Workmen of Delhi Electric Supply Undertaking

Vs

The Management of Delhi Electric Supply Undertaking

Civil Appeal No. 1408 of 1968

(C. A. Vaidialingam, P. Jagmahan Reddy, K. K. Mathew JJ)

14.04.1972

JUDGMENT

VAIDIALINGAM, J. –

1. This appeal by special leave is against the Award, dated October 24, 1967, of the Additional Industrial Tribunal, Delhi, in I.D. No. 34 of 1966.

2. Two disputes between the workmen of the Delhi Electric Supply Undertaking and the Management of the Delhi Electric Supply Undertaking were referred by the Chief Commissioner, Delhi, for adjudication to the Additional Industrial Tribunal, Delhi. Those two disputes were I.D. No. 34 of 1966 and I.D. No. 102 of 1966. A common Award in both the disputes was given by the Tribunal. This Court has granted by its order, dated May 1, 1968, special leave limited to the following points :

> "(1) Whether the Inspectors and Superintendents required to work beyond their normal duty hours are entitled to payment of overtime for the extra time and what directions are necessary in this respect.
>
> (2) Whether conveyance allowance to Inspectors and Superintendents needs to be increased and what directions are necessary in this respect."

3. The Delhi area served by the Under taking is divided into a number of zones. Technical staff is attached to each zone. At the head of the staff is an Assistant Engineer. Next to him is a Technical Superintendent and there are Inspectors below him. Type staff looks after the operation, maintenance and construction of the distribution system. The workmen covered by both the points, regarding which special leave has been granted are persons working either in the sub-stations or the zonal stations. The demand of the Technical Superintendents and Inspectors in the sub-stations and zonal stations was that their hours of duty and other conditions of service should be fixed in the same manner as those of the employees working in the power stations which have been registered as factories under the factories Act, 1948. On this basis, the Superintendents and the Inspectors claimed that they should be paid overtime wages for the extra time they work over and above their normal hours of duty. This claim was pressed on the basis that the workmen in the power stations get such payment for over-time work.

4. This claim was contested by the Undertaking on the ground that the power station has alone been registered as a factory under the Factories Act, and neither the sub-stations nor the zonal stations have been treated as a factory as in law those two areas are not a factory under section 2(m) of the

Factories Act. The respondent further pleaded that the payment of over-time wages was being paid to the workmen in the power station not under the factories Act but under clause (d) of Regulation 17 of the Service Regulations framed under Section 79(c) of the Electricity (Supply) Act, 1948.

5. The claim of the appellant regarding the conveyance allowance was for revision of the allowance fixed by the respondent by its order, dated April 10, 1964. Their grievance was that while the motor-car allowance to the higher grade officers was being increased from time to time, no such increment has been made in respect of these two classes of employees. Their plea was that the conveyance allowance must be fixed at Rs. 120/- per month for the Superintendents and Rs. 80/- per month for the Inspectors.

6. This claim again was contested by the respondent on the ground that the order dated April 10, 1964, was issued with retrospective effect from July 1, 1963, after a very careful consideration of all relevant circumstances including the allowance that was being given to the Central Government employees on the recommendation of the Pay Commission. The basis of allowance fixed under the order, dated April 10, 1964, was scientific one and as such no further increase is permissible for these workmen.

7. The Tribunal held that the service conditions of the appellants were governed by the Regulations framed under Electricity (Supply) Act which still continues to be in force. Under the said Regulation no over-time wages have been allowed to Technical Superintendents and Inspectors and therefore, the claim for over-time allowance cannot be granted. Regarding the claim for increase in the conveyance allowance, the Tribunal held that though it is true that a fairly high rise in the motorcar allowance to the higher officers has been given in the order, dated April 10, 1964, any disturbance of the allowance fixed for persons having scooters and motor-cycles like the Superintendents and Inspectors will disturb the entire arrangement as laid down in the order, dated April 10, 1964. On this ground this claim was also rejected.

8. The Delhi State Electricity Undertaking was taken over by the Delhi Municipal Corporation by virtue of Section 511, read with Item No. 11 of the Second Schedule of the Central Acts, 66 of 1957. All the employees under the Electricity Board became the employees of the Corporation. When the Undertaking was with the Delhi Electricity Board, it was governed by the Electricity (Supply) Act, 1948. By virtue of the powers conferred on the said Undertaking by Section 79(c) of this Act, the Board had power to make Regulations among other matters, relating to conditions of service of officers and servants of the Board, their salaries, duty allowance, etc. by virtue of this provision. Regulations had been framed by the Undertaking. Regulation No. 17 relating to over-time pay is as follows :

> "17. Over-time Pay.- Only the following classes of servants of the Board shall be entitled to receive over-time pay -
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> (a) those governed by the provisions of the Factories Act, 1948.
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> (b) Those employed in the Mains Department (Central Power house and Distribution Branch), Meter Department and the Sub-Station of the Distribution Branch with the exception of sealers, Meter Checkers and Inspectors :
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> Provided that no over-time pay shall be admissible to any one holding a supervisory or a clerical post."

9. In respect of the claim for over-time wages, Mr. M. C. Chagla, learned counsel for the appellants raised three contentions : (1) That Regulation 17 is no longer in force as it has not been saved under Section 516 of the Delhi Municipal Corporation Act, 1957 : (2) Even assuming that the said Regulation applies, the Technical Superintendents and Inspectors are governed by the provisions of the Factories Act, 1948 and therefore they are eligible for over the pay under clause (a) thereof : (3) Even if the Factories Act does not apply, the respondent has itself given the go-by to Regulation 17 by giving over-time pay to officers not governed by the said Regulation. In any event justice and equity require that when a workman is asked to do work beyond his normal duty hours, he should be paid over-time wages.

10. Mr. G. B. Pai, learned counsel for the respondent, pointed out that the appellants have nowhere taken the plea that the Regulations are not saved by Section 516 of the Delhi Municipal Corporation Act. On the other hand, they have all along proceeded on the basis that the Regulations apply and the workmen concerned are governed by the Factories Act, and as such they are eligible for over-time wages under clause (a) of the Regulation No. 17. The sub-stations and the zonal stations do not come under the definition of "factory" as per Section 2(m) of the Factories Act, inasmuch as no manufacturing process is carried on there. The nature of the work done by these workmen has nothing to do with any manufacturing process and therefore Regulation No 17-A has no application.

11. Mr. Pai further pointed out that no over-time payment is paid to any person who is not eligible under Regulation No. 17.

12. Mr. G. B. Pai is well-founded in his contention that the appellants have nowhere raised the point that the Regulations are not saved by Section 516 of the Delhi Municipal Corporation Act. On the other hand, the respondent has specifically raised the plea in its written statement before the Tribunal that Regulation No. 17, which has been framed under Section 79(c) of the Electricity (Supply) Act, governs the service conditions of the employees of the Undertaking which has been taken over by the Delhi Municipal Corporation. This plea was not controverted by the appellant. One the other hand, they rested their claim specifically on clause (a) of Regulation No. 17 on the ground that they are governed by the provisions of the Factories Act.

13. As the first contention that the Regulations are not saved by Section 516 of the Delhi Municipal Corporation Act, was taken by Mr. Chagla for the first time and that without any previous notice to the respondent, we did not permit him to pursue that contention.

14. Then the question is whether the concerned workmen are governed by the Factories Act. If they are governed by the Factories Act, there can be no controversy that under clause (a) of Regulation No. 17 they are eligible for over-time pay. The expressions "manufacturing process" and "factory" are defined in Section 2(k) and (m) respectively of the Factories Act. As Mr. Chagla has relied on sub-clause (3) of clause (k) and sub cause (1) of clause (m) of Section 2 it is enough to refer to those provisions, which are as follows :

> "2. In this Act, unless there is anything repugnant in the subject or context :
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> (k) "manufacturing process" means any process for -
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> #* * * *##
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> (m) "factory" means any premises including the precincts thereof -

(i) whereon ten or more workers are working or were working or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on, or

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15. From the definition of "factory" it is clear that it must be a premises where a manufacturing process is carried on. According to Mr. Chagla the manufacturing process that is carried on by the undertaking is that if generating, transforming and transmitting electricity power. Though electricity is generated in the power station still to reduce the voltage and to other incidental acts for the purpose of ensuring supply of power to consumers, the sub-stations and the zonal stations are an integral part of the power station. That is, according to Mr. Chagla, the entire process generating, transforming and transmitting power, though these items of work may be done in different places, namely, power stations, sub-stations and the zonal stations, must be considered to from part of a single manufacturing process in which the workmen are employed. The fact that some of the workmen are in the power station and the rest are either in the sub-stations or the zonal stations will not make any difference in this respect, as all of them take part in the manufacturing process. Admittedly, the power station is treated as factory and it follows that these two units, the sub-stations and the zonal stations also come within the definition of "factory".

16. No doubt Mr. Chagla referred us to the decision of the Calcutta High Court in Calcutta Electric Supply Corporation Ltd. v. Employees State Insurance Corporation, (AIR 1961 Cal 248 : (1961) 2 Lab LJ 30) where it was held that the power stations or generations stations and connected sub-stations and other ancillary establishments are to be considered as one unit. But this conclusion was arrived at by the learned Judges when construing the expression "employee" under Section 2(9) of the Employees State Insurance Act, 1948. A reading of that definition clearly shows that its ambit was very wide. Therefore this decision does not asset Mr. Chagla.

17. In this connection we may refer to the decision in Nagpur Electric Light and Power Co. Ltd. v. Regional Director, Employees State Insurance Corporation, ((1967) 3 SCR 92 : AIR 1967 SC 1364 : (1967) 2 LLJ 40) wherein this Court has disapproved the decision of the Bombay High Court (Nagpur Bench), which had held that under Section 2(12) of the Employees State Insurance Act, 1948 the area over which transmission lines run is a factory. This Court observed as follows :

"It seems to us a startling proposition that every inch of the wide area over which the transmission lines are spread is a factory within the meaning of Section 2(12). 'A factory must occupy a fixed site', see Halsbury's Laws of England, 3rd Ed., Vol. 17, Art. 15, p. 15."

18. Section 2(12) referred to in the above quotation is of the Employees State Insurance Act. It is clear from this decision that the factory must occupy a fixed site or premises. The evidence on record clearly shows that several sub-stations and zonal stations are left unattended. This will not be the case if a manufacturing process takes place in those premises. A perusal of the nature of the work that the concerned workmen have to do even as enumerated in their statement of claim before the Tribunal clearly shows that they have no part in any manufacturing process. Their functions appear to be to maintain the existing lines of generation, transmission and transformation of power in their respective ares, to attend to installation and other incidental matters when a new connection has been given to a consumer. They have to attend to daily complaints from the consumers, keep

regular reports and attend to the defects in the consumers premises. They have to go out for filed work and they have to sit in office for maintenance and preparation of the relevant records. It cannot be said that any manufacturing process either takes place in the sub-stations or in the zonal stations and they do not satisfy the definition of "factory" under Section 2(m) of the Factories Act. If these places are not factories clause (a) of Regulation No. 17 will not apply to the concerned workmen who are employed therein.

19. In this connection it may be noted that the Chief Inspector of Factories, Delhi Administration, gave evidence on the side of the respondent as M.W. No. 1 and has deposed that the electric sub-stations, whether attended or unattended are not registered as factories under the Factories Act. He has further stated that only the zonal plant at Lahori Gate "C Power House" and "Rajghat Power House" are registered as factories and that zonal stations are not registered as factories. The evidence of this witness gives an indication that the authorities administering the Factories Act have not treated the sub-stations and zonal stations as factories. We are conscious that the question whether a particular unit is a factory has to be decided by applying the ingredients contained in the definition of "factory" under the Factories Act and therefore, the fact at a witness, however high placed he may be, says that a particular unit is not a factory cannot be conclusive on the matter. We have after applying the necessary test held that the sub-stations and the zonal stations are not factories and in that connection the evidence of M. W., 1 becomes relevant. From the above discussion it follows that the second contention also fails.

20. Regarding the third contention, though we have great sympathy, when the grievance of the concerned workmen is that they are not paid when they are asked to work over-time, no relief can be granted to them. Their service conditions are governed by the Regulations framed under Sections 79(c) of the Electricity (Supply) Act. Regulation No. 17 clearly specified the persons the whom over-time wages can be paid. The concerned workmen do not come under any of the categories. Mr. Chagla has not been able to satisfy us that contrary to Regulation No. 17 any workman is being paid over-time wages. Therefore, this contention also has to be rejected.

21. Coming to the question of conveyance allowance we have already stated that the claim is for fixing Rs. 120/- per month for the Superintendents and Rs. 80/- p.m. for the Inspectors. With effect from November 1, 1955, the Delhi State Electricity Board had fixed the allowance for motorcar for certain categories of its employees ranging from Rs. 85/- to Rs. 125/- p.m. depending upon the mileage covered. Likewise allowance for maintenance of motor cycles was allowed to certain categories of employees of the Board ranging from Rs. 35/- to Rs. 45/- p.m. depending upon the average mileage. The car allowance was raised from Rs, 85-125 to Rs. 150-200 in 1959 and further raised to Rs. 200-250 from July 1, 1963. On the other hand the allowance payable to Superintendents was raised from Rs. 45/- to Rs. 60/- p.m. in 1959. The Inspectors were made eligible for the motor cycle allowance for the first time in 1961 at Rs. 30/- p.m. On April 10, 1964, the Delhi Electric Supply Undertaking revised the conveyance allowance for cars and motor-cycles or scooters. The revised rates took effect from July 1, 1963. So far as the car allowance was concerned, it was increased to some officers to Rs. 250/- p.m. and in respect of certain other officers it was increased from the amount ranging from Rs. 125/- to Rs. 200/-. There were 25 officers governed by the car allowance. Admittedly, the car allowance which was in 1955 ranging from Rs. 85-125, was revised in 1964 at amounts ranging from Rs. 125/- to Rs. 250/-. In fact there has been a steady increase from time to time. While increasing the car allowance in 1964, though the same order with the allowance for motor-cycles and scooters, no increase whatsoever was made for them. The allowance of Rs. 60/- given to the Superintendents in 1959 was retained even in 1964. Rs. 30/- given for the first to the inspectors in 1961 was retained at the same level in 1964. The Tribunal has

rejected the claim of the concerned workmen for an increase in the allowance on the ground that the order, date April 10, 1964, has fixed the conveyance allowance motor-cycles and motor-cars on a rational basis and that any disturbance in the rates will have repercussions on other category of workmen. This is the sole reason given by the Tribunal for rejecting the claim of the workmen.

22. Mr. Chagla is justified in his contention that the Tribunal has not considered the matter properly as it should have done.

23. Mr. G. B. Pai learned counsel for the respondent, no doubt, referred us to the written statement of the respondent filed before the Tribunal, wherein it is stated that when the order, dated April 10, 1964, was passed, the cost of maintenance, repair charges, cost of fuel have all been taken into account. It is further stated that the Pay Commission had recommended certain scales of conveyance allowance to the officers of the Government as well as to the employees of the Central Public Works Department. As the order has fixed the conveyance allowance on a scientific basis, the counsel pointed out, that the Tribunal was justified in rejecting the claim of the workmen, for increasing the conveyance allowance.

24. We are not inclined to accept the contention of Mr. Pai. The Tribunal has, as we have already pointed out, given no other reason expect the fact that if the rates in the order are disturbed in favour of one category of workmen, it will have repercussions on other categories of workmen. It there may be claims from other workmen also. That by itself is not a valid reason in our opinion, for rejecting the claim of the workmen. Mr. Pai also pointed out during the course of his arguments that as Delhi has expanded far and wide, the officers with cars have to travel longer distances and therefore, an increase in the car allowance was justified. There was no material placed before the Tribunal by the respondent as to what additional trips the officers have to make over and above the trips that they used to make in 1955 and later on. Admittedly, the conveyance allowance for motor-cars have been steadily increased from 1955. The 1964 rates show that the increase is as much as 2 1/2 times in some cases in respect of motor-cars. If there is a justification for such an increase in respect of cars, there is also justification for giving additional allowance regarding motor-cycles and scooters. In the written statement the respondent has admitted that the break-down in electricity is very frequent and that the Superin-tendents and Inspectors have to make more frequent visits. Having due regard to the increase in the cost of maintenance, fuel, etc., which the respondent has itself taken note of in 1964 and the extra mileage that has to be covered in our opinion, the Superintendents and Inspectors must be given an increase of Rs. 25/- and Rs. 12.50 p.m. respectively over the present rate of allowance given to them in the order of 1964. Accordingly, the Superintendents will get Rs. 85/- p.m. and the Inspector will get Rs. 42.50 p.m. Those workmen will be entitled to get the allowance at this rate retrospectively from the date of reference, namely April 1, 1966. The excess amount due to them as per our Judgment from April 1, 1966, up to March 31, 1972, will be paid by the respondent within three months from today. From April 1, 1972, these workmen will get the conveyance allowance at the rate fixed by us.

25. The award is accordingly modified in respect of the conveyance allowance and the appeal is allowed to that extent in part. There will be no order as to costs.

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