

Union of India and Others

Vs

Suresh C. Baskey and Others

Civil Appeals No. 1837 of 1991

(Kuldip Singh, B. L. Hansaria JJ)

13.11.1995

JUDGMENT

KULDIP SINGH, J.

1. The question before the General Administrative Tribunal Calcutta Bench (the Tribunal) was whether the employees (workmen) working in the Government Mint, Alipur, Calcutta - who were allottees of government accommodation and as such were not being paid house rent allowance - were entitled to compute the overtime allowance payable to them after taking into account, notionally, the element of house rent allowance. Following its earlier decision in *Nirmal Chandra Bhowmick v. Union of India* [(1990) 13 ATC 789 (CAT) (Cal)] (decided on 1-9-1989) the Tribunal answered the question by the impugned judgment dated 6-9-1990 in the affirmative and decided the same in favour of the employees. This appeal, by the Union of India is against the judgment of the Tribunal.

2. It is not necessary for us to go into the chequered history of litigation on the question whether the employees of the Government Mint were entitled to the overtime allowance. It is not disputed before us that the employees of the Government Mint who come within the definition of workmen under the Factories Act, 1948 (the Act) are entitled to extra wages for overtime under Section 59 of the Act. It is further not disputed that all those employees who have not been allotted government accommodation and are in receipt of house rent allowance are entitled to compute the overtime allowance by including house rent allowance into the "ordinary rate of wages". The short question before us is whether the employees who are occupying government accommodation and as such are not being paid house rent allowance, are entitled to compute the "ordinary rate of wages" by notionally adding the amount of house rent allowance which they would have got, had they not been allotted the government accommodation.

3. The Tribunal accepted the contention of the respondents applicants before it that they were entitled to similar relief as was given to the employees of the Government Mint in OA No. 13 of 1987 [(1990) 13 ATC 789 (CAT) (Cal)]. On the concession of the learned counsel for the Union of India, the Tribunal allowed the application by the impugned order in the following terms :

"Mr C.R. Beg very fairly concedes that the facts of this case are identical with those in OA No. 13 of 1987 (*Nirmal Ch. Bhowmick v. Union of India* [(1990) 13 ATC 789 (CAT) (Cal)]).

In that view of the matter, we dispose of this application at the admission stage itself with a direction to the respondents to dispose of the representation of the applicants

dated 8-12-1986 (Annexure C) in the light of the aforesaid two judgments and pass an appropriate order giving the same benefits within 60 days from today."

4. We may, therefore, examine the judgment of the Tribunal in *Nirmal Chandra Bhowmick v. Union of India* [(1990) 13 ATC 789 (CAT) (Cal)]. It would be useful to reproduce the operative part of the judgment :

"It is the grievance of the applicants that although an order has been made on 11-11-1985 directing that overtime should be calculated inclusive of house rent allowance, the respondents are not implementing the same. This application has been taken out for implementation of the order dated 11-11-1985 read with order dated 28-9-1984 and Mint Diary Order No. 130 of 1984 dated 26-10-1984.

Mr Samir Ghosh appearing for the applicants invites my attention to Annexure 'A' at p. 22 of the application which is the letter dated 11-11-1985. The subject-matter of this letter is 'computation of overtime allowance on the basis of emoluments including house rent allowance - payment of arrears regarding ...'. This letter is addressed to the General Manager, India Government Mint, Bombay/Hyderabad/Calcutta and is written by the Under Secretary to the Government of India, Ministry of Finance, Department of Economic Affairs.

This letter reads as follows :

'I am directed to convey the approval of the Government of India, Ministry of Finance, Department of Economic Affairs, for making payments of arrears of overtime allowance from 1-1-1956 onward on the basis of emoluments including house rent allowance to the industrial employees as well as the classified staff of the India Government Mints at Bombay, Calcutta and Hyderabad.

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This issues with the approval of IFA in the department vide their UO No. 3825/IFA/85 dated 7-11-1985.'

The letter dated 28-9-1984 at p. 23 of application is addressed to Shri H.N. Gupta, General Manager, India Government Mint, Calcutta. Paragraph 1 of this letter states as follows :

'Please refer to the correspondence resting with our letter of even number dated 28-6-1984 regarding computation of OTA on the basis of emoluments including HRA addressed to the General Manager, India Government Mint, a copy of which has been endorsed to you.'

The third letter annexed to the application at p. 24 is dated 26-10-1984, the subject-matter of which is - 'Computation of overtime allowance on the basis of emoluments including house rent allowance for work between 37 1/2 and 48 hours a week.' This letter records as follows :

'Computation of overtime allowance on the basis of emoluments including house rent allowance was under consideration of the Government of India, Ministry of Finance (DEA) since quite some time. It has now been decided by the Government that overtime allowance will be computed on the basis of emoluments including house rent allowance with effect from 9-5-1984 for work done between 37 1/2 hours to 48

hours per week in respect of all employees of the three (3) Mints.'

Going through the annexures to the application, the correctness which has not been disputed by the respondents, I have no doubt in my mind that overtime allowance payable to the applicants must be computed inclusive of house rent allowance."

5. The Tribunal, thereafter, allowed the application in *Nirmal Chandra Bhowmick v. Union of India* [(1990) 13 ATC 789 (CAT) (Cal)] in the following terms :

"In view of facts stated above, this application is allowed. The respondents are directed to give effect to the Government Order dated 11-11-1985 read with Order dated 28-9-1984 and Mint Diary Order No. 130 of 1984 dated 26-10-1984, as appended in Annexure 'A' of the application collectively, so far as the applicants are concerned the respondents are directed to draw and disburse the overtime allowance in terms of the said order. This order should be complied with within three months from date. All arrears payable to the applicants be paid to them within the said period.

Matter is disposed of. There will be no order as to costs."

Special Leave Petition 4854 of 1990 filed against the above-quoted judgment of the Tribunal in OA No. 13 of 1987 [(1990) 13 ATC 789 (CAT) (Cal)] was dismissed by this Court on 26-2-1990 by the following order :

"We find no grounds to condone the delay. Interlocutory application for condonation of delay is dismissed. Consequently, the special leave petition is dismissed as barred by time."

6. The judgment of the Tribunal in OA No. 13 of 1987 [(1990) 13 ATC 789 (CAT) (Cal)] shows that the Tribunal, after quoting the three government instructions, directed the Union of India to give effect to the said instructions. It is no doubt correct that the government instructions specifically provided that "overtime allowance will be computed on the basis of emoluments including house rent allowance", but it is nowhere provided in the said instructions that even those employees who are occupying government houses and as such are not being paid the house rent allowance, are also entitled to include house rent allowance, notionally, in their wages for the purposes of computing the overtime allowance. We are of the view that on the plain reading of the instructions relied upon by the Tribunal it is not possible to interpret the same to mean that the employees of the Government Mint who are occupying government accommodation and as such are not being paid house rent allowance, are entitled to compute the overtime allowance by including the house rent allowance - notionally - in their emoluments. Since the Tribunal in its judgment in OA No. 13 of 1987 [(1990) 13 ATC 789 (CAT) (Cal)] did not interpret the government instructions the same shall be read in the light of the interpretation given by us.

7. This Court on 26-7-1994 passed the following order :

"CA No. 1837 of 1991. - This appeal is directed against the judgment of the Central Administrative Tribunal, Calcutta Bench dated 6-9-1990 in OA No. 983 of 1990. The Tribunal in turn relied upon its earlier judgment in OA No. 13 of 1987 [(1990) 13 ATC 789 (CAT) (Cal)] was dismissed by this Court on the ground of delay.

Since this Court has granted leave to appeal against the judgment of the Calcutta Bench in OA No. 983 of 1990, the matter has to be finally decided on merits. There is a connected appeal on the same point from the judgment of the Central Administrative Tribunal, Bombay.

We are prima facie of the view that any decision on merits in these two appeals is likely to affect the respondents in SLP (C) No. ... (CC No. 23481) filed against the judgment of the Central Administrative Tribunal, Calcutta Bench, in OA No. 13 of 1987. The special leave petition was dismissed on the ground of delay on 26-2-1990. We direct the Registry to issue notices to the respondents in SLP (C) No. ... (CC No. 23481) which was dismissed on 26-2-1990. The notices shall be returnable on 7-9-1994. The Union of India to obtain dasti process in addition to serve those respondents."

8. In response to the above-quoted order, Nirmal Chandra Bhowmick has filed affidavit on behalf of the respondents in SLP No. 4854 of 1990.

9. We have heard learned counsel for the parties. We agree with the contention of the learned counsel of the appellant that a bare reading of the government instructions relied upon by the Tribunal goes to show that the said instructions do not give any right to the respondents and others similarly situated to have the house rent amount included in their emoluments for the purpose of computing overtime allowance.

10. Even otherwise the government instructions have to be read in conformity with the provisions of the Act. The claim of the respondents for grant of overtime allowance is based on Section 59 of the Act. Sub-sections (1) and (2) of Section 59 of the Act, which are relevant, are as under :

"Extra wages for overtime. - (1) Where a worker works in a factory for more than nine hours in any day or for more than forty-eight hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages.

(2) For the purposes of sub-section (1), 'ordinary rate of wages' means the basis wages plus such allowances, including the cash equivalent of the advantage accruing through the concessional sale to workers of foodgrains and the other articles, as the worker is for the time being entitled to, but does not include a bonus and wages for overtime work."

11. The overtime allowance has to be computed on the basis of the "ordinary rate of wages". Sub-section (2) of Section 59 of the Act defines "ordinary rate of wages" to mean the basic wages plus such allowances as the worker is for the time being entitled to, but does not include the bonus and wages for overtime work. In other words, the ordinary rate of wages is the basic wages plus the allowances to which a worker is entitled for the time being. If a worker is not entitled to a particular allowance the same cannot be included in the "ordinary rate of wages". In the present case, admittedly, the respondents are not entitled to the house rent allowance and as such the same cannot be included while determining the ordinary rate of wages. It would be wholly fallacious to include an allowance 'notionally' which has been excluded specifically. The legislature in its wisdom included the cash equivalent of the advantage accruing through the concessional sale to workers of foodgrains and other articles in the definition of "ordinary rate of wages". The legislature has not

done so in respect of the house rent allowance.

12. We respectfully agree with the law laid down by this Court in Govind Bapu Salvi v. Vishwanath Janardhan Joshi [1995 Supp (1) SCC 148 : 1995 SCC (L&S) 308 : (1995) 29 ATC 103] and in Master of the Mint v. Kashi Nath Dutta [CAs Nos. 2376-2377 of 1977, decided on 31-10-1995].

13. We are inclined to agree with the learned counsel for the appellant that despite the respondents getting a slightly lesser rate for computing the overtime allowance they are placed in an advantageous position as compared to those who are not in occupation of government accommodation. In the additional affidavit filed on behalf of the Union of India, multiple benefits which accrue to a government employee, who is allotted government accommodation, have been shown as under :

#"Government Accommodation Private Accommodation(1) Nominal licence fee up exorbitant rent-incremental upto 10% of basic pay the mercy of landlord.(2) No HRA payable HRA admissible approximately Rs 250 for this category of employees.(3) In the vicinity of Mint far from Mint.(4) No expenditure on some expenditure on transport transport and inconvenience.(5) Little time taken to reach some time taken to reach Mint.Mint(6) Free maintenance by minor maintenance has to beGovernment attended by the allottee - all other maintenance by the landlord at his convenience.(7) One can live till the age at the mercy of landlord.of superannuation and 6 monthsthereafter(8) In case of 'die in harness' No such provision exists."the quarter is allotted todeceased's dependant.##

14. We, therefore, hold that the respondents and other employees of the Government Mint two are occupying government accommodation are not entitled to include the house rent allowance as a part of the "ordinary rate of wages" for computing the overtime allowance.

15. We allow the appeals, set aside the impugned judgments of the Tribunal. We, however, direct that the respondents or other employees of the Government Mint similarly situated who have already been paid overtime allowance in terms of the Tribunal's judgment shall not be asked to refund the same.

16. In OA No. 13 of 1987 [(1990) 13 ATC 789 (CAT) (Cal)] the Tribunal directed that the government instructions relied upon by the Tribunal be implemented. Since we have interpreted the government instructions and also the provisions of Section 59 of the Act, it would be in the interest of justice that the law laid down by us be made applicable to the applicants in OA No. 13 of 1987 [(1990) 13 ATC 789 (CAT) (Cal)] (respondents in SLP No. 4854 of 1990) prospectively from the date of this judgment. No costs.