

(1965) 02 KAR CK 0005

In the Karnataka High Court

Case No : Civil Petition No's. 292 and 293 of 1963

The Municipal Borough, Bijapur

APPELLANT

Vs

M.N. Gundawan and Others

RESPONDENT

Date of Decision : 26-02-1965

Acts Referred:

Minimum Wages Act, 1948 — Section 12, 14, 14 (1), 20

Citation : AIR 1965 Kar 317 : (1965) 1 MysLJ 461

Hon'ble Judges : M. Santosh, J;K.S. Hegde, J

Bench : Division Bench

Judgement

Hegde, J.

(1) These are applications under Article 227 of the Constitution. They arise from the decision of the learned Judicial Magistrate, First Class, IInd Court, Bijapur in Mis. Cases Nos. 11 and 14 of 1959 on his file. The said learned Magistrate was constituted as the "Authority" u/s 20 of the Minimum Wages Act, 1948, to be hereinafter referred to as the "Act" to hear and decide all claims arising under Ss. 12 and 14 of the "Act" in the District of Bijapur. He will be hereinafter referred to as the "Authority".

(2) Mis. Cases Nos. 11 and 14 of 1959 were disposed of by one common order. That order was assailed on various grounds which will be set out presently.

(3) Briefly stated the facts of the case material for our present purpose are these: The respondents are borne on the staff of the Bijapur Municipal Borough. They work on the Octroi Department of that Borough. They claimed overtime allowances under the provisions of the "Act" from 1-4-1955 to 31-3-1958. Their claim was partly allowed and partly disallowed. The Bijapur Municipal Borough has come up with these petitions challenging the decision of the Authority to the extent it went against it. The respondents have accepted that decision. The grounds urged in support of these petitions are:

1. There is no evidence whatsoever to establish that all the petitioners had

worked overtime;

2. The claim made by the petitioners is in fact a claim for arrears of wages and therefore, the present application u/s 20 of the "Act" are not maintainable; and

3. Under any circumstance, the wages actually paid to the employees being more than minimum wages fixed, inclusive of the overtime allowances payable under the "Act" no recourse can be had to the provisions of the "Act".

(4) The question whether the respondents in these petition who will be hereinafter referred to as employees had worked overtime or not is essentially a question of fact. Therefore, what we have to see is whether the finding in question is founded on no evidence whatsoever.

(5) The Authority appear to have proceeded on the basis that in view of section 18 of the "Act" and Rules 25(2) and 26 of the Rules framed under the "Act" the burden of proving that the employees had not worked overtime is on the employer. We do not think that this view of the law is correct. It is true that section 18 requires the employer to maintain such registers and records giving such particulars to employees employed by him, the work performed by them, the wages paid to them, the receipts given by them and such other particulars in such form as may be prescribed. Every employer is also required to exhibit, in such manner as may be prescribed, in the factory, workshop or place where the employees in the scheduled employment may be employed, or in the case of out-workers, in such factory, workshop or place as may be used for giving out work to them, notices in the prescribed form containing prescribed particulars.

Sub-rule (2) of Rule 25 requires every employer to maintain a register of overtime in form IV in which entries under the columns specified therein should be made as where overtime is worked in any establishment; where no overtime has been worked in any wage period a nil entry shall have to be made in the register at the end of the wage period. Rule 26 prescribes that a register of wages should be maintained by every employer at the work spot and kept in such form as may be notified by the State Government and that register should include the following particulars:--

(a) the minimum rates of wages payable to each person employed;

(b) the number of days for which each employed person worked overtime for each wage period;

(c) the gross wages of each person employed for each wage period;

(d) all deductions made from wages with an indication in each case, of the kinds of deductions mentioned in sub-rule (2) of Rule 21; and

(e) the wages actually paid to each person employed for each wage period and the date of payment.

(6) The rest of the Rule is not relevant for our present purpose. It is true that the

Bijapur Municipal Borough the employer had not maintained any of the documents and records required to be maintained by S. 18 and Rr. 25 and 26. Therefore, adverse inference can be drawn against it. But that is not the same thing as saying that the burden of proving that a particular employee has not worked overtime is on the employer. An employee who claims relief under the "Act" has to place before the Authority, evidence to support his claim. That evidence may get strengthened from the fact that the employer has failed to maintain the required documents and records. It is a well known rule of law that it is for the person who makes claims to establish the same. The provisions in the "Act" and the Rules framed thereunder do in no manner depart from that basic rule. No provision either in the "Act" or in the Rules placing the burden of proving the negative on the employer was brought to our notice.

Hence we hold that Authority was wrong in proceeding on the basis that the burden of proving that each one of the respondents had not worked overtime is on the employer. Further the Authority should have borne in mind the fact that the petitioners before it had to prove not merely some of them had worked overtime. They had to further prove the period during which they worked overtime. The authority had proceeded on the basis that admittedly some of the Nakas worked all the 24 hours of the day; therefore by necessity the Octroi staff in those nakas had to work overtime. That may be so. But, the question for decision was whether each one of the petitioners before the Authority had worked overtime; if not who all had worked overtime. That was the essence of the matter. That question was not gone into by the Authority. The conclusion that most of the employees had worked overtime is not sufficient to hold that all of them had worked overtime. From the order of the Authority it does not appear that any evidence had been placed before it to show that all the petitioner before it had worked overtime. Nor does the Order disclose the period during which the petitioners or any of them had worked overtime. In our view the Authority had no clear idea of the issues arising for decision. The error in this regard is an apparent error in law. This is our finding on point No. 1 formulated above.

(7) We are unable to agree with the petitioner before us (The Bijapur Municipal Borough) that the claim made is not one that arises from the provisions of the "Act". The grievance of the employees is that they were made to work overtime and for the same they are required to be paid wages at overtime rate. Such a claim undoubtedly comes within Section 14(1) read with section 20(2).

Section 12(1) provides :

"Where in respect of any scheduled employment a notification u/s 5 is in force, the employer shall pay to every employee engaged in a Scheduled employment under him was at a rate not less than the minimum rate of wages fixed by such notification for that class of employees in that employment without any deductions except as may be authorised within such time and subject to such conditions as may be prescribed."

(8) Admittedly, the employment of the employees in this case is a scheduled employment. Section 5 notification had been issued by the Government of Bombay. There is no dispute that the respondents are entitled to the minimum rate of wages fixed under the "Act". Section 13 deals with the fixing of hours for a normal working day. In the instant case, the Government has fixed 9 hours as a normal working day. Sunday has been fixed as a day of rest. These are all admitted facts.

(9) Now we come to section 14(1), which reads:

"Where an employee, whose minimum rate of wages is fixed under this Act by the hour, by the day, or by such a longer wage period as may be prescribed works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate fixed under this Act or under any law of the appropriate Government for the time being in force, whichever is higher." It is agreed that for the overtime the employees are entitled to, under the Rules framed, double the wages payable for the same period of work during the normal working hours.

(10) Section 20 in terms after its amendment in 1957 authorises the Authority to hear and "decide all claims" arising out of payment of less than the minimum rates of wages to employees or in respect of the payment of the remuneration for days of rest or for work done on such days under clause (b) or clause (c) of sub-section (1) of Section 13 or of wages at the overtime rate u/s 14. To exercise that jurisdiction it is necessary for the Authority to decide whether the employees had worked overtime, if so for how many hours and what is the amount due to them in respect of the overtime work. From the provisions of the "Act" it is clear that the Authority has ample power to decide as to whether the employees had worked on any day upon which they claimed to have done so. It can also decide whether they have worked overtime, if so, the period during which they worked overtime.

(11) As observed by a Bench of the Bombay High Court in *Bahadursingh Birsing and Others Vs. C.P. Fernandes and Others*, , although the jurisdiction of the Authority is confined to decide as to whether a minimum rate of wages has been paid, yet when the unit for which the minimum rate of wages has been prescribed is a day, and the minimum rate of wages which had been prescribed for each day is divided into two parts, one for the normal working day of the nine hours, and the other, for the overtime, the question as to whether an employee has worked overtime on any particular date enters into the determination of the question of the minimum rate of wages paid for day, and, therefore, the Authority must go into the question as to whether the employee has worked overtime. We are in agreement with these observations.

(12) For the reasons mentioned above, ground No. 2 formulated above is held against the emptier--the petitioner in this Court.

(13) This takes us to the last ground urged viz., if the wages actually paid to employees are more than the minimum wages fixed inclusive of overtime allowance payable under the "Act", no recourse can be had to the provisions of the "Act".

(14) From the scheme of the "Act" it is clear its object was to guarantee those, who are working in scheduled employment, a minimum rate of wages. It is open to the employers and the employees to contract for a higher rate. But any claim on the basis of contract is not one which arises under the "Act". This much is clear from the several provisions in the "Act". The long title to the "Act" says that it is an Act to provide for fixing minimum rates of wages in certain employments. The preamble reads :

"Where as it is expedient to provide for fixing minimum rates of wages in certain employments; it is here by enacted as follows :"

Section 3 empowers the appropriate Government to fix the minimum rates of wages payable to the employees employed in an employment specified in Part I or II, of the schedule and in an employment added to either Part by notification under S. 27. Section 4 sets out the components of the minimum wages. As seen earlier, S. 12 requires the employer to pay every employee engaged in a scheduled employment under him wages at a rate not less than the minimum rate of wages fixed by the appropriate Government. Section 14 further requires him to pay overtime wages at the rate prescribed if the employee works on any day in excess of the number of hours constituting a normal working day. Section 20 empowers the authority to hear and decide all claims arising out of payment of less than the minimum rates of wages in respect of the payment of remuneration for days under clause (b) or clause (c) of Sub-s. (1) of S. 13 or of wages at the overtime rate under S. 14.

From these provisions, it is evident that what the "Act" compels the employer is to pay his employees the minimum rate of wages fixed for a normal working day. Normal working day has been fixed by the Rules as that constituting nine working hours. If an employee works more than nine hours prescribed then to determine the minimum wages payable to him one has to first separate the normal working day and compute the minimum wages payable for the same, then find out the hours during which the employee worked overtime for which the minimum rate of wages fixed is double than fixed for an hour during the normal day and add on the same to the minimum wages payable for the normal working day. From this it follows that if the wages paid by the employer are more than what the employee would have got on the basis of the minimum rate of wages for the normal working day plus the wages for the overtime work then no relief under the "Act" can be given to him. To put it differently, the scheme of the "Act" is to provide for a minimum wage for each employee. The minimum applies to the rate. But what is payable is still the wages. The "Act" provides for the payment of a minimum. The employer's duty, as defined by S. 12(1) and S. 14(1) is to pay at the minimum rate both for the normal working day as well as

for the overtime work to the employee. The statutory right of the employee is to receive wages at the rate not lower than the notified minimum rate.

(15) The above conclusion of ours gains support from the decision of the Madras High Court in *Chairman of the Madras Port Trust Vs. Claims Authority and Others*, . Similar was the view taken by the Bombay High Court in *Union of India and Another Vs. B.D. Rathi and Others*, . Therein the court laid down that the object of the "Act" is to provide minimum wages to the employees according to the nature and the duration of the work done by the employees. That being so, the Authority functioning under the Act has, in a case before him to find out what is the total liability imposed on the employer in order to achieve the object. In this respect, section 12(1) is the only section which defines that liability of the employer as regards the payment of wages. Thus, so long as the employer pays the total minimum wages as provided by the said Act and the rules thereunder, the employer will not be liable to pay anything more, merely because the Act provides for the regulation of the hours of work and because Rule 25 of the Minimum Wages (Central) Rules, 1950, prescribes wages for the overtime work at the double the ordinary rate of wages. So long as the employer pays the employees the total minimum wages, including overtime wages, as provided by the said Act and the Rules thereunder, the domain of contract is left untouched.

(16) The Authority was wrong in thinking that whenever an employee worked overtime, irrespective of the actual wages paid to him he is entitled to overtime wages under the "Act".

(17) The orders of the Authority impugned in these proceedings are vitiated by errors of law detailed above which errors in our opinion are errors apparent on the face of the record. Therefore the impugned orders are quashed and the cases remanded to the Authority for disposal according to law, in the light of this judgment.

(18) In the circumstances of these cases, we make no order as to costs.

(19) Cases remanded.