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Court : Rajasthan

Decided On : Aug-05-1980

Reported in : 1980WLN(UC)327

Judge : S.N. Deedwania, J.

Appeal No. : S.B. Civil Revision Petition No. 244 of 1977

Appellant : Khalil and ors.

Respondent : The Assistant Engineer

Disposition : Petition dismissed

Judgement :

S.N. Deedwania, J.

1. This revision is preferred against the Judgment dated July 27, 1977 of the learned District Judge, Bikaner, whereby he partly accepted the appeal of the non-petitioner in a claim under the Payment of Wages Act, 1936 (hereinafter referred to as ' the Act).

2. Briefly stated the facts are these. The petitioners submitted a claim under Sections 15(2) and 16 of the Act for overtime wages for the period between 1st of June, 1972 to 31st of July, 1972 against the respondent before the learned Authority appointed under the Act. (sic)The non-petitioner employed the petitioners

to work on Pump Station of the Rajasthan Canal Project, Chhaturgarh, Bikaner and during the relevant period they remained on duty at the Pump Station round the block. The learned authority directed the non-petitioner to pay to the petitioners overtime wages for 16 hours per day from 1-6.(sic)72 to 31-7(sic)72 The non-petitioner preferred an appeal before the District Judge, who as already stated partly accepted the appeal and restricted the payment of overtime wages to each of the petitioners for 4 hours per day instead of 16 hours per day. The reason for the decision of the learned District Judge appears to be that under Sections 54 and 56 of the Factories Act, the non-petitioner could not take overtime work from the petitioners for more than 4 hours i. e. upto 1-2 hours a day and, therefore, for any employment for overtime in contravention of Sections 54 and 56 of the Factories Act, the petitioners were not entitled to any overtime wages.

3. I have heard the learned Counsel for the parties and perused the entire record of the case carefully.

4. It is strenuously argued by the learned Counsel for the petitioners that the non-petitioner cannot take advantage of his own wrong. If the non-petitioner employed the petitioners in contravention of the Factories Act, he may be liable to prosecution but on that score he could not escape his liability for payment of full overtime wages.

5. On the other hand, learned Counsel for the non-petitioner argued that as the action of non-petitioner was in contravention of the law, the petitioners could not get overtime wages for more than 4 hours a day. I have considered the rival contentions carefully. No doubt, it was that observed in (sic)Garusharan Singh v. (sic)Rewa Transport Services and Ors. 1968 I.L.J.(M.P) 143:

It may also be mentioned that there is complete prohibition under Section 13 of the Motor Transport Workers Act from employing any worker for hours in excess of the hours prescribed under Section 13 Any overtime work done in excess of the hours prescribed under Section 13 shall be work done in violation of the Act, and a claim based on such a violation cannot be sustained under the Minimum Wages Act or the Payment of Wages Act.

I have gone through this authority but with great respect I am unable to agree with the same. No reason whs. so ever has been given by their Lordships In making the aforesaid observations The restriction for employment of the workman beyond a particular number of hours including the overtime has been enacted for the benefit of the workman and its violation may subject the employer to penal consequences, bat the effect of such an illegal act in not to deprive a workman of his overtime wages which he has earned by actual putting in the work Moreover these observations appear to have been made by way of obiter dicta. I am supported in my view that a workman is entitled to his overtime wages for the entire period, for which be has worked Irrespective of the fact that under the law, he could not be asked to work overtime beyond a minimum number of hours, by the observations in the following two authorities:

(1) Carew & Co. Ltd. v. Sailaja Kanti Chatterjee and Ors. 1972(42)F.I.R. 316:

The proviso (ii) to Section 7(2) of the Act pats a bar on the employer to demand overtime work from the employer for any period exceeding 120 hours in any one year. But, in violation of that provision of the said section, if the employee it compelled by the employer to work overtime for more than 120 hours a year, that, however, shall not disentitle the employee to recover overtime wages for the period exceeding 120 hours at the statutory rate.

(2) Bishan and Ors. v. Labour Court and Ors. 1979 (38) FLR 403:

In India Oxygen Ltd. v. Its Workmen (4) the Supreme Court held in a case under the Bihar Shop³ and Establishment Act, 1963 that the workmen were entitled to be paid at overtime rate for all work beyond the hours under their conditions of service, even though within maximum permitted hour under the Act. With regard to the limit of overtime hours prescribed by the Act it was observed that the Rule regarding maximum daily hours of work only put a bar on the Employer to demand overtime work from the employee beyond the prescribed extent. But in violation of the provision if the employee is compelled by the employer to work overtime more than 120 hours a year, that shall not disentitle the employee to recover overtime wages for the period exceeding 120 hours at the statutory rate These observations hold good with regard to the parallel provisions of Section 6 of the Adhiniyam.

It, therefore, does appear that the learned District Judge took a wrong view of a law in limiting the overtime wages of the petitioners to 4 hours per day.

6. However, it is strenuously contended by the learned Counsel for the non-petitioner that a decision on the question of law can not be corrected by the court in its revisional jurisdiction, if the appellate court has not acted in the exercise of its jurisdiction illegally or with material irregularity. I am inclined to agree with this submission. The learned District Judge appears to be wrong on the question of law but it does appear that he has acted in the exercise of its jurisdiction illegally or with material irregularity. This Court, therefore, cannot correct errors of law only in the exercise of its revisional powers. It was thus, observed in *DLF Housing and Construction Co. (P) Ltd v. Sarup Singh and Ors.* : [1970]2SCR368

While exercising the jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact how ever gross or even errors of law unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. The words, 'illegally' and 'with material irregularity' as used in CL. (c) do not cover either errors of fact or of law; they do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this clause may relate either to breach of some provision of law or to material defects of procedure affecting the ultimate decision, and not to errors either of fact or of law, after the prescribed formalities have been complied with.

7. Where the lower court stayed proceedings under Section 38 of the Land Acquisition Act pending decision of suit for specific performance on ground that entire matter relating to apportionment of compensation was covered by the suit, the order of the lower Court could not be interfered with in exercise of revisional jurisdiction under Section 115, Civil P. C. Merely because the High Court would have felt inclined, had it dealt with the matter initially, to come to a different conclusion on the question of continuing stay of the reference proceedings pending decision of the appeal, could hardly justify interference on revision under Section 115 of the Code when there was illegality or material irregularity committed by the lower court.

8. I am therefore of the view that this revision petition is not maintainable and is liable to be dismissed. I, therefore, dismiss the revision petition but make no order as to costs.

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