

(2018) 10 RAJ CK 0004
In the Rajasthan High Court
Case No : Spl. Appl. Writ No. 813 of 2014

Union of India And Ors @APPELLANT@Hash Bhanwar Lal And Ors

Date of Decision : 01-10-2018

Acts Referred:

Citation : (2018) 10 RAJ CK 0004

Hon'ble Judges : Pradeep Nandrajog, CJ;Dr. Pushpendra Singh Bhati, J

Bench : Division Bench

Advocate : Kamal Dave, J.K. Kaushik

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties.
2. Challenge in the appeal is to an order dated 21st March, 2014 dismissing S.B. Civil Writ Petition No.1984/2014 filed by the appellants challenging an order dated 15th January, 2013 passed by the Secretary, Government of India, Ministry of Labour dismissing appeal filed by the appellants challenging the order dated 29th February, 2008 passed by the Regional Labour Commissioner.
3. Learned counsel for the appellants concedes that for purposes of payment of wages the respondents were treated as employees rendering continuous service and vide order dated 10th July, 2001 the Divisional Railway Manager, Jodhpur directed that they should be treated as employees rendering service which would be essentially intermittent.Â This resulted in less wages being paid.
4. To understand what was done by the Divisional Railway Manager, we need to highlight that the respondents were working as Points Man.Â As Points Man their job was to facilitate movement of trains and this required them to be in touch with the signaling department.Â To facilitate

movement of trains at the point where they were working they had to pull the lever.Â The duty hours of the workmen were 12 hours.Â During this

12 hours, when trains would not be passing they would sit in the cabin room and presumably be resting.

5. A joint survey was done by the railway authorities, treating 3 days as a representative segment which comes to 216 hours and the requirement of

the rule of the departmental instructions was that during 12 hours shift if an employee had worked continuously for 6 hours he would be treated as

having worked continuously led to the working hours being determined.Â If the working was less than 6 hours it would be treated as essentially

intermittent working, and this affected the wages.

6. The joint inspection report prepared by the railway authorities concededly determined the action period to be 5 hours and 49 minutes in the shift of

12 hours.Â This was less by 11 minutes of the qualifying period of 6 hours.

7. In the order dated 29th February, 2008 passed by the Regional Labour Commissioner the data provided by the railway authorities have been

accepted and it has been accepted that as per the report the respondents were working in 12 hours shifts for a duration of 5 hours and 49 minutes.Â

The first reason given by the Regional Labour Commissioner to grant relief to the respondents is that the period of short-fall i.e. 11 minutes is so less

that it needs to be ignored.Â Though not stated in the order the principle of de-minimis had been applied.

8. That apart, a more substantial reason has been given.Â The more substantial reason is that a perusal of the joint inspection report prepared by the

railway authorities shows that the in-action period i.e. the period during which the employees would statedly be resting is for durations less than 5

minutes which totals to 104 minutes and the duration of intervals when the employees were not in action ranged between 6 minutes to 10 minutes total

579 minutes.Â With reference to said data it has been reasoned that for the down-trodden working class, while assessing the workload such short

intervals of in-action needs to be ignored.

9. Common sense tells us that if a workman gets a break for say about 4 or 5 minutes between performing the task assigned it could not be a case

where the workman can be said to be resting properly so-called.

10. This reasoning of the Regional Labour Commissioner has been upheld by the

appellate authority.

11. We see no infirmity in the judicial approach by the two authorities concerned.

12. The writ appeal is dismissed.