
(2010) 03 AHC CK 0277
In the Allahabad High Court
Case No : Writ-C No. 17574 of 1985

Rana Pratap Singh

APPELLANT

Vs

Labour Court and others

RESPONDENT

Date of Decision : 08-03-2010

Acts Referred:

Factories Act, 1948 — Section 59
Industrial Disputes Act, 1947 — Section 33C(2)
Uttar Pradesh Industrial Disputes Act, 1947 — Section 6H(2)

Citation : (2010) 125 FLR 822

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Advocate : Shyam Narain, G.S. Mishra and Gauri Shankar, for the Appellant;
S.C., Arvind Kumar and S.C. Verma, for the Respondent

Final Decision : Dismissed

Judgement

Prakash Krishna, J.—This writ petition is at the instance of workman challenging the legality and validity of the order dated 23.8.1985 passed in Misc. Case No. 21 of 1982 and 21 of 1984 whereby the claim of the petitioner for overtime wages has been denied. The petitioner filed an application u/s 6-H (2) of the U.P. Industrial Disputes Act claiming overtime wages on the pleas inter alia that the normal duty of the petitioner was six hours a day i.e. thirty six hours per week except on second Saturday. He regularly performed his duties and work and also performed overtime duties under the command of superior officers including holidays. He claimed his entitlement for wages for the overtime as per detail given along with the application filed u/s 6-H(2) of the Act for the period between April, 1979 to November, 1980. The said application was numbered as Misc. Case No. 21 of 1982. A written statement denying the claim of the petitioner was filed on the pleas inter alia that the petitioner is not entitled for overtime wages besides the plea that such a claim, if any, can be laid under the Payment of the Wages Act and not by means of the present application u/s 6-H(2). On merit, it was submitted that overtime is not permissible as per the

decision taken by the Board.

The parties led evidence in support of their respective cases. The petitioner claimed a sum of Rs. 26,479.71 as overtime wages in the Misc. Case No. 21 of 1982 and more than Two Lakhs of rupees in Misc. Case No. 21 of 1984. The Labour Court by the impugned order has dismissed both the cases

2. Heard Sri Shyam Narain, learned Counsel for the petitioner and Sri Arvind Kumar, learned Counsel for the contesting respondents. The learned Counsel for the petitioner submits that in view of section 59 of the Factories Act, the petitioner is entitled to get wages for overtime work. Elaborating the argument, he submits that the decision taken by the Board not to take overtime work from the employees being contrary to section 59 of the Factories Act, has no legal effect. Reliance has been placed upon a judgment of the Apex Court in this regard on Dr. Rajinder Singh Vs. The State of Punjab and Others, in particular.

3. In contra, the submission of the learned Counsel for the respondents is two-fold. Firstly, such an application is not maintainable u/s 6-H(2) of the U.P. Industrial Disputes Act which is akin to section 33-C(2) of the Industrial Disputes Act. Elaborating the argument, he submits that, first, there should be a determination of entitlement of the workman to receive certain amount from the employer which is capable of being computed in terms of money. In the present case, since the very right of the petitioner to do overtime work is being denied, the application u/s 6-H(2) of the Act is not maintainable and the petitioner could have raised an industrial dispute if so advised. Secondly, the Service Rules do not permit any workman to do overtime and the practice of overtime work having been completely abolished in view of the office memorandum dated 25th of January, 1979, a copy whereof has been filed as Annexure-1 to the counter affidavit, the petitioner, in any case, is not entitled for any dues.

4. Considered the respective submission of the learned Counsel for the parties and perused the record.

5. The matter was heard earlier and the following order dated 9th of July, 2008 was passed by the Court:

Heard Sri Shyam Narain, learned Counsel for the petitioner as well as Sri Arvind Kumar, learned Standing Counsel appearing for the respondents.

From reading of paragraphs 5, 6 and 7 of the award it appears that overtime work was taken from the workman for which conveyance allowance was paid to him. The admitted position from the award is that employer's witness has also supported the case of the workman that he was performing overtime work.

It also appears from the award that Conveyance register is being maintained and an endorsement to this effect has been made and whenever the workman has been asked to work overtime an entry has also been made in the Register.

Considering the facts and circumstances of the case the learned Counsel for the

respondents shall file a photostat copy of the conveyance register during the period the workman has claimed for overtime work. The parties shall also make endeavour to get certified copy of the conveyance register available in the Court which has been filed before the Labour Court in Misc. Case Nos. 21/82 and 21/84.

6. It was listed subsequently before different Benches. The learned Counsel for both the parties state that no such record i.e. copy of conveyance register is available and they jointly agreed that the case may be proceeded on the basis of the material already on the record.

7. The learned Counsel for the petitioner submits that the Labour Court has recorded a finding of fact that the petitioner has done overtime work, therefore, the Labour Court was not justified in not giving the desired relief.

8. The petitioner has examined himself and stated that on the oral instructions of the Executive Engineer, he has worked after duty hours i.e. after 5:00 P.M. and is entitled for double of the wages for the period beyond his normal duties Further, he states that no order in writing was passed by the Executive Engineer. He used to work overtime every day for one, two or three hours depending upon the work. In further examination, he states that, earlier, a record was used to be maintained in the office of overtime work but the said practice has been stopped since 1979. The Executive Engineer used to countersign the said record. He admits that he has received certain payments in the year 1983. In contra, on behalf of the employer it was stated that the petitioner had never done any overtime and if he was asked to do some overtime, travelling allowances were given to him.

9. The Tribunal without deeply analysing the evidence has in para 7 of its order made a general remark that there appears to be no doubt that off and on work was taken from the petitioner after 5:00 P.M for which he was paid Rs. 6/- as travelling allowance, the fact which has been admitted by the petitioner.

10. The learned Counsel for the petitioner submits that the petitioner had done overtime work as has been found by the Labour Court. It is difficult to agree with him. The Labour Court has made a passing remark that for the overtime work which was undertaken by the petitioner, occasionally the travelling allowance @ Rs 6/- per clay was paid.

11. As noticed hereinabove, there is no clear finding by the Labour Court I that the petitioner did overtime work. The said issue has not been examined thoroughly by the Labour Court and only a passing remark in paragraph 7 of the order has been made. The fact remains that no documentary evidence has been produced by the petitioner to show that as a matter of fact, he did overtime. On the statement of the petitioner itself that earlier there was a practice to maintain a register regarding the overtime work done by a workman, however, that practice has been discontinued since the year 1979. This itself is indicative of the fact that the said practice has been discontinued in view of the office memorandum dated 25th of January, 1979. The relevant portion from the said

office memorandum is reproduced below:

It has been decided by the Board that practice of taking extra work on payment of overtime wages should be stopped w.e.f. Feb. 1, 1979 in all the establishments of the Board except for generation activities at Obra, Panki, Harduaganj and KESA where overtime work can be taken only to the extent permissible under the provisions of Factories Act, 1948 read with U.P. Factories Rules, 1950. It should be noted that under Rules 83 & 84 of the Factories Rules work can be taken of extra hours on payment of overtime wage with certain conditions to the maximum limit of 50 hours in one quarter (Three months). The General Manager/Addl. Chief Engineers concerned should please ensure that the limits for taking overtime work as provided under the Factories Act and Rules are strictly adhered to by the Officers under their charge. Violation of these orders shall be viewed very seriously.

12. This being so, the claim of the petitioner that he has done extra work is hot proved. In any view of the matter, in view of the office memorandum referred to above, the petitioner cannot claim wages for the overtime as a matter of right. He knew that at the most he would be entitled for the travelling allowances for the overtime work for which he had been paid. At this juncture, the submission of the learned Counsel for the petitioner that the said office memorandum being contrary to section 59 of the Factories Act is liable to be rejected as it is without any substance. The said office memorandum is not in any way in conflict with the said statutory provision namely 59 of the Factories Act. Decision was taken by the respondent Board as a matter of policy not to ask the employees to do overtime. The said decision is not under challenge presently.

13. The ruling relied upon by the learned Counsel for the petitioner in the case of Dr. Rajinder Singh (*supra*) has no application to the facts of the present case as the said office memorandum is not a substitute of the Statutory Rules framed with the authority of law. The said office memorandum was given effect to by discontinuing the practice of maintaining register of overtime work.

14. A little aside there is sufficient force in the submission of the learned Counsel for the respondents that the claim for overtime work cannot be made by filing a Misc. Application u/s 6-H(2) of the Act. The learned Counsel for the respondents has placed reliance upon a decision of the Apex Court in the case of Union of India (UOI) and Another Vs. Kankuben (Dead) by LRs. and Others etc. etc., a case u/s 33-C(2) of the Industrial Disputes Act, 1947 wherein it has been laid down that a benefit sought to be enforced u/s 33-C(2) of the Industrial Disputes Act, 1947 is necessarily a pro-existing benefit or one flowing from a pre-existing right. It pointed out a difference between the pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand. The difference is held to be vital. The former falls within jurisdiction of Labour Court exercising powers u/s 33-C(2) of the Act while the latter does not.

15. Applying the above ratio to the facts of the present case, the case on hand

falls" at the most in the latter category of case as the right of the petitioner to receive the wages for overtime is being disputed and denied by the employer, in fact and as a matter of policy. Unless it is adjudicated upon that the petitioner, as a matter of fact, has done overtime duties and the policy decision not to take overtime duty is held to be wrong, by a competent Court, authority or Tribunal, no relief by way of an application can be granted u/s 6-H(2) of the U.P. Industrial Disputes Act which corresponds to section 33-C(2) of the Industrial Disputes Act, is well merited.

16. I could lay my hands on a recent judgment of the Apex Court in the case of D. Krishnan and Another Vs. Special Officer, Vellore Co-operative Sugar Mill and Another, wherein almost identical controversy was involved and the claim for overtime wages was denied. Therein the application filed by the workman was being contested on the ground that the applicant was not a workman as he was discharging the function of manager and therefore, the application u/s 33-C(2) for overtime wages was not maintainable. The said objection was upheld, holding that the grievance of the applicant in that case cannot be addressed in proceeding u/s 33-C(2) of the Industrial Disputes Act. Relevant para 7 of the aforesaid judgment is, reproduced below:--

Mr. Gonsalves, has, however urged that a pre-existing right could also emanate from a statute, in this case from section 59 of the Factories Act, which provided for the payment of overtime wages and in this view of the matter, all that the Labour Court was called upon to do was to make a calculation of the amounts due to the appellants. The facts of the case are, however, not as clear cut and dried, as has been contended. The Division Bench has observed that though section 59 of the Factories Act undoubtedly provided for extra payment as overtime wages, but according to Rule 78-B of the Tamil Nadu Factories Rule, 1950, only an employee authorized to work overtime by an overtime slip would be entitled to claim an overtime allowance. The specific case of the respondent-Management, which has not been contested by the appellants even during the course of the arguments before us, is that no such slips had ever been issued. Additionally, we are of the opinion that in the absence of any supporting oral evidence by the workmen which would also result in their cross-examination, a mere reliance on the documents filed by them is insufficient for determining the factual basis of the issues involved, in proceedings u/s 33-C (2) of the Act. In this view of the matter. Mr. Gonsalves's argument based on Rameshwar's case (supra) or the scope and ambit of section 33-C(1) vis-avis section 33-C(2), is also unacceptable.

17. In view of the above, I find no merit in the petition. The petition lacks merit and is dismissed. But no order as to costs.