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Sushil Kumar and ors Vs. the Director General of Works,

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Court : Delhi

Decided On : Jan-24-2012

Appellant : Sushil Kumar and ors

Respondent : The Director General of Works,

Advocate for Def. : Dr. Barlingay

Advocate for Pet/Ap. : Ms. Anita Sharma, Ms. Shweta Kapoor

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision: 24.01.2012 + LPA 13/2003 SUSHIL KUMAR and ORS ..... Appellants Through : Sh. R.K. Kapoor, Ms. Anita Sharma and Ms. Shweta Kapoor, Advocates. Versus THE DIRECTOR GENERAL OF WORKS, CPWD..... Respondents Through : Sh. Sanjeev Sabharwal with Sh. Hem Kumar, Advocates, for Govt. of NCT of Delhi. CORAM: MR. JUSTICE S. RAVINDRA BHAT MR. JUSTICE S.P. GARG MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT) %.

1. The controversy in this appeal pertains to the correctness of the judgment dated 25.11.2002, of a learned Single Judge of this Court, by which W.P. 5743/2001 was rejected. The appeal was received by this Bench today; with consent of counsel for parties, it was finally heard..

2. The facts are that the present appellants - eight in number - claimed to have worked as Pump Operators in the establishment of the respondent L.P.A. 13/2003

Page 1 organization - Central Public Works Department (CPWD). It was alleged that they were "Work-Charged" employees. They preferred a claim on 23.04.2001, alleging that the respondent establishment had not paid them the applicable overtime wages, in accordance with the Notification issued by the appropriate Government under the Minimum Wages Act, 1948 ("the Act"). The claim further stated that the amount payable was ` 3,44,706/-. A list was attached to the claim petition, detailing the period and the amount payable. In short, the claim pertained to the period November 1998 to October 2000. The respondents, in their reply, denied liability. At the outset, it was averred that: "XXXXXX XXXXXX XXXXXX That the application of the workers is not maintainable, since the claim of the applicants for payment of overtime was neither admissible nor required as the Competent Authority never engaged/deputed them on overtime except earlier for which they were duly paid. XXXXXX XXXXXX XXXXXX".

3. It was further averred that the applicants had been paid "Over-time" wages within the prescribed standards, in terms of office order No. 23/9/98/EC X dated 12.02.1999, restricting overtime in respect of all categories and the actual performance of the duties. The authority which decided the application under Section 20(2) of the Act, rejected it, holding that in terms of a decision of the Supreme Court, i.e. Municipal Council, Hatta v. Bhagat Singh and Others (1998) 2 SCC 443, overtime wages could not be claimed by the present appellants; they challenged that in a writ proceeding. The impugned order rejected the petition. Their appeal was rejected after noticing the rival arguments, by a previous Division Bench, on 03.12.2003. The appellants preferred a petition L.P.A. 13/2003 Page 2 for Special Leave, which was granted, by the order dated 14.01.2010; this Court was directed to consider the appeal on merits. The Supreme Court observed as follows, in the order of 14.01.2010: "XXXXXX XXXXXX XXXXXX.

3. One of the objections raised by Ms. Indra Jaising, learned Additional Solicitor General, appearing for the Respondents is that the appellants are being paid salary and wages under the Central Civil Services (Revised Pay) Rules, 1997 and, therefore, The Minimum Wages Act, 1948 and the rules framed thereunder are not applicable to them..

4. On the other hand, Mr. R.K. Kapoor, learned counsel for the appellants submits that the provisions of the Minimum Wages Act, 1948 and the rules framed thereunder are applicable to the appellants..

5. Upon a perusal of the judgment of the High Court, we find that this controversy has not been examined. Our considered view, it would be in the fitness of things if the High Court reconsiders the entire matter in the backdrop of the aforesaid contentions and other pleas that may be raised by the parties..

6. We, consequently, set aside the impugned judgment and order passed by the Division Bench of High Court on 03.12.2003. Letter Patent Appeal No. 13/2003 is restored to the file of the Dlehi High Court for re-hearing and re-consideration in accordance with law and the observations made above. The parties shall be at liberty to file additional affidavits and documents before the High Court. XXXXXX XXXXXX XXXXXX".

4. Sh. R.K. Kapoor, learned counsel for the appellants urges that the impugned judgment requires to be set-aside because it is premised on the applicability of the judgment in Municipal Council, Hatta (supra), which in turn L.P.A. 13/2003 Page 3 had apparently overlooked a previous three-Judges ruling in Y.A. Mamarde and Nine Ors. and Ghanshyam and Eight Ors. v. Authority under the Minimum Wages Act (Small Causes Court) Nagpur and Anr. AIR1972 SC 1721. Particular reliance is placed on the following observations in Y.A. Mamarde and Nine Ors. (supra) judgment: "XXXXXX XXXXXX XXXXXX.

13. It is common ground between the parties that Sunday has been declared to be a day of rest and the normal working hours per day are 9 hours a day or 54 hours a week. According to Shri Dhabe the appellants' learned counsel the words "at double the ordinary rate of wages" used in Clause (b) of Rule 25 mean double the rate of wages which are actually being paid to the employees concerned and not double the rate of wages fixed under the Act as minimum wages, whereas according to Dr. Barlingay, learned counsel for the respondent, the Act is only concerned with providing for minimum wages and if an employee is being paid more than minimum wages so provided, the Act does not operate and the employer cannot be compelled to pay higher wages. The employees of the

corporation are already being paid much higher wages than those fixed under the Act as minimum wages and, therefore, so contended Dr. Barlingay, there is no legal obligation on the employer to pay higher wages. The provision requiring payment at double the ordinary rate of wages contained in Rule 25, must, according to the respondent's argument, be read as "the ordinary rate of minimum wages fixed.".

14. Let us first deal with this question. The Act which was enacted in 1948 has its roots in the recommendation adopted by the International Labour Conference in 1928. The object of the Act as stated in the preamble is to provide for fixing minimum rates of wages in certain employments and this seems to us to be clearly directed against exploitation of the ignorant, less organised and less privileged members of the society by the capitalist class. This anxiety on the part of the society for improving the general economic condition of some of its less favoured members appears to L.P.A. 13/2003 Page 4 be in supersession of the old principle of absolute freedom of contract and the doctrine of laissez faire and in recognition of the new principles of social welfare and common good. Prior to our Constitution this principle was advocated by the movement for liberal employment in civilised countries and the Act which is a pre- Constitution measure was the offspring of that movement. Under our present Constitution the State is now expressly directed to endeavour to secure to all workers (whether agricultural, industrial or otherwise) not only bare physical subsistence but a living wage and conditions of work ensuring a decent standard of life and full enjoyment of leisure. This Directive Principle of State Policy being conducive to the general interest of the public and, therefore, to the healthy progress of the nation as a whole, merely lays down the foundation for appropriate, social structure in which the labour will find its place of dignity, legitimately due to it in lieu of its contribution to the progress of national economic prosperity. The Act has since its enactment been amended on several occasions apparently to make it more and more effective in achieving its object which has since secured more firm support from the Constitution. The present rules under Section 30, it may be pointed out, were made in October, 1950 when the State was under a duty to apply the Directive Principles in making laws. No doubt the Act, according to its preamble, was enacted to provide for fixing minimum rates of wages, but that does not necessarily mean that the language, of

Rule 25 should not be construed according to its ordinary, plain meaning, provided of course, such construction is not inconsistent with the provisions of the Act and there is no other compelling reason for adopting a different construction. A preamble though a key to open the mind of the Legislature, cannot be used to control or qualify the precise and unambiguous language of the enactment. It is only in case of doubt or ambiguity that recourse may be had to the preamble to ascertain the reason for the enactment in order to discover the true legislative intendment. By using the phrase "double the ordinary rate of wages" the rule-making authority seems to us to have intended that the worker should be the recipient of double the remuneration which he, in fact, ordinarily receives and not double the rate of minimum wages fixed for him under the Act. Had it been intended to provide for L.P.A. 13/2003 Page 5 merely double the minimum rate of wages fixed under the Act the rulemaking authority could have so expressed its intention in clear and explicit words like "double the minimum rate of wages fixed under the Act". This intendment would certainly have been stated in the explanation added to Rule 25 (1) in which the expression "ordinary rate of wages" has been explained. The word "ordinary" used in Rule 25 reflects the actuality rather than the worker's minimum entitlement under the Act. To accept Dr. Barlingay's suggestion would virtually amount to recasting this phrase in Rule 25 for which we find no justification. This rule calls for practical construction which should ensure to the worker an actual increase in the wages which come into his hands for his use and not increase calculated in terms of the amount assured to him as a minimum wage under the Act. The interpretation suggested on behalf of the respondents would have the effect of depriving most of the workers who are actually getting more than the minimum wages fixed under the Act of the full benefit of the plain language of Rule 25 and in case those workers are actually getting more than or equal to double the minimum wages fixed, this provision would be of no benefit at all. This construction not only creates a mere illusory benefit but would also deprive the workers of all inducement to willingly undertake overtime work with the result that it would to that extent fail to advance and promote the cause of increased production. We are, therefore, clearly of the view that Rule 25 contemplates for overtime work double the rate of wages which the worker actually receives, including the casual requisites and other advantages

mentioned in the explanation. This fate, in our opinion, is intended to be the minimum rate for wages for overtime work. The extra strain on the health of the worker for doing overtime work may well have weighed with the rule-making authority to assure to the worker as minimum wages double the ordinary wage received by him so as to enable him to maintain proper standard of health and stamina. Nothing rational or convincing was said at the bar why fixing the minimum wages for overtime work at double the rate of wages actually, received by the workmen should be considered to be outside the purpose and object of the Act. Keeping in view the overall purpose and object of the Act and viewing it harmoniously with the general scheme of industrial legislation in the country in L.P.A. 13/2003 Page 6 the background. of the Directive Principles contained in our Constitution the minimum rates of wages for overtime work need not as a matter of law be confined to double the minimum wages fixed but may justly be fixed at double the wages ordinarily received by that workmen as a fact. The Bombay High Court has no doubt held in Union of India v. B. D. Rathi that "ordinary rate of wages" in Rule 25 means the minimum rate for normal work fixed under the Act. The learned Judges sought support for this view from Section 14 of the Act and Rule 5 of the Railway Servants (Hours of Employment) Rules, 1951. The workers there were employees of the Central Railway. With all respect we are unable to agree with the approach of the Bombay High Court. Section 14 of the Act merely lays down that when the employee, whose minimum rate of wages is fixed by a prescribed wage period, works in excess of that period the employer shall pay him for the period so worked in excess at the overtime rate fixed under the Act. This section does not militate against the view taken by us. Nor does a provision like Rule 5 of the Railway Rules which merely provides for 54 hours employment in a week on the average in any month go against our view. The question is not so much of minimum rate as contrasted with the contract rate of wages as it is of how much actual benefit in the form of receipt of wages has been intended to be assured to the workman for doing overtime work so as to provide adequate inducement to them willingly to do overtime work for increasing production in a peaceful atmosphere in the industry. The problem demands a liberal and rational approach rather than a doctrinaire or technical legalistic approach. The contract rate is not being touched by holding that T 25 contemplates double the rate of

wages which actually come into the workman's hands any more than it is touched by fixing the minimum rate of wages under Sub-section 3, 4 and 5 of the Act. The decision of the Mysore High Court in Municipal Borough, Bijapur. Gundawan (M.N.) and Ors. AIR 1965 Mys.

317. and of the Madras High Court in Chairman of the Madras Port Trust v. Claims Authority and Ors. MANU/TN/0086/1957 also take the same view as the Bombay High Court does. We need not, therefore, deal with them separately. XXXXXX XXXXXX XXXXXX" L.P.A. 13/2003 Page 7.

5. We have heard learned counsel for the respondents, who submits that the Authority under the Minimum Wages Act overlooked the fact that the Appellants' entitlement to overtime wages was even disputed. Learned counsel relied on the reply to the Claim which specifically stated that the Appellants' had not been engaged or deputed at all for the period November 1998 to October 2000 and as such are disentitled to wages..

6. In view of the rival submissions, we notice that the authority in the first instance ought to have adjudicated on the entitlement of the present appellants, i.e. whether they had worked during the relative time on overtime basis so as to claim their wages as was done by them. The only relief sought is for a determination of their entitlement. However, the authority's determination went off tangentially, by applying the Municipal Council, Hatta (supra) case, without rendering any findings on the facts of the case..

7. In the light of the above observations, we are of the opinion that the matter should be reexamined by the Authority; the appeal is entitled to succeed in the above terms. The matter is remitted for examination by the Authority under the Minimum Wages Act, appointed by the appropriate government (in the present case, the Central Government). The Authority is directed to consider the entire material on record, including the records of overtime of the Establishment as well as the other documents in support of the Appellants' claims. The Authority shall first decide whether the appellants are entitled to the overtime wages for the period claimed by them or in part thereto and then proceed to consider the rival submissions as to what should be the rate, having regard to the law declared by

the Supreme Court in Y.A. Mamarde and Nine Ors. (supra) and Municipal Council, Hatta (supra). The Authority shall hear and dispose of the matter L.P.A. 13/2003 Page 8 before it as expeditiously as possible and in any event within four months of receiving a copy of the present order. The Appeal is allowed in the above terms. No costs. S. RAVINDRA BHAT (JUDGE) S.P. GARG (JUDGE) JANUARY 24, 2012 'ajk' L.P.A. 13/2003 Page 9

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