
(2009) 03 P&H CK 0163

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 2678 of 1989 And CWP Nos. 1654,6830,5308 & 2704 of 1990

R.S. Prasher and others

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 24-03-2009

Acts Referred:

Citation : (2009) 3 PLR 229 : (2009) 2 RCR(Civil) 659

Hon'ble Judges : Ajay Tewari, J

Advocate : Ms. Abha Rathore, Advocate. Mr. Harish Rathee, Sr. DAG, Haryana.,
Advocates for appearing Parties

Judgement

Ajay Tewari, J.

This judgment will decide the following five cases :

1. CWP No. 2678 of 1989
2. CWP No. 1654 of 1990
3. CWP No. 6830 of 1990
4. CWP No. 5308 of 1990
5. CWP No. 2704 of 1990

1. The facts are being taken from CWP No. 2678 of 1989. The case of the petitioners is that they are clerical staff in the Haryana Roadways Depot at Faridabad and are entitled for overtime under Motor Transport Workers Act, 1961 (for brevity "the Act"). Section 2h defines the Act in the following terms :

"motor transport worker" means a person who is employed in a motor transport undertaking directly or through an agency, whether for wages or not, to work in a professional capacity on a transport vehicle or to attend to duties in connection with the arrival, departure, loading or unloading of such transport vehicle and includes a driver, conductor, cleaner, station staff, line checking staff, booking

clerk, cash clerk, depot clerk, timekeeper, watchman or attendant, but except in section 8 does not include :

i) any such person who is employed in a factory as defined in the Factories Act, 1948;

ii) any such person to whom the provisions of any law for the time being in force regulating the conditions of service of persons employed in shops or commercial establishments apply;

2. Thereafter, referred to Section 13 of the Act of 1961 mandates that no worker shall be required or allowed to work for more than 8 hours. Further Section 26 of the Act provides that payment of extra wages for overtime in the following terms:

"Extra wages for overtime : (1) Where an adult motor transport worker works for more than eight hours in any day in any case referred to in the first proviso to section 13 or where he is required to work on any day of rest under subsection (2) of section 19, he shall be entitled to wages at the rate of twice his ordinary rate of wages in respect of the overtime work or the work done on the day of rest, as the case may be.

(2) Where an adult motor transport worker works for more than eight hours in any day in any case referred to in the second proviso to section 13, he shall be entitled to wages in respect of the overtime work at such rates as may be prescribed.

(3) Where an adolescent motor transport worker is required to work on any day of rest under subsection (2) of section 19, he shall be entitled to wages at the rate of twice his ordinary rate of wages in respect of the work done on the day of rest.

(4) For the purposes of this section, "ordinary rate of wages in relation to a motor transport worker means his basic wages plus dearness allowance."

3. Admittedly the petitioners were being paid extra wages for the overtime work they had performed. The grouse of the petitioners is that in view of instructions (Annexure P3), the respondent No. 2 directed all the General Manager of Haryana Roadways not only to forthwith stop payment of overtime but also to recovery the amount/s of overtime paid to the Ministerial staff.

4. In written statement, the plea taken is that the petitioners being Government servants are only entitled to the benefits granted to them under the Civil Service Rules and cannot seek to get the benefit of the Act. The second plea taken is that w.e.f. 1.1.1988, the practice of taking overtime from Ministerial staff has been brought to an end. As regards the first point with regard to the allegation that the recovery has been initiated without issuance of any show cause notice, the stand taken is the amount having been paid by mistake, the respondents are entitled to recover the same.

5. In the circumstances, the question regarding the entitlement of the petitioners

for overtime beyond 1.1.1988 being academic is left specifically unanswered. As regards the first argument, the question which arises is whether the services of the petitioners would be covered by the Act or would be covered by the Civil Service Rules. The respondents have sought to justify the withdrawal of extra wages of overtime on the ground that after being Government servants, the petitioners have got so many other benefits which may not be available to the motor transport workers generally, and, therefore, the benefits of the said act should not be extended to the petitioners. On the contrary, learned counsel for the petitioners has argued that the provision of a central act cannot be diluted either by Rules or by instructions.

6. In my opinion to decide the issue of recovery, it may not be necessary to go into these vexed questions. In the case of Syed Abdul Qadir and others v. State of Bihar and others reported as 2009(1) SCT 61. Hon'ble the Supreme Court after reviewing the entire law on the subject held as follows :

"This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess.

"Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made.

7. Thus, the question of recovery has been kept justiciable on the facts and circumstances of each case.

Coming to the facts and circumstances of this case, I find that there is no denial to the averment that the petitioners did extra work. The only justification sought to be advanced that the petitioners were not entitled to extra wages.

In my opinion, the most important component of the above mentioned factual matrix is the admitted position that the petitioners did work overtime. Thus, it is not the case where any real over payment has been made which is now sought to be recovered. Applying the dictum of the Hon'ble the Supreme Court quoted above, the respondents would not be entitled to make recovery of the amount/s released to the petitioners as overtime.

This writ petition is, therefore, allowed and the respondents are directed not to make any recovery and the recovery order stands quashed.

No costs.