

CALCUTTA HIGH COURT

Carew and Co. Ltd

Vs.

Sailaja Kanti Chatterjee

Civil Revn. No. 2639 of 1968

(Amiya Kumar Mookerji, J.)

01.02.1972

ORDER

Amiya Kumar Mookerji, J.

1. This rule was obtained by the employer M/s. Carew & Co. Ltd. and it is directed against an appellate order of the learned Chief Judge, Small Cause Court, Calcutta, in an appeal under Section 14(6)(a) of the West Bengal Shops and Establishments Act, 1963, (hereinafter referred to as 'the Act').

2. The facts that lie in a short compass may be stated as follows:

The opposite party No. 1, Sailaja Kanti Chatterjee, is a clerk under the petitioner's company. His salary was raised from ₹ 582-590 and odd per month inclusive of dearness allowance at the relevant time. During the period January, 1966 to March, 1968, he had done overtime work for a total period of 1043 1/2 hours and as such he was entitled to recover from the petitioner's company the total overtime wages amounting to ₹ 1,730.36 calculated at one and half times of his basic salary. On or about 15th May, 1968, he made an application under Section 14(2) of the Act against the petitioner before the authority under the said Act for recovery of the aforesaid deducted overtime wages.

3. The employer-company resisted the employee's claim on the ground that rate of overtime wages at 1 1/2 times of the ordinary rate as provide a in the Act would be applicable only in cases where the total work inclusive of overtime work exceeds the statutory limit of 48 hours. It is not disputed that the opposite party No. 1 had done overtime work but he was paid proportionate wages at a single rate.

4. The authority under the Act found that the employee's claim for the period June, 1968 to May, 1969, was barred by limitation and he had not done any overtime work in November and December, 1967. As regards the rest of the claim, viz., claim for overtime wages for 264 hours

during the month of June to May, 1968, he allowed the overtime wages for 120 hours in view of proviso (ii) to Section 7 of the Act and dismissed the employee's claim for remaining 156 hours. The employee and employer both aggrieved against the said order preferred an appeal and cross-objection respectively. The learned Chief Judge, Small Cause Court, Calcutta, allowed the opposite party No. 1's application and dismissed the cross-objection preferred by the petitioner. Being aggrieved against the said appellate order, the petitioner moved This Court and obtained the present rule.

5. Mr. Ghosh, appearing in support of the rule, contended that the authority under the Act had no jurisdiction to entertain and determine the opposite party No. 1's application as it involved complex and intricate question of construction and interpretation of the West Bengal Shops and Establishments Act. In support of his contentions, he referred to a decision of the Supreme Court, *The Payment of Wages Inspector; Ujjain v. Surajmal Mehta*¹, Director, the Barnagar Electric Supply & Industrial Co. Ltd. and Anr.

6. In the instant case, the only dispute is the rate of the overtime wage, whether it would be a contractual rate as alleged by the petitioner or the rate as provided under Section 13 of the Act. No contract was produced by the petitioner in the Tribunals below to prove the so called contractual rate. So, apparently, the employer's application under Section 14 of the Act does not involve any complicated question of law. In the Supreme Court case referred to by Mr. Ghosh, the workman claimed compensation under Section 25FF of the Industrial Disputes Act, 1947. In an application under Section 15(2) of the Payment of Wages Act, the workman's claim was disputed by his new employer. The Supreme Court held that for such a claim the Legislature did not provide alternative remedies both under the Industrial Disputes Act and the Payment of Wages Act. In view of the limited jurisdiction of the authority under Section 15(2) of the Payment of Wages Act it was not intended to deal with such question which in some cases might raise complicated problems of both fact and law.

7. Section 13 of the Act provides the rate of overtime as one and half times of the ordinary rate of wages payable to any person employed in a shop or establishment. In view of the provisions under Section 24 of the Act, right of the workman under the Industrial Disputes Act, 1947, has not been curtailed. In Civil Rule 3004 of 1969, *State of West Bengal v. The 8th Industrial Tribunal and Ors*². I held that the authority under Section 15 of the Act had no jurisdiction to decide whether the services of an employee have been rightly or wrongly dismissed and he also cannot claim reinstatement or payment of retrenchment compensation under Section 25F of the Industrial Disputes Act except upon an adjudication under Section 10(1) of the Industrial disputes Act. In my view, determination of the rate of overtime is within the jurisdiction of the authority under the Act and the decision of the Supreme Court, as referred to by Mr. Ghosh, has got no relevancy in the facts and circumstances of the present case.

8. Mr. Ghosh next contended that the learned Chief Judge should have held that under the Act the employee could claim overtime wages if he worked more than 48 hours in a week. He further contended that under Section 7(2) of the Act the limit of the hours of working in a shop was 48 hours in a week, whereas the normal hours of working in the petitioner's company was 36 hours; so any work done by an employee below the statutory limit, viz., 48 hours, such overtime work did not come within the meaning of statutory overtime work and, accordingly, the employee was not entitled to claim the statutory rate

¹ AIR 1969 SC 590 : (1969 Lab IC 867)

² decided on 13-1-72, since reported in 76 C.W.N. 408

under Section 13 of the Act and in support of his contentions, Mr. Ghosh referred to certain observations of the Supreme Court in the case of *Indian Oxygen Ltd. v. Their Workmen reported in*³

9. Section 7(2) of the Act only limits the maximum hours of work in a shop. But it does not impose any restriction upon the employer to fix a lesser number of hours than provided in the said section. In the present case, the normal hours of work being admittedly 36 hours in a week, so any hours of work done beyond that normal hours, viz., 36 hours a week, must be regarded as overtime.

10. It is not disputed by the petitioner that the opposite party No. 1 had done overtime work. The dispute is only as regards the rate.

11. In the *Indian Oxygen Ltd. Case 1969-I L.L.J. 235 : A.I.R. 1969 S.C. 306*, it was contended on behalf of the company that its factory at Jamshedpur having been declared an establishment under the Bihar Shops and Establishments Act, 1953 (Bihar Act VIII of 1954), it could be made liable to pay for overtime work at the rate provided in that Act, viz., at double the ordinary rate when a workman was asked to work beyond 48 hours, so the company could not be asked to pay more than the ordinary rate of wages payable to workmen, if they were asked to work beyond 39 hours but not exceeding 48 hours. The Supreme Court observed that under the conditions of the services of the company, the total hours of work per week are 38 hours. Any workman asked to work beyond these hours would obviously be working overtime and the company, in fairness, would be expected to pay him compensation for such overtime. The Bihar Shops and Establishments Act has no relevance to that question as that Act fixes the maximum number of hours of work allowable thereunder, i.e., 48 hours a week, and provides for double the rate of ordinary wages for work done over and above 48 hours.

12. Mr. Ghosh drew my attention to the last part of the above observation of the Supreme Court and contended that as provisions of both the West Bengal and the Bihar Acts are similar, the rate of overtime as provided in Section 13 of the West Bengal Shops and Establishments Act could not be looked into in view of the admitted fact that overtime done in the instant case was not above 48 hours. Accordingly, the appellate Tribunal illegally exercised its jurisdiction in granting the overtime at the rate prescribed under Section 13 of the Act.

13. The Bihar Act was not placed before me at the time of hearing of the matter. However, I myself looked into the provisions of the said Act. It seems that the provisions of the Bihar and West Bengal Acts are not similar.

14. Section 21 of the Bihar Act VIII of 1954 reads as follows:

"Where an employee is required to work in an establishment for more than 9 hours in any day or for more than forty-eight hours in any week, he shall be entitled in respect of the overtime to wages at the rate which shall be twice the ordinary rate of his wages.

³1969-I L.L.J. 235 : at page 311

15. In view of Section 21 of the Bihar Act VIII of 1954 as set out hereinabove the Supreme

Court observed that the said Act has no relevance in cases where overtime worked did not exceed the statutory limit of 48 hours. The Supreme Court in the Indian Oxygen Ltd. case (supra) further observed that if the company were asked to pay at the rate equivalent to the ordinary rate of wages for work done beyond 39 hours but not exceeding 48 hours a week, it would be paying no extra compensation at all for the work done beyond the agreed hours of work. Accordingly, the Supreme Court approved the rate for overtime work at 1 1/2 times the ordinary rate of wages, as fixed by the Industrial Tribunal.

16. The rate of overtime as provided in Section 13 of the West Bengal Shops & Establishments Act does not restrict payment of overtime wages where the overtime work is done beyond the normal or contractual hours and within the 48 hours a week, as restricted by Section 21 of the Bihar Act VIII of 1954.

17. Accordingly, I hold that in any establishment where a person enjoys the benefits of lesser number of hours of work than what is provided in Sections 6(2) and 7(2) of the West Bengal Shops and Establishments Act, the person so employed should be entitled to overtime wages as provided for, under Section 13 of the said Act, for the period he works beyond the normal hours of work applicable to his case.

18. Mr. Ghosh lastly contended that as under proviso (ii) to Section 7 of the Act the total number of overtime work shall not exceed 120 hours in one year, the Appellate Tribunal erred in law in awarding overtime wages to the opposite party No. 1 for 154 hours.

19. The proviso (ii) to Section 7(2) of the Act puts a bar on the employer to demand overtime work from the employee for any period exceeding 120 hours in any one year. But, in violation of that provision of the said section, if the employee is compelled by the employer to work overtime 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.

20. In the result, all the points raised by Mr. Ghosh fail and this rule is discharged with costs, hearing fee being assessed at 6 gold mohurs.
Rule discharged.