore, it could not be said that they had accepted the condition of additional alternative holidays in lieu of working on the weekly holidays, in accordance with the said circular. According to her, the employees are, therefore, entitled to get overtime wages at double the rate and the Labour Court has rightly determined and computed their dues.

6. It is not in dispute that the employees of the audit section had also reported for work and had actually worked on the weekly holidays under consideration. It is also not in dispute that they did not avail of the alternative additional holidays in lieu of their working on those weekly holidays. It is very well established that the Labour Court u/s 33C(2) of the I.D. Act can determine and compute the money dues claimed by the workman, having existing right to claim such money from the employer. If the workmen establish that they have an existing right to claim the money from the employer and that the employer has failed to pay such dues in that case, the Labour Court has jurisdiction to direct the employer to pay

the amount determined and computed u/s 33C(2) of the Act. It is, therefore, clear that the applicant or the claimant has to first establish his right to make a claim of money from the employer. In the absence of the existing right having been established, the Labour Court has no jurisdiction to determine and compute the claims made u/s 33C(2) of the I.D. Act. This provision is more or less of the nature of execution of the established claims of the workmen. Under these provisions no new claims or no new terms of contract can be established or disputed questions can be adjudicated for the first time. It is pertinent to note that in the applications filed by the workmen, it is nowhere indicated that under what law or under what contract they were claiming the amount of overtime wages. The applications are absolutely vague in respect of the source of the existing right. It is nowhere mentioned that the employees were claiming overtime wages at double the rate either under any statute, enactment or award or settlement or agreement. Ordinarily, the employees covered by the Bombay Shops and Establishments Act have a right to claim overtime wages. The said enactment is not applicable to the local authority of the petitioner, as there has been an exemption from the provisions of the said Act given to the petitioners. The applicants have also not mentioned in their applications that their claim was based under the provisions of the Minimum Wages Act, 1948. The applicants have not even whispered the source of their existing right. Beyond making a vague averment that they are entitled to get overtime wages "under the law", there is no specific statute or enactment referred or averred to show the source of the existing right to get the overtime wages. Even the Labour Court has merely said that the employees are entitled to get overtime wages "under the law" without specifying and without pointing out under which law the Labour Court was granting the claim of the applicants for overtime wages. It is not enough merely to say that the employees are entitled to get wages under the law. If the law requires the claimants to establish their existing right to get certain claim, they must show their existing right and the source of such right or the basis thereof. The source could be either a statute, say the Bombay Shops and Establishments Act or the Payment of Bonus Act or the Minimum Wages Act, etc. The pleading has to be clear atleast to that extent. It cannot be said that the existing right is established by merely saying that the workman is entitled to get certain amounts "under the law". The alleged law has to be identified and established by specific pleadings in the application. The opposite party or the employer cannot be taken by surprise and cannot be kept in dark in respect of the alleged source of the existing right. The employer must know under what provisions of law or under what terms of the contract, the claim is made against him and under what provisions he is liable to make such payment. Neither the employees nor the Labour Court has identified the source of the existing right to grant the overtime wages at double the rate as awarded by the Labour Court.

7. As a matter of fact, the employees of the audit section had reported for work on the aforesaid weekly holidays in accordance with the circular. I am not prepared to believe the statement made by a witness that he was not knowing

the circular and that the circular was not given to individual employee and that he had not seen the circular. It is an admitted fact, on the basis of which the claim of overtime is made, that the employees of the audit section had actually reported for work and had actually worked on those dates. It, therefore, cannot be held that the employees were not knowing the said circular whereby they were called upon to work on the weekly holidays and whereby they were offered additional alternative holidays. It is, therefore, beyond any pale of doubt that the employees of the audit section had full knowledge of the said circular. They had reported for work and had worked on all the weekly holidays on which they were called. At no point of time there was any protest from them or any demand from them that they would be working on the weekly holidays as required in the circular but they will not be availing of the alternative additional holiday and that they would be claiming overtime wages for their work on those holidays. It cannot be believed that over the long span of period during which they were required to work, they did not know the terms of the circular and that they did not even care to find out the terms of the circular. If the said employees were to protest or to demand overtime wages for the work done on the weekly holidays, the petitioners would definitely have been put on guard and would have taken certain other decision. The employees had, therefore, accepted the terms stipulated in the circular that they would work on weekly holidays and in lieu thereof they would agree to avail of the alternative holidays as offered in the said circular. By implication the employees had accepted the terms of working on the weekly holidays in the circular. By their conduct, the employees had accepted the circular which can be construed as an agreement between the petitioner and the employees. Once having accepted the terms in the circular, the employees cannot turn around and cannot back out and cannot put forward their demand for overtime wages for the work done on the weekly holidays. If they did not agree with the circular, they ought to have protested at the appropriate time and they ought to have made their demands clear that they would work on the weekly holidays only if they were given overtime wages. During the period from 22-3-1985 to 28-3-1985 at no point of time they whispered their demand for overtime wages instead of alternative holidays. It is impossible to believe that during such a long span they did not notice the circulars displayed on the notice board and that they did not hear any talk about the circular which was finally in their interest as they, all were to get arrears as a lump sum.

8. The Labour Court has observed that the question of working on the weekly holidays and giving of compensatory holidays to the employees of the audit section was not discussed with the union. There is nothing on record to show that the union had at any time protested against the circular. It, therefore, can be safely presumed that even the union did not object to the said circular and that even the union tacitly agreed with the temporary arrangement or reshuffling of the holidays for a few days in the interest of all. Besides, it was not necessary for the petitioner to have discussed this issue with the union as the Union had never invited any discussion and no provision is pointed out to me that such

discussion was necessary. The petitioner had displayed a circular requiring the employees to work on certain holidays and giving them additional alternative holidays in lieu of the working on the weekly holidays. There was no change in the service condition of any nature. The petitioners had merely shifted the holidays in the interest of the employees of the corporation and in the public interest. The employees of the corporation were to be paid the difference in the dearness allowance and the house rent allowance and the computation of such difference was to be prepared so that the employees could be paid the amounts payable to them. I do not find anything wrong in the discretionary decision taken by the Municipal Commissioner requiring the employees to work on the weekly holidays and instead to offer them two additional holidays per day of work of regular weekly holiday. There is no loss or prejudice caused to the employees. They were offered two holidays for one day's weekly holiday. The Municipal Commissioner has rightly observed that the economy measure was taken to save some funds to be utilised for the civic purposes and in the interest of public. The Municipal Commissioner has balanced both interests; he has done justice to the employees by giving them two holidays for one day working on weekly holiday. The employees of the Corporation had accepted the said condition and had worked in accordance with the offer made in the circular except the employees of the audit section. If they were to put forward their demand as soon as the circular was displayed in that case that would have been a different matter. In the present case, even the employees of the audit section had accepted the condition stipulated in the circular and had actually worked and had indicated by their silence that they would avail of additional alternative holidays. It was, therefore, not open to them to claim overtime wages for the work done on the weekly holidays. They had no right to claim overtime wages having accepted the terms in the circular. They were indeed entitled to get additional alternative 8 holidays for having worked on 4 weekly holidays.

9. It is not possible to accept the contention of Ms. Sarnaik that the claim of the employees is based in Section 14 of the Minimum Wages Act, 1948. In the present case, the employees had in fact accepted the alternative arrangement of availing of two holidays and they had not pressed or demanded overtime wages soon after the circular was displayed at any time and, therefore, Section 14 of the Minimum Wages Act has no application in the present peculiar circumstances. The learned Advocate has relied upon the aforesaid judgment of the Supreme Court. The facts and circumstances in that case are totally different. In our case, the employees had by implication agreed to work on weekly holiday and had agreed by implication to avail of two alternative additional holidays. In such circumstances, it cannot be said that the employees are entitled to get overtime wages under the provisions of the Minimum Wages Act.

10. Shri Ketkar has relied upon the judgment of the Supreme Court in the case of Municipal Council Hatta Vs. Bhagat Singh and Others, . In that case also the claim of overtime under the Minimum Wages Act was made. The Supreme Court has, however, turned down such a claim as not maintainable, on the ground that

the said provision is not applicable to those employees who are getting more than the minimum wages as prescribed under the Act. The Supreme Court has observed in paras 4 and 5 as under :--

"4. There is also an amendment to Section 14 by addition of Sub-section (1-a) under the Minimum Wages (Madhya Pradesh Amendment and Validation) Act, 1961 being Act 23 of 1961. Sub-section (1-a) which is inserted in Section 14 entitles the State Government by notification to fix the limit for overtime work in a scheduled employment. This provision is not directly relevant. To claim overtime u/s 14, the following conditions must be fulfilled by an employee (1) the minimum rate of wages should be fixed under the Minimum Wages Act, 1948; and (2) such an employee should work on any day in excess of the number of hours constituting a normal working day. Therefore, overtime u/s 14 is payable to those employees who are getting a minimum rate of wage as prescribed under the Minimum Wages Act, 1948. These are the only employees to whom overtime u/s 14 would become payable. In the present case the respondents cannot be described as employees who are getting a minimum rate of wages fixed under the Minimum Wages Act, 1948. They are getting much more and that too under the Madhya Pradesh Municipal Services (Scales of Pay and Allowances) Rules, 1967. Therefore, Section 14 has no application to them. We have not been shown any other provision under which they can claim overtime.

5. The application u/s 22 of the Minimum Wages Act, is, therefore, misconceived. The respondents seem to have proceeded on the basis that because employment under any local authority is listed as Item 6 in the Schedule to the Minimum Wages Act, 1948, they would automatically get overtime under the said Act. Section 14, however, clearly provides for payment of overtime only to those employees who are getting minimum rate of wage under the Minimum Wages Act, 1948. It does not apply to those getting better wages under other statutory rules."

11. The reliance placed by the Labour Court on a judgment reported in 1975 (3) FLR 53 is equally misplaced as in that case, there was an award between the State Bank of India and the employees. In the present case, there is no such award, agreement or settlement in respect of overtime wages. It is, therefore, clear that there is neither a contract nor a statute as a source of the existing right of the employees. The only source of their existing right was the circular which the petitioner have been ready to enforce but the employees of the audit section refused to get the benefits of that circular. The Labour Court was, therefore, wholly wrong in observing that the employees had existing right in any other unspecified law. The findings of the Labour Court, therefore, are erroneous, illegal and without any basis. The impugned judgment and order, therefore, deserves to be quashed and set aside and the same is quashed and set aside.

12. Petition is allowed. Rule is made absolute. No orders as to costs. It is clarified that all those eligible employees who are still employed would be entitled to avail

of the additional alternative holidays in accordance with the circular and those who have ceased to be in employment would be entitled to claim wages at the prevalent rate of pay at the relevant time for the unavailed holidays under the said circular.