

(2001) 05 RAJ CK 0072
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3785 of 2000

State of Rajasthan

APPELLANT

Vs

Mohan Singh and Another

RESPONDENT

Date of Decision : 15-05-2001

Acts Referred:

Constitution of India, 1950 — Article 23, 309
Minimum Wages Act, 1948 — Section 12, 12(1), 13, 14(1), 20(2)
Rajasthan Minimum Wages Rules, 1959 — Rule 26
Rajasthan Service Rules, 1951 — Rule 2, 42, 43, 7(3)

Citation : (2002) 1 RLW 225 : (2000) 1 WLC 546 : (2003) 2 WLN 232

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Advocate : Vineet Kothari, for the Appellant; Govind Mathur, for the Respondent

Final Decision : Allowed

Judgement

Chauhan, J.—The instant writ petition has been filed by the State challenging the order dated 31.5.99 passed by the Prescribed Authority under the Minimum Wages Act, 1948 (hereinafter called as the Act 1948) allowing the claim of overtime of the respondent-workman.

2. The facts and circumstances giving rise to this case are that the respondent was initially appointed as a work-charged employee as Driver under the Rajasthan (P.W.D. (B & R), including Garden, Irrigation, Water Works and Ayurved Subordinate Work Charge Employees Service) Rules 1964. However after completing ten years of service and considering his past service record, he stood regularised w.e.f. 1.4.1994 and was given the regular pay scale and become subject to Rajasthan Service Rules, 1951 (for short, "the Rules, 1951") in accordance with the provisions of rule 2 thereof. A claim petition under Sub-section (2) of Section 20 of the Act 1948 was filed before respondent No. 2-Prescribed Authority claiming overtime on the ground that he had worked over the office hours as a Driver. The petitioner-employer did not dispute the working

of the respondent Driver over the office hours but raised the preliminary objection that as the claimant was a regular employee of the Government and the Rules, 1951 were applicable on him, the provisions of the Act, 1948 were not applicable. The employee could be entitled for other allowance etc. but the claim under Sub-Section (2) of Section 20 of the Act 1948 was not maintainable. The Prescribed Authority allowed the claim of the employee-Driver directing the employer to pay the overtime. Hence this petition.

3. The legal submission made before the Prescribed Authority have been raised again before this Court by Shri Vineet Kothari, learned counsel for the employer-State. Shri Govind Mathur, learned counsel appearing for the respondent-Driver has submitted that as the Department in which the employee was working, as a Driver stood notified under Part-1 of the Schedule to the Act, the employee is working in Scheduled employment as defined u/s 2(g), hence he was entitled for overtime.

4. Before entering into the merits of the case it may be pertinent to mention here that the Prescribed Authority, after considering the submissions of the parties, has observed as under:-

(i) The claimant has submitted that he was a workman under the provisions of Motor Transport Labour Rules though he did not produce any evidence in support thereof;

(ii) The said provisions of the Motor Transport Labour Rules are applicable only on the establishment which runs vehicle on hire/reward, otherwise the said Rules are not applicable;

(iii) The claim of the employee that the provisions of the Act 1948 were applicable on him is worth considering;

(iv) The Department in which the respondent Driver was working has been put in the first part of the Schedule of the Act 1948. In 1985, the Government has fixed the minimum wages under the said Act which have been revised from time to time. The same includes the Drivers which are entitled for overtime under the provisions of Section 13 of the Act 1948 and the Rule 26 of the Rajasthan Minimum Wages Rules.

(v) The employer-State has submitted that the services of the respondent-Driver were governed by the Rules, 1951 and the provisions of Act 1948 were not applicable but no evidence has been adduced in support of the same;

(vi) It is correct that w.e.f. 1.4.94 the Rules, 1951 have been extended to the claimant but that does not mean that the provisions of Act, 1948 were ceased to apply to him;

(vii) The Act, 1948 is a Central Act and the Rules, 1951 have been framed under the proviso to Article 309 of the Constitution, therefore, the provisions of Central Act would prevail;

(viii) If the employee is entitled for two alternative reliefs it will depend upon him as which one of them he would like to avail;

(ix) It is evident that there is no provision of overtime under the Rules, 1951 rather allowance is being paid under certain circumstances;

5. Making the aforesaid observations, the Prescribed Authority recorded the finding of fact that though the claimant-Driver was a regular employee in the Government service yet the provisions of Act, 1948 were applicable and under the provisions of Section 13 of the Act 1948 and under Rule 26 of the Rajasthan Minimum Wages Rules he was entitled for overtime.

6. I have considered the rival submissions made on behalf of the parties and perused the record.

7. The provisions of the Act, 1948 were considered by the Hon''ble Supreme Court in Y.A. Mamarde and others v. The Authority under Minimum Wages Act (1), and explained the purpose for providing overtime as under:-

"The extra strain on the health of the worker for doing overtime work may well have weighed with the rule making authority to assure to the worker as minimum wages double the ordinary wage received by him so as to enable him to maintain proper standard of health and stamina."

The Court further observed as under:-

"The problem demands a liberal and rational approach rather than a doctrinaire or technical legalistic approach."

8. In Peoples Union for Democratic Rights and Ors. v. Union of India and Ors. (2), the Hon''ble Supreme Court considered the scope of Article 23 of the Constitution in case a workman is paid less than the minimum wages and held that in such eventuality, Article 23 is enforceable not only against the State but also against every person indulging in any such practice as Article 23 strikes at forced labour in whatever form it may manifest because it is violative of constitutional provisions and is contrary to basic human values. It held that even if the labour is forced to work against his wishes and he has worked unwillingly under compulsion) it may also be a case of Begar and it attracts the provisions of Article 23. The Court observed as under:-

"It may therefore be legitimately presumed that when a person provides labour or submits to another against respective remuneration which is less than the minimum wage, he is acting under the force of some compulsion which drives him to work though he is paid less than he is entitled under law to receive, what Article 23 prohibits is "forced labour" i.e. labour or services which a person is forced to provide and force which would make such labour or service to work. Forced labour may arise in several ways."

9. Similar view has been reiterated by the Hon''ble Supreme Court in Sanjit Roy v. State of Rajasthan (3), and Bandhuva Mukti Morcha v. Union of India and Ors.

(4).

10. A Constitution Bench of the Hon^{ble} Supreme Court in *Workmen of the Bombay Port Trust v. Trustees of the Port of Bombay* (5), considered the provisions of Act, 1948 and the Central Rules framed under the said Act and observed that a worker may be asked to work 8 hours a day with an interval of one hour; he may be asked to work for 48-hours in a week; during the working hours a period of interval may be fixed by the employer considering the nature of job and the circumstances prevailing therein for the reason that in some employments time for work depends on some extraneous factors and hours of rest cannot always be fixed to break up those hours. In a case of ports workers it was proverbial that time and tide did not wait for any man. Workers at a tidal dock must work when the tide is in and take their rest when the tide is out. Therefore, employer can fix variable recesses and fix hours of work accordingly.

11. The object of the Act, 1948 is to prevent exploitation of the workers and for that purpose its aim is fixation of minimum wages which the employer must pay though the Act does not make a classification for the purpose of application of its provisions, rather leave it to the State Government to seek and classify persons, objects, transactions, localities and the things for special treatment and set out the policy for its guidance in the exercise of its authority in the matter of selection (vide *Kami Raning Rawal v. State of Saurashtra* (6)).

12. The Act, 1948 provides for minimum wages. It does not inhibit the employer to pay more under a contract as is evident from the provisions of Section 12(1) and 14(1) of the Act, 1948 and where an employee gets more than the minimum prescribed under the Act 1948, the provisions of the said Act would not apply.

13. In *Chairman of the Madras Port Trust v. Claims Authority and Ors.* (7), the Division Bench of the Madras High Court held as under:-

"The Act provides for the payment of a minimum. So long as that minimum is paid, the contractual wage structure is left unaffected and the component parts of the wages can still be regulated by contract between the employer and the employee.....Except for that liability, the contract between the employee and the employer is left intact. If for instance, the contract rate of wages is higher, the statutory right and obligation do not come into play. The statutory right of the employee itself is to receive wages at a rate not lower than the notified minimum rate."

14. Similar view has been reiterated in *Union of India and Ors. v. B.D. Rathi and Ors.* (8) and *Municipal Borough of Bijapur v. Gundawan and Ors.* (9).

15. A Division Bench of Patna High Court in *The Imperial Tobacco Co. of India Ltd. v. The State of Bihar and Ors.* (10), after considering the provisions of Act, 1948 held as under:-

"On a consideration of the facts and circumstances, it is clear that the petitioner-Company has been actually paying much higher rates of wages to these

workmen and in this view of the matter they cannot come within the mischief of Section 12 of the Act. Their liability was only to pay the minimum rates of wages and since they have been paying much more than in view of this section and the object of the Act, the petitioner company cannot be held guilty or infringement of any of the provisions of the Act. It is also obvious that it will be extremely unfavourable to the workers themselves if they week their rights under the Minimum Wages Act and the employer also pays them only what they are liable to pay under the notification. The workers and the Union will not be satisfied and it will unnecessarily create complication and unpleasantness."

16. The Prescribed Authority placed reliance upon the Constitution Bench judgment of the Hon"ble Supreme Court in Patel Ishwarbhai Prahladbhai etc. v. Taluka Development Officer and Ors. (11), and understood it that even if the Government employee works beyond officer hours in a scheduled employment, he shall be entitled for the benefit of the provisions of Section 14 of the Act i.e. over-time. The Prescribed Authority committed a grave error in allowing the claim by placing reliance upon the aforesaid judgment for the reason that the facts in that case are quite distinguishable and the ratio thereof has no bearing in the facts and circumstances of this case. The law laid down therein by. Their Lordships is that even if an employee, who is a Government servant and holds a public post, working in a scheduled employment and getting the wages lesser than prescribed by the Government under the Act, 1948, he shall be entitled for the minimum wages prescribed under the Act and all other benefits including the over-time as the Hon"ble Apex Court held as under:-

"We are, therefore, of the opinion that the tube-well operators there in these appeals, even though State Government servants, are employees in scheduled employment under the Local Authority or Authorities and are consequently entitled to minimum wages and other benefits under the Act, it is not being disputed that the minimum wages have been fixed by the State Government in respect of tube-well operators generally though that benefit has not been extended to tube-well operators concerned in these appeals."

17. Thus, it is evident from the aforesaid observations that the appellants therein were getting lesser than the minimum wages fixed under the Act, 1948 and that is why they were held entitled to the minimum wages and the overtime.

18. In the instant case, learned counsel for the petitioner has fairly stated that the wages paid to the employee are much higher than the minimum wages fixed under the Act, 1948. Government. In view of the above, it is settled legal proposition that where an employee gets wages higher than the minimum wages fixed under the Act, 1948 and the wages are fixed by the contract between the parties, even in that case the Government employee who is working in a scheduled employment but getting the wages more than the minimum fixed by the Government, he cannot claim any benefit under the Act, 1948. In case he is entitled for the same benefit under any other law, he has to resolve for redressal of his grievance before the Appropriate Forum, e.g. under the Industrial Disputes

Act, 1947 etc. but as the Act 1948 cannot be made inapplicable, the Prescribed Authority has no jurisdiction to entertain that case under Sub-section (2) of Section 20 of the Act, 1948.

19. The Prescribed Authority has also erred in holding that the Government could not prove that the services of the respondent Driver were governed by the provisions of the Rules, 1951. As per the provisions of the Rules, 1951, it is made clear that the Rules are applicable if a person comes into regular employment, i.e". after having been granted permanent status in the establishment even if he is working as a work-charge employee.

20. Rule 42 of the Rules, 1951 provides for allowances for working after the officer hours under certain circumstances mentioned under rule 43(c) of the Rules, 1951. Allowances (honorarium) has been denied under Rule 7(3) of the Rules, 1951 and the State Government has issued Notification, Government Order and Circular clarifying as under what circumstances, the allowances are available in such an eventuality.

21. In the wake of the above, the petition succeeds and is allowed. The impugned order dated 31.5.1999 is hereby quashed. The petitioner, if entitled, may claim the benefit of the Rules, 1951 before the Appropriate Forum. In the facts and circumstances of the case, the parties shall bear their own costs.