
(1963) 03 RAJ CK 0003
In the Rajasthan High Court

Verma Motors and Others

APPELLANT

Vs

Labour Commissioner and Others

RESPONDENT

Date of Decision : 12-03-1963

Acts Referred:

Minimum Wages Act, 1948 — Section 20, 3, 5

Citation : (1963) 2 LLJ 43

Hon'ble Judges : D.M. Bhandari, J;B.P. Beri, J

Bench : Division Bench

Judgement

D.M. Bhandari, J.—These writ petitions are disposed of by this judgment as all of them arise out of the order dated 15 November 1960, passed by the authority to hear and decide claims for the payment of minimum wages under the Minimum Wages Act, 1948 (hereinafter called "the Act"). A number of workmen filed claims u/s 20(1) of the said Act for the amount paid less than the minimum wages against the owners of a number of motor buses. These claims covered the period, between 1 January 1959 and 30 October 1959. In order to appreciate the basis of their claims it is necessary to refer to the two notifications, one issued by the Government of Ajmer, and the other issued by the Government of Rajasthan. In exercise of the powers conferred by 01. (a) of Sub-section (1) of Section 3 and Sub-section (2) of Section 5, of the Minimum Wages Act, 1948 (Act XI of 1948), the Chief Commissioner, Ajmer, fixed the minimum wages payable to employees employed in the employment in public motor transport by notification No. 9/5/54 Lab., dated 27 December 1954. Paragraph 2 of the said notification fixed the minimum basic rates of wages for the categories of workers specified in the table under that paragraph which included drivers, conductors and clerks. Paragraph 5 of that notification ran as follows:

5. When the cost of living index number for Ajmer rises by 20 points or more over the cost of living Index number at the same place in November 1954, a cost of living- allowance shall be paid to each employee to whom this notification applies at the rate of Rs. 6 per month for every such completed 20 points rise.

The cost of living index number for the purposes of this paragraph shall in every case be calculated with 1944 as base.

2. After the issue of this notification the erstwhile State of Ajmer merged in the State of Rajasthan on 1 November 1956. After the merger, on 9 March 1959, the Government of Rajasthan, in exercise of the powers conferred by Sub-clause (a) of Sub-section (1) of Section 3 read with Sub-section (2) of Section 5 of the Act, published the minimum wages payable to the employees in the employment in public motor transport in the State of Rajasthan (as reorganized) under the State Reorganization Act, 1956. This notification gave a schedule of minimum rates of wages in respect of certain workers including drivers, conductors and clerks. This notification further contained the following provision:

Notwithstanding anything contained herein, if on the date the aforesaid rates come into force, the wages of an employee in the said employment exceed such rates, the wages actually received by the employee on the said day shall be the minimum rates of wages fixed in respect of him.

3. This notification came into effect after the expiry of two months from the date of the publication of the notification. Various drivers, conductors and clerks filed claims before the authority for payment of the amount to the extent it was less than the minimum rates of wages. Their claim was one based mainly on the ground that cost of living Index number had increased by more than 20 per cent over the cost of living number at the time when their wages were fixed at Ajmer and they were entitled under Para. 5 of the Ajmer notification to get Rs. 6 per mensem more which their employers had refused to pay them. The said authority by its order dated 15 November 1960 ordered that the employers of the undertakings given in that order dealing in the employment in public motor transport in the area comprised within the erstwhile state of Ajmer shall pay to all employees an increase of Rs. 6 per mensem with effect from 1 January 1959 in pursuance of Para. 5 of the aforesaid Ajmer notification. The undertakings which were so directed included Verma Motors Company, Beawar, which is petitioner in Writ Petition No. 477 of 1961, Rajasthan Motors Company, Beawar, which is petitioner in Writ No. 490 of 1961 and Pratap Singh Rathor & Sons in Writ Petition No. 495 of 1961. The grievance of the petitioner in Writ Petition No. 477 of 1961 is that the petitioner has been wrongly held liable to pay this allowance to the workers, Bhagwandas and Gangadhar who are respondents 2 and 3 in that writ petition. Similarly in Writ Petition No. 490 of 1961 the petitioner has taken a grievance that it had been illegally directed to pay allowance of Rs. 6 per mensem to all the employees. The petitioner in Writ Petition No. 495 of 1961 has made a similar grievance with respect to one of its employees.

4. The main argument that has been urged in all these writ petitions is that the said Rajasthan notification (Ex. 5) superseded the Ajmer notification (Ex.1) and the employers were not liable to pay the allowance as mentioned in Para. 5 of the Ajmer notification. Sri Chandradhar Issar, Authority under the Minimum

Wages Act, 1948, has taken the view that as there was a rise of 25 points in the cost of living index, as mentioned in Para. 5, of the Ajmer notification dated 27 December 1954, the employees were entitled to the allowance, in his view the Rajasthan notification did not repeal the Ajmer notification. In our opinion, after the Rajasthan notification had come into force, it would govern the question of the minimum wages which are to be paid by the employers referred to in that notification to the employees. But even under the Rajasthan notification as pointed out by Sri Chandradhar Issar, the various employees were entitled to the benefit of the allowance of Rs. 6 per mensem as before the Rajasthan notification came into effect, there was rise in the cost of living Index by more than 20 points. Under the Rajasthan notification, if on the day the rates mentioned in that notification came into force, the wages actually received by him shall be the minimum rates of wages fixed introspect of him. The words " actually received " here must be construed as " actually entitled to be received" and not " actually being paid to him." If under the Ajmer notification an employee was entitled to receive an allowance of Rs. 6 per mensem as provided in Para. 5 of that notification but the same was not being paid by the employer, the expression " wages actually received by such employee" shall be deemed to include this amount of Us. 6 per mensem, It is in this way that this provision in the Rajasthan notification has been construed by Sri Chandradhar Issar and we do not find any fault with this interpretation of the notification but It may be mentioned that after the Rajasthan notification had come into force, Para. 5 of the Ajmer notification could not remain operative in future. Thus, no increase on account of the rise of cost of living could be claimed in future under the Rajasthan notification if the same could not be claimed by virtue of the Ajmer notification at the time the Rajasthan notification came into force. Mr. Mridul on behalf of the employees states that he is not making any such claim. He says that the employees in these writ petitions are claiming only such increase as had accrued to them at the time the Rajasthan notification came into force. The operative part of the order of Sri Chandradhar Issar is confined to awarding Rs. 6 per mensem to an employee with effect from 1 January 1959 in pursuance of Para. 5 of the Ajmer notification, and we make it clear that this operative part of the order shall not be construed by any employee to claim the amount of Rs. 6 per mensem in future even if there is a rise of cost of living index. Beyond this clarification, the order of Sri Chandradhar Issar does not stand in need of any amendment.

5. In these writ petitions it is also argued that there was no evidence that there was a rise of more than 20 points in the index numbers of the cost of living. Sri Chandradhar Issar, in his order which is Ex. 13 on the record, has observed that the employees were entitled to claim with effect from the date the cost of living Index numbers of Ajmer with 1944 as base had risen above 20 points or more. This does not appear to have been disputed before him. Paragraphs of the claim application before the Authority under the Minimum Wages Act has not been challenged so far as the assertion of increase in cost of living Index is concerned.

It is too late in the day to argue that when even the employers did not think fit to contest the points of fact, the employees should have led evidence on the point. This contention, therefore, has no force.

6. It is also urged that the claim of the employees was barred by the limitation as under the first proviso of Sub-section (2) of Section 20, various applications by the employees should have been presented within six months from the date on which the minimum wages or other allowance became payable. But there is also the second proviso to Sub-section (2) which says that if the authority is satisfied that the employees had sufficient cause for not making application within such period, he may condone the delay in his discretion. The delay has been condoned in these applications. We think, in extraordinary jurisdiction, we should not in any way disturb the discretion exercised by the said authority under the second proviso to Sub-section (2) of Section 20.

7. The writ petitions have got no force and are dismissed with costs.