
(2007) 01 GAU CK 0016
In the Gauhati High Court

State of Tripura and Others	Vs	APPELLANT
Pramode Debbarma and Others		RESPONDENT

Date of Decision : 24-01-2007

Acts Referred:

Factories Act, 1948 — Section 51, 52, 54, 56, 59

Citation : (2007) 114 FLR 938 : (2007) 1 GLT 740 : (2008) 1 LLJ 80

Hon'ble Judges : Maibam B.K. Singh, J;Aftab H. Saikia, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.H. Saikia, J.—Heard learned Counsel for the parties.

Both the writ appeals having been carried from the common judgment and order dated January 16, 2001 rendered by the learned single Judge in Civil Rule No. 276/1995 and Civil Rule No. 278/1995 based on common question of law structured on exactly identical factual premises have been taken up for hearing analogously and are being disposed of by this common judgment.

2. The basic issue raised in both the writ petitions is as to whether the Chief Inspector under the Factories Act, 1948 (for short, the Act) is empowered u/s 65 of the Act to make exemption from the application of provision of Section 59 of the Act though the exemption under such Section has not been prescribed u/s 65(2) of the Act.

3. The brief facts which have been narrated in both the writ petitions precisely are that all the writ petitioners-respondents herein being entitled to get extra wages for over time in terms of Section 59 of the Act have been denied of such benefits for which they have to approach this Court through those notification/order dated July 18, 1994 issued by/the Chief Inspector under the Factories Act (Annexure 2 to both writ petitions) wherein it has been ordered that the categories of employees/workers to which the writ petitioner-respondent belong, shall not be entitled to any extra wages u/s 59 of the Act for the over time work

done during the relevant quarter.

4. The writ Court, upon hearing the learned Counsel for the parties in depth as well as having extensively considered those relevant, provisions of law so referred to and relied upon, came to the specific finding that the Chief Inspector in exercise of power u/s 65(2) of the Act in issuing the impugned order acted without statutory competency as well as, in violation of Section 65(2) itself which did not include exemption of provision of Section 59 of the Act save and except those provisions under Sections 51, 52, 54 and 56 of the Act and accordingly both the writ petitions were answered in favour of the respondents.

5. For the sake of convenience, it would be apt and necessary to quote Section 65 of the Act which reads as under:

65. Power to make excepting orders: (1) Whether the State Government is satisfied that, owing to the nature of the work carried on or to other circumstances, it is unreasonable to require that the periods of work of any adult worker in any factory or class or description of factories should be fixed beforehand, it may by written order, relax or modify the provisions of Section 61 in respect of such workers therein, to such extent and in such manner as it may think fit, and subject to such conditions as it may deem expedient to ensure control over periods of work.

(2) The State Government or, subject to the control of the State Government the Chief Inspector may, by written order exempt, on such conditions as it or he may deem expedient, in or all of the adult workers in any factory or group or class or description of factories from any or all of the provisions of Sections 51, 52, 54 and 56 on the ground that the exemptions required to enable the factory or factories to deal with an exceptional pressure of work.

(3) Any exemption granted under Sub-section (2) shall be subject to the following conditions namely:

(i) the total number of hours in any day shall not exceed twelve:

(ii) the spread over, inclusive of intervals for rest, shall not exceed thirteen hours in any one day;

(iii) the total number of hours of work in any week, including overtime, shall not exceed sixty;

(iv) no worker shall be allowed to work overtime, for more than seven days at a stretch and the total number of hours of overtime work in any quarter shall not exceed seventy five.

Explanation.-In this Sub-section "quarter" has the same meaning as in Sub-section (4) of Section 64.

6. Be it mentioned herein that Section 59 of the Act basically provides for extra wages for overtime to worker who works for more than nine hours in a day or for

more than forty eight hours in any week. Relevant provisions of Section 59(1) may be noticed as under:

59 - Extra wages for overtime.--(1) Where a worker works in a factory, for more than nine hours in any day or for more than forty-eight hours in any week, he shall, in respect of overtime work be entitled to wages at the rate of twice his ordinary rate of wages.

7. In view of the above statutory provisions of law as well as upon hearing the learned Counsel for the parties, We are of the view that u/s 65(2) of the Act the power of the Chief Inspector to grant exemption of the application is only confined to Sections 51, 52, 54 and 56 and as such the same has not been extended to Section 59. In other words, the Chief Inspector is not empowered u/s 65(2) to issue exemption of the application of Section 59 of the Act. That being so, we do fully endorse the views expressed by the writ Court in the impugned judgment and order and hence we are of the firm opinion that the impugned judgment and order needs no interference and accordingly both the writ appeals stand dismissed. No costs.