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Court : Mumbai

Decided On : Aug-19-1966

Reported in : (1967)69BOMLR296; (1967)IILLJ388Bom; 1967MhLJ145

Judge : B.N. Deshmukh and ;D.V. Patel, JJ.

Acts : [Minimum Wages Act, 1948](#) - Sections 4, 5, 12, 12(1), 13, 14, 20 and 20(3)

Appeal No. : Special Civil Application Nos. 853, 874, 875 and 941 of 1965

Appellant : Yeshwant Ambarsa Mamarde and ors.

Respondent : Authority Under Minimum Wages Act, Nagpur and ors.

Judgement :

Patel, J.

1. These four special civil applications arise out of the orders made by the authority under the Minimum Wages Act in respect of claims made by members of different departments of the opponent 'city of Nagpur Corporation.' The petitioners are in the employment of the Nagpur Corporation and item 6 in the schedule governs the petitioners; employment. The petitioners' working day is eight hours a day. They alleged that they were required to work on Sundays, a day of holiday

fixed under the Minimum Wages Act by rules under S. 13 made by the Government, and since they were made to work on Sundays, they must be paid remuneration for the extra work, or in any event compensation for the work done on Sundays.

2. On behalf of the Corporation, two defences were set up, one that at least in respect of some work the notification of the State Government under S. 5 applied only to unskilled workers and, therefore, the skilled workers were out of the benefit of the notification and could not make an application under S. 20 of the said Act. The second contention was that as the wages of the petitioners were much more than the wages fixed under the Minimum Wages Act, they were not entitled to claim anything under either S. 13 read with the rules, or S. 14. It may be mentioned that the minimum wages, which are fixed by the notification by the State Government under S. 5, are Rs. 1-2-0 per day for adult male and 12 annas for adult female labour at Nagpur, Jabalpur and Akola, and in other centres at 14 annas per day for adult male and 9 annas for adult female labour. Wages paid to the petitioners ranged from Rs. 78 per month to Rs. 300 per month. According to the Corporation, even if the petitioners had a right of claiming overtime payment on the basis of Minimum Wages Act, their total emoluments are much higher than the minimum wages provided under the notification and so they are not entitled to anything more. Both these contentions have succeeded before the authority under the Act. Sri Dhaba contends that the authority is wrong in its decision on both the points.

3. For the consideration of the first point, it is necessary to mention only a few facts. After following the procedure laid down under S. 5, the Madhya Pradesh Government fixed the minimum wages under that section by notification, dated February 21, 1951. The Government fixed the rate of wages for unskilled labour including casual labour in respect of the scheduled employments as mentioned in the schedule under this notification, therefore, minimum wages were fixed only in respect of unskilled labour belonging to both permanent as well as casual class. While revising the rates, the Government omitted reference to the words 'unskilled labour' or 'casual labour' saying :

'... The State Government are pleased to revise the minimum rates of wages in respect of the scheduled employment as mentioned in schedule below in supersession of those fixed under ...'

4. Sri Dhabe contends that the reference to the words 'of those' is only to the minimum rates of wages and not to wages of persons referred to in the earlier notification. On the other hand, Sri Patil says that since the Government was revising the minimum rates of wages and has used the words 'those fixed' under the notification, dated February 21, 1951, we must read it as a qualification to wages of those whose wages were fixed by the prior notification. Now, there is no particular charm in using the words 'revising' or the word 'fixing.' Merely because the second notification is in revision of the first notification, it does not necessarily mean that its operation must be confined to the case of employees who were covered by the notification. The provision must be read in the light of other words used in the said notification. Now, the schedule that is given is 'name of scheduled employment' and it is 'employment under any local authority.' It is at once apparent that the schedule is not limited by its application to a particular kind of work. It is all-embracing and, therefore, merely by reference to the adjectival words 'of those' we cannot reduce the meaning of the schedule. The notification must be construed as all other instruments in a reasonable and rational way, and reading the notification in a reasonable way, it is obvious that it was intended to apply to all employments under a local authority, provided the employee came within the definition of the word 'employee' as defined in the Act. The words 'of those' used in the body of the notification related to the minimum rates of wages and not wages of workers fixed under the old notification. In our view, the authority below was wrong in interpreting the notification made by the Government.

5. This, however, does not solve the difficulties of the petitioners. Section 5 prescribes the procedure for fixing and revising minimum wages. It is a procedural section, the requirements of which must be followed in accordance with the subsequent section for the purposes of coming at a decision as to the minimum wages that must be fixed. Section 13 gives the Government a right to frame certain rules in respect of which minimum wages have been fixed. The rules provide for

(i) fixing the number of hours of work which constitute a working day inclusive of interval;

(ii) fixing the number of hours of work which constitute a working week;

(iii) a day for rest in every period of seven days which must be allowed to all employees or to any specified class of employees and for the payment of remuneration in respect of such days of rest; and

(iv) provide for payment for work on a day of rest at a rate not less than the overtime rate.

6. It is not necessary to refer to Sub-section (2) of S. 13. Section 14 prescribes the payment of overtime rate to an employee whose minimum rate of wages is fixed by the Act, by the hour, by the day or by such a longer wage-period.

7. The State Government has made rules under the provisions of S. 13. Rule 23 does prescribe a weekly holiday, but does not prescribe any payment to be made for work on a rest day. Rule 24 prescribes that the normal working day for an adult worker would be nine hours. It also prescribes under rule 26 extra wages for overtime.

8. The question is whether the petitioners are entitled to any payment in respect of this work on a day of rest when no rules are made by the State Government in respect of the same. A Division Bench of this court in *Ratanlal v. Municipal Committee, Khapa* [Special Civil Application No. 3 of 1965, decided by Wagle and Padhye, JJ., on December 13, 1965 (Unrep)] held that unless the State Government has made a rule requiring the payment to be made, no such payment can be claimed. The Court differed from the decision in *Athni Municipality v. Shetteppa Laxman Pattan* : (1965) IILLJ307 Kant . In another case in *Union of India v. B. D. Rathi* : (1962) IILLJ655 Bom a Division Bench of this Court considered the scope of Ss. 4, 13 and 14, and while construing the words 'ordinary rate of wages' observed that :

'... Moreover if the expression 'ordinary rate of wages' in rule 25 is interpreted to mean 'ordinary contract rate of wages,' such interpretation would enlarge the

scope of rule 25 beyond that of the provisions of the said Act, which cannot be done.'

The learned Judges held that the Act did not interfere with the domain of contract so long as the contract provides the total minimum wages fixed by that Act and that they said that :

'... Considering the relevant provisions of the said Act together, it appears to us the 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.'

These observations are apposite to the question in hand and if the decision is right which Sri Dhabe contends it is not, then the matter is concluded. The question is :

'Does the question require reconsideration ?'

9. Sri Dhabe invites our attention to a decision in Chief Executive Officer, Zilla Parishad, Yeotmal v. Bhimrao [Special Civil Application No. 508 of 1965, decided by Kotval and Padhye, JJ., on January 19, 1966 (Unrep.)], where the Court did not really consider the point in issue, but remitted the proceeding to the authority under the Act for decision. It, however, made, while dealing with a contention founded on the decision in Union of India v. B. D. Rathi : (1962)ILLJ655Bom (vide supra) a passing observation. The contention was that the Minimum Wages Act was intended in terms to secure only a minimum subsistence to the workers and if once that is ensured, then the entire object of the Act is fulfilled and the workers cannot claim anything under it. The Court said :

'the contention appears to us somewhat revolutionary and if accepted, may materially affect the administration of the Minimum Wages Act altogether.'

10. It may be that the Court thought, in the absence of further arguments on the point, that the contention appeared to be revolutionary. The question, however, must depend for decision, upon the terms of the relevant provisions of the Minimum Wages Act. Now, the Act shows that its purpose was to assure minimum wages to all employees and the Government was entitled to fix under S. 5

minimum rates of wages. Went along with the rates of wages such other emoluments as must be paid for certain other things. Section 14, which requires the payment for overtime work, postulates that the worker, who asked for it, is one whose minimum rate of wages is fixed under the Act, that is, someone who gets the minimum rate of wages. The Act was not intended to enable the Government to lay down rules for the working of industries and/or local authorities. There are several other Acts in force which prescribe the conditions of service in industries and local authorities. Evidently that was not the object of this Act and this seems to be made clear when one reads S. 12 which requires payment of emoluments to a worker, in accordance with the Act.

Section 12(1) reads as below :

'Where in respect of any scheduled employment a notification under S. 5 is in force, the employer shall pay to every employee engaged in a scheduled employment under him wages 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 authorized within such time and subject to such conditions as may be prescribed.'

Omitting the unessentials, the section must read :

'the employer shall pay to every employee at a rate not less than the minimum rate of wages fixed without any deductions.'

11. It is clear that what the employer is bound to pay is something more than the Minimum Wages Act and not pay or give all the benefits prescribed for workers who get only the bare minimum wages. In our view, having regard to the charging section which prescribes what the employer should pay the workman, it is impossible to contend that, over and above the high contractual wages, the employer is still bound to pay on the basis of the contractual wages for other advantages to the workers. Those matters may and could be provided for by other means. We therefore, think that the conclusion in *Union of India v. B. D. Rathi* : (1962) IILLJ655Bom (vide supra) is fully justified and so is the conclusion of the authority below.

12. Sri Dhabe contended that, under S. 20 Sub-Section (3), the authority is entitled to value the advantages to a workman and provide payment of the same. He relies in support of his contention on the decision in *Jaswant Sugar Mills v. Subdivisional Magistrate* : (1960)IILLJ373All . In the context of S. 12 that argument is not applicable in the present case. It may possibly cover a case where a workman is getting the minimum wages as prescribed by the notification and who is required to work on Sunday in which case though no rates are fixed by the State government for payment to him, he might go to the authority and ask for compensation. We, however, do not decide this question, as it is not necessary to do. The question may have to be considered as and when occasion arises.

13. In view of our judgment, we discharge the rule. Looking to the circumstances of the case, there will be no order as to cost.