

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 1st July, 2010.

+ **W.P.(C) No.2146/1992**

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NATIONAL AIRPORTS AUTHORITY Petitioner
Through: Ms. Anjana Gosain & Ms. S. Fatima,
Advocates.

Versus

SUDERSHAN KUMAR & OTHERS Respondents
Through: Mr. Gaj Raj Singh, Advocate for R-1&2.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

RAJIV SAHAI ENDLAW, J.

1. The petitioner employer by this writ petition impugns the order dated 9th March, 1992 of the Authority appointed under the Minimum Wages Act, 1948, on the application of 74 employees of the petitioner, all impleaded as respondents no.1 herein and holding the said employees to be entitled to overtime for the period July, 1990 to December, 1990 under Section 14 of the said Act and at the rates as prescribed in Rule 25 of the Minimum Wages (Central) Rules, 1950, at double the rate of the wages being paid by the petitioner to the said employees.

2. The petitioner employer, before the said Authority contested the very applicability of the Act to itself. The Authority held the Act to be applicable to the petitioner employer.

3. Section 2(e) of the said Act defines an “employer” as a person who employs one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under the Act. “Scheduled employment” is defined in Section 2(g) as an employment specified in the Schedule, or any process or branch of work forming part of such employment. Section 2(i) defines an “employee” as a person employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed. Section 12 mandates an employer to 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 notification under Section 5 of the Act for that class of employees in that employment. The Schedule to the Act lists the various employments. At Serial no.7 of Part I of the Schedule is listed “employment on the construction or maintenance of roads or in building operations” and at serial no.12 is listed “employment in the maintenance of buildings and employment in the construction and maintenance of runways”.

4. The case of the petitioner employer before the Authority as well as before this Court is that the 74 employees aforesaid are not employed in any scheduled employment.

5. The employment of the aforesaid 74 employees with the petitioner employer has a chequered history. They were initially working in the CPWD as work charged employees with the Civil Aviation Department of the Government of India. Upon the constitution of the petitioner vide The National Airports Authority Act, 1985, they exercised the option of absorption in the said petitioner and were so absorbed. It was/is the contention of the petitioner employer that it is engaged in the task of providing safe and economical Air Traffic services to the operating Airlines and the maintenance of office and residential buildings is an incidental activity to keep them under habitable conditions as a welfare measure and not for any commercial purposes; that the construction and maintenance of runways at Delhi where the 74 applicants were employed was being done by the International Airports Authority of India or was contracted out; that the said 74 employees were not engaged in the construction of buildings or runways and thus not employed in scheduled employment and were thus not covered by the Act and not entitled to overtime at double the rate but at the rate prescribed in the Service Regulations of the petitioner employer.

6. The Authority has on the basis of the evidence led by the parties before it concluded that the 74 employees while employed with the CPWD as work charged employees and posted/deputed for the works of the Airport were governed by the Minimum Wages Act and even after absorption in the petitioner employer have been doing the same work as while in employment of CPWD i.e. of maintenance and construction of buildings and runways and the petitioner employer has not effected any change in their duties or nature of work. It was thus held that the employment of the 74 employees was in the scheduled employment of

construction or maintenance of roads, buildings, runways and the provisions of the Act were applicable to them and hence they were entitled to overtime at double the rate of wages.

7. The aforesaid finding of the Authority is a finding of fact and the scope of interference therewith in writ jurisdiction is limited. The petitioner employer has not been able to make out any case for interference with the said factual finding.

8. The other contention of the petitioner employer before the Authority and before this Court is that the said employees on absorption with the petitioner employer were governed by the Service Regulations of the petitioner employer and were eligible for payment of overtime as per the said regulations only and not in accordance with the Act and the Rules. It is the case of the petitioner employer that under its Regulations the said employees are enjoying much better terms of employment than under the Act; they are earning much more than the minimum wages notified for the scheduled employment aforesaid; their working hours are lesser than those for which an employee is required to work in lieu of minimum wages fixed under the Act and the Rules and they are being provided with much better amenities, provisions and facilities, not provided for under the Act and the Rules. The case of the petitioner employer thus is that the employees cannot demand overtime charges at double the rates as under the Act and the Rules and are entitled to overtime charges only in accordance with the Regulations of the petitioner employer. The counsel for the petitioner employer has urged that the Act is intended to secure minimum notified wages for workmen in unorganized sector who are not in a position to negotiate and is not intended to cover the

employees of the petitioner employer who are in regular employment and who under the Regulations of the petitioner employer are enjoying much higher wages than the minimum wages notified under the Act. It is urged that the employees cannot have double benefit at the cost/prejudice of the petitioner employer. The counsel for the petitioner employer in this regard relies on *Municipal Council, Hatta Vs. Bhagat Singh* AIR 1998 SC 1201 laying down –

“To claim overtime under Section 14, the following conditions must be fulfilled by an employee (1) the minimum rate of wages should be fixed under the Minimum Wages Act, 1948; and (2) such an employee should work on any day in excess of the number of hours constituting a normal working day. Therefore, overtime under Section 14 is payable to those employees who are getting a minimum rate of wage as prescribed under the Minimum Wages Act, 1948. These are the only employees to whom overtime under Section 14 would become payable. In the present case the respondents cannot be described as employees who are getting minimum rate of wages fixed under the Minimum Wages Act, 1948. They are getting much more and that too under the Madhya Pradesh Municipal Service (Scales of Pay and Allowances) Rules, 1967. Therefore, Section 14 has no application to them. We have not been shown any other provision under which they can claim overtime.

5. The application under Section 22 of the Minimum Wages Act, is, therefore, misconceived. The respondents seem to have proceeded on the basis that because employment under any Local Authority is listed as Item 6 in the Schedule to the Minimum Wages Act, 1948 they would automatically get overtime under the said Act. Section 14, however, clearly provides for payment of overtime only to those employees who are getting minimum rate of wage under the Minimum Wages Act, 1948. It does not apply to those getting better wages under other statutory Rules.”

9. Per contra, the counsel for the respondent workmen has contended that the aforesaid judgment of a two judge Bench of the Supreme Court does not notice the earlier judgment of a three judge Bench in *Y.A. Mamarde Vs. Authority under*

The Minimum Wages Act (1972) 2 SCC 108, where also the contention was that if an employee is being paid more than the minimum wages provided under the Act, the Act does not operate and the employer cannot be compelled to pay overtime at double the rate of ordinary rate of wages under Rule 25 aforesaid. The Supreme Court though noticed that the Act was directed against the exploitation of the less organized by the capitalist class, held that the 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. Not only was the employer of a scheduled employment, even if paying wages at rates higher than the minimum rate notified, held liable to pay overtime at double the rate as provided under Rule 25 but it was also clarified that such “double the rate” has to be double of the rate of wages being paid and not merely double the minimum rate of wages. The Supreme Court noticed the judgment of the Bombay High Court in ***Union of India Vs. B.D. Rathi*** AIR 1963 Bombay 54 relying on Section 14 of the Act to construe the expression “ordinary rate of wages” in Rule 25 as minimum wage fixed under the Act but observed -

“The 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 periods so worked in excess at the overtime rate fixed under the Act. This Section does not militate against the view taken by us.”

10. The counsel for the respondent workmen also relies on the judgment of five judge Bench of the Supreme Court in ***Patel Ishwerbhai Prahladbhai Vs. The Taluka Development Officer*** 1983 Lab IC 321 negating the plea that the benefits of the Act are not available to the Government servants, the terms of

whose employment were regulated by other rules & regulations. On finding the employment to be in the scheduled employment, the benefits of the Act were held to be applicable to such employees.

11. There appears to be an apparent conflict in the judgments of the Supreme Court in *Municipal Council, Hatta* and in *Y.A. Mamarde*. Unfortunately, the judgment in *Y.A. Mamarde* was not brought to the notice of the Supreme Court in *Municipal Council, Hatta*. However, the task of resolving the said conflict does not fall on the undersigned because I find the Division Bench of this Court in *Sushil Kumar Vs. The Director General of Works, CPWD* LPA No.13/2003 decided on 3rd December, 2003 to have dealt with the said conflict. The plea there in also was that the employees of the CPWD were not entitled to overtime at double the rate under the Act and the Rules but only at the rate prescribed by the employer CPWD for the reason of the said employees being governed by the rules applicable to the Central Government employees and drawing more than the prescribed minimum wages. The Authority in that case had dismissed the claim of the employees for overtime at double the rate relying on the judgment of the Supreme Court in *Municipal Council, Hatta*. It was contended by the employees before the Division Bench that *Municipal Council, Hatta* had overlooked the judgment in *Y.A. Mamarde*. The Division Bench held that the judgment in *Y.A. Mamarde* only interpreted Rule 25 of the Rules and did not deal with Section 14 of the Act on which the *Municipal Council, Hatta* was based and therefore there was no conflict in the two judgments.

12. Though in my humble opinion, the reasoning given by the Division Bench does not appear to be correct because Section 14 of the Act was noticed, as aforesaid, by the Supreme Court in *Y.A. Mamarde* and notwithstanding the same, it was held that the employees drawing more than minimum wages also were entitled to overtime at double the rate as provided in the Rule 25, but this Court is bound by the Division Bench judgment supra.

13. I find another single judge of this Court in *Uttam Chand Vs. The Director General (Works), CPWD* MANU/DE/8914/2006 also, relying on *Municipal Council, Hatta* and *Sushil Kumar* (supra), to have taken a view that an employee in a scheduled employment drawing more than minimum wages is not entitled to overtime at double the rate as prescribed under the Act and the Rules.

14. I may, however, add that an SLP was preferred to the Supreme Court against the judgment aforesaid of the Division Bench in *Sushil Kumar* and which was converted into Civil Appeal No.6710/2004. It was the contention of the employer CPWD before the Supreme Court that the workmen were being paid under the Central Civil Services (Revised Pay) Rules, 1997 and therefore the Minimum Wages Act and the Rules framed thereunder were not applicable to the workmen; since the said aspect had not been urged or considered before the Division Bench, the Supreme Court vide order dated 14th January, 2010 remanded the matter to the Division Bench of this Court for reconsideration in the backdrop of the new contention urged. It is found that the matter, being LPA No.13/2003 is listed before the Division Bench now on 14th July, 2010. However, the Supreme Court did not interfere or comment on the reasoning given by the Division Bench

in the judgment dated 3rd December, 2003 (supra) and thus this Court will remain bound by the same.

15. I may however state my reasons for preferring the view in *Municipal Council, Hatta*, of the employee even if in scheduled employment but drawing more than minimum wages and enjoying better terms of employment than under the Act and the Rules, being not entitled to overtime at double the rate as provided in the Rules. The Minimum Wages Act, 1948 was only intended to secure minimum wages and certain other conditions in scheduled employment. It was not intended to and/or is not a legislation to otherwise govern the contract of employment between an employer and an employee drawing more than the minimum wages, even in scheduled employment. If an employee in a scheduled employment is drawing more than the notified minimum wages and enjoying amenities, facilities and conditions of employment better than those provided under the Act and the Rules, then holding the provisions of the Act to be still applicable to the employee would tantamount to the legislature interfering in terms of employment in the scheduled industry rather than securing minimum wages and related conditions of employment in such employment. The Supreme Court in *Beed District Central Co-operative Bank Ltd. Vs. State of Maharashtra* (2006) 8 SCC 514 held that even while interpreting a beneficent statute (in that case the Payment of Gratuity Act) either a contract has to be given effect to or the statute. It was held that the Gratuity Act under consideration in that case, did not contemplate that the workmen would be at liberty to opt for better terms of the contract while keeping the option open in respect of a part of the statute; he has to opt for either of them and not the best of the terms of statute as well as those of the

contract and that he cannot have both. A reading of the Minimum Wages Act, 1948 also shows that its scheme is to ensure fixing of hours of work and minimum wages therefor. It also does not envisage interference with the terms of employment even in scheduled establishments where workmen/employees are enjoying wages more than the minimum and working hours/conditions better than those prescribed in the Act. Section 14 of the Act provides for work over and above the time for which the workman is to work in lieu of minimum wages. If the workman is working for lesser hours than those for which he is required to work to earn the minimum wage, then the computation of overtime as done in the Rules on the said premise cannot be made applicable to him.

16. Section 25 of the Act makes a contract whereunder an employee relinquishes or reduces his right to a minimum rate of wages or any privilege or concession accruing to him under the Act null and void to the extent it purports to reduce the minimum rate of wages fixed under the Act. Unless the Act is held inapplicable to those scheduled employments where payment is being made at rates in excess of the minimum wages, the contract or agreement for payment of overtime at rates lesser than the double rate would become null and void. Section 26(2) of the Act empowers the appropriate government to, by notification, exempt the employees employed in scheduled employment from applicability of the Act or certain provisions thereof. Ideally, the appropriate Government should in exercise of the said power notify that the provisions of the Act shall not apply to those in scheduled employment earning more than minimum wages and enjoying working conditions better than those prescribed in the Act.

17. For the reasons aforesaid, the petition has to succeed and the order of the Authority under the Minimum Wages Act, 1948 is struck down/quashed. The Rule issued earlier is made absolute. However in the facts of the case, the parties are left to bear their own costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

1st July, 2010
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