BOMBAY HIGH COURT

Union of India

Vs.

B.D. Rathi

Special Civil Appln. No. 1319 of 1961 (With Spl. C. A. Nos. 1745 to 1753 of 1961)

(Tarkunde and Chitale, JJ.)

26.04.1962

JUDGMENT

Chitale, JJ.

1. These are applications against the decision by the Authority under the Minimum Wages Act, 1948, at Bombay (hereinafter referred to as the Authority), on applications submitted by several employees of the Central Railway. The employees applied to the Authority alleging that they worked for 51 hours a week, although according to the provisions and rules framed under the said Act they were required to work only for 48 hours during a week; thus they have worked overtime for three hours per week, and hence they were entitled to extra wages payable as per rules framed under the said Act for the overtime work done by them during the period beginning with 1-4-1952 upto the date of the applications. It is common ground that the employees are monthly rated employees, and that they are workers in a scheduled employment.

2. These applications were opposed by the central Railway on the ground that the Authority had no jurisdiction to entertain claims prior to 1957, and that the Minimum Wages Act, 1948, was not applicable to the employees-applicants, as these employees are entitled to remuneration as per Prescribed Scale of Pay and Hours of Employment Regulations of Central Railway, from the moment they are brought on monthly rates of pay. It was not disputed before the Authority, nor before us, that the employees concerned are railway servants whose employment is "continuous," and their cases fall under Rule 5 of 'Railway Servants (Hours of Employment) Rules 1951.' The point that was urged before the Authority was that the bed Scale of Pay and Hours of Employment Regulations of Central Railway, from the moment they are brought on monthly rates of pay. It was not disputed before the Authority, nor before us, that the employees concerned are railway servants whose employment is "continuous," and their cases fall under Rule 5 of 'Railway Servants (Hours of Employment) Rules 1951.' The point that was urged before the Authority was that the bed Scale of Pay and Hours of Employment Regulations of

Central Railway, from the moment they are brought on monthly rates of pay. It was not disputed before the Authority, nor before us, that the employees concerned are railway servants whose employment is "continuous," and their cases fall under Rule 5 of 'Railway Servants (Hours of Employment) Rules 1951.' The point that was urged before the Authority was that the rules framed under Section 71E of the Indian Railways Act provide for the remuneration, i.e. wages, payable to employees, including wages for ovsputed before the Authority, nor before us, that the employees concerned are railway servants whose employment is "continuous," and their cases fall under Rule 5 of 'Railway Servants (Hours of Employment) Rules 1951.' The point that was urged before the Authority was that the rules framed under Section 71E of the Indian Railways Act provide for the remuneration, i.e. wages, payable to employees, including wages for overtime work, the employees concerned are governed by these rules, and hence the provisions of the Minimum wages Act, 1948, and rules framed there under do not apply to the cases of these employees. The Authority over-ruled this contention. It was also urged before the Authority that in view of Rule 32 of the Minimum Wages (Central) Rules, 1950, the provisions of the Minimum Wages Act did not apply. This contention also was over-ruled. In view of these conclusions, the Authority held that the employees-applicants were entitled to the benefits conferred on them by the Minimum Wages Act, and were entitled to claim wages for overtime work as provided by the said Act, and rules framed there under. It is against this decision that these Special Civil Applications are preferred to this Court under Article 227 of the Constitution.

3. Mr. Parikh, who appears for the Central Railway, contends that the Authority was wrong in holding that the provisions of the Minimum Wages Act, 1948, (hereinafter referred to as the said Act) applied to the cases of the employees concerned. The contention advanced by Mr. Parikh before us is slightly different from the contention advanced before the Authority. This contention does not seem to have been advanced before the Authority in the particular form in which it is advanced before us. We have, however, allowed him to raise that contention inasmuch as the facts on which it is based are not disputed, and we are told that the same point arises in many cases before the Authority; moreover Mr. Namjoshi, who appears for the employees, also stated that it would be desirable that this Court decides the point that is urged by Mr. ParikhMr. Parikh contends that the object of the said Act is to provide for the minimum rates of wages in the case of scheduled employees, and the Act ensures that in the case of the employees, to whom the Act applies, every employer shall pay at least the minimum wage prescribed by the said Act and rules thereunder. Mr. Parikh contends that while considering the question of over-time wages payable to such employees, the total amount of wages paid by the employer to an employee will have to be considered in order to find out whether the minimum wage, as provided by the said Act and the rules thereunder, is paid to that employee or not. In other words, Mr. Parikh contends that the Railway pays to the employees concerned more than what they would be entitled to according to the provisions of the said Act, and the rules thereunder, including the overtime wages, and hence the employees in these cases are not entitled to any relief.

4. As against that, Mr. Namjoshi for the employees contends that it is open to an employer to

agree to pay more than the minimum wages fixed according to the provisions of the said Act and the rules thereunder, and if he chooses to do so, he undertakes the liability to pay overtime wages also at a higher scale calculated according to Rule 25 of the Minimum Wages (Central) Rules, 1950, and hence the employees in these cases are entitled to the overtime wages as claimed by them.

5. In view of these contentions, the main question for consideration is : What is the liability of the employer, in view of the provisions of the Minimum Wages Act, 1948? Hence before dealing with the facts in these applications, it would be necessary to note the relevant provisions of the said Act. Section 2(b) defines the expression "appropriate Government," and according to that definition, in relation to any scheduled employment carried on by or under the Authority of the Central Government or a Railway Administration, it means the Central Government, and in relation to any other scheduled employment, it means the State Government. Section 2(h) defines "wages" and that definition indicates that the expression "wages" includes all remuneration capable of being expressed in terms of money payable to an employee, but it excludes certain items mentioned in the said definition. This definition makes it clear that the expression "wages," as used in the said Act includes not only the basic wage, but also other types of remuneration included in that definition. Section 3 casts a duty on the appropriate Government to fix the minimum rates of wages. Section 3 sub-section (2) reads thus :

> "The appropriate Government may fix, -
> (a) a minimum rate of wages for time work (hereinafter referred to as "a minimum time rate");
> (b) a minimum rate of wages for piece work (hereinafter referred to as "a minimum piece rate");
> (c) a minimum rate of remuneration to apply in the case of employees employed on piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis (hereinafter referred to as "a guaranteed time rate");
> (d) a minimum rate (whether a time rate or a piece rate) to apply in substitution for the minimum rate which would otherwise be applicable, in respect of overtime work done by employees (hereinafter referred to as "overtime rate")".

Section 3 sub-section (2) thus makes it clear that the expression "wages" consists of component parts, one of Which is 'overtime rate.' Section 3 sub-section (3) makes it clear that the fixation of minimum rates of wages would be in relation to the factors mentioned in that sub-section, such as different scheduled employments, different classes of work in the same scheduled employment, adults, adolescents, children and apprentices, and different localities; so also the fixation of minimum rates of wages would be with reference to the period of work, viz. by the hour, by the day, by the month, or by such other larger wage period as may be prescribed by rules under the said Act Section 4 provides inter alia that the minimum rate of wages fixed or revised by the appropriate Government shall consist of not only the basic rate of wages with or without

the cost of living allowance, but also of the cash value of the concessions in respect of supplies of essential commodities at a concessional rate where so authorized. Thus the cost of living allowance and the cash value of the said concessions are to be computed while fixing of revising the minimum wages. Section 5 lays down the procedure for fixing and revising minimum wages. sections 7 to 9 provide for Advisory Board, Central Advisory Board, Composition Committees, etc. to help and advise the committees mentioned in Section 5 and the appropriate Government in fixing and revising minimum wages. Section 11 lays down that minimum wages shall be payable in cash unless otherwise provided for. Section 12, which is material for the determination of the question arising in these applications, lays down the liability of an employer. Relevant portion of that section reads thus :

> "12. Payment of minimum rates of wages. (1) where in respect of any scheduled employment a notification under Section 5 is in force, the employer shall pay to every employee engaged in a scheduled employment under his wages, at a rate not less than the minimum rate of wages fixed by such notification for that class of employees in that employment without any deductions except as may be authorized within such time and subject to such conditions as may be prescribed.
> (2) ? ? ? ? ? ? "

This section makes it clear that where in the case of any scheduled employment a notification under Section 5 is published and is in force, the employer shall be liable to pay wages at a rate not less than the minimum rate of wages fixed by such notification. Section 13 provides that the appropriate Government may in such cases fix the number of hours of work, which would constitute a normal working day, inclusive of one or more specified intervals, and provide for a day of rest in every period of seven days, which the employer shall allow. It also lays down that the appropriate Government may provide for payment for work done on a day of rest, at a rate not less than the overtime rate. Sub-section (2) of Section 13 deals with particular classes of employees with reference to the nature of their employment, such as employees doing emergency work or whose employment is intermittent. Section 14 deals with overtime wages in the case of those employees, whose minimum rate of wages is fixed under the said Act. Relevant portion of that section reads thus "14. Over-time. - (1) Where an employee, whose minimum rate of wages is fixed under this Act by the hour, by the day or by such a longer wage-period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate fixed under this Act or under any law of the appropriate Government for the time being in force, whichever is higher.

> (2) . . . . . ."

It is clear that from the wording of Section 14 that that section imposes liability on the employer to pay the employees wages for the overtime work done by them at the rate fixed under the

provisions of the said Act or under any law of the appropriate Government for the time being in force, whichever is higher. This section makes it clear that the employees doing overtime work are entitled to get wages for the overtime work either at the rate fixed under the provisions and rules of the said Act, or under any other law of the appropriate Government, if such wages fixed by the latter law are higher than those fixed by the former one. Section 22 lays down penalties for breach of some of the provisions of the said Act by employers. For example, if an employer pays less than the minimum rates of wages fixed according to the provisions of the said Act, he will be liable to punishment; so also if he contravenes any rule or order under Section 13, he will be liable to punishment as provided by Section 22. Section 22A provides for punishment for contravention of those provisions of the said Act, which are not covered by Section 22. Section 25 reads thus :

> "25. Contracting out. - Any contract or agreement, whether made before or after the commencement of this Act, whereby an employee either relinquishes or reduces his right to a minimum rate of wages or any privilege or concession accruing to him under this Act shall be null and void in so far as it purports to reduce the minimum rate of wages fixed under this Act."

It is clear that Section 25 is intended to secure for scheduled employees minimum wages as prescribed by the said Act, and hence any contract by which an employee agrees to relinquish or reduce his right to get minimum rate of wages is declared void. These are the provisions of the Minimum Wages Act, 1948 with which we are concerned.

6. Mr. Namjoshi, on behalf of the employees, relies on Section 3 sub-section (3) (b), and points out that the minimum rates of wages are fixed with reference to hour, day, month, or such other larger wage period as may be prescribed. He also relies on Section 13, and contends that this section clearly indicates that the object of the said Act is not merely to provide for minimum wages, but also to regulate the hours of work, and to provide a day of rest with other consequences. He also points out that the enforcement of these provisions is ensured by Sections 22 and 22A. He also invites our attention to Section 26(2A) under which appropriate Government may direct that in certain cases provisions of the said Act or any of them shall not apply. Relying on these provisions, Mr. Namjoshi contends that the object of the said Act is not merely to provide minimum wages, the said Act confers various other rights on the employees, and hence the mere fact that an employer pays his employees the amount to which they would on the whole be entitled according to the provisions and rules framed under the said Act, does not absolve the employer from liability to pay overtime wages as prescribed by the rules under the said Act, i.e. 'at double the ordinary rate of wages.' Mr. Namjoshi relies on Rule 25, and contends that the employees in these cases are entitled to get overtime wages "at double the ordinary rate of wages," i.e. at double the contract rate of wages, that rate being higher. Mr. Namjoshi strongly relies on the words "ordinary rate of the wages; according to him, this expression clearly shows that the employees are entitled to overtime wages at double the contract rate of wages, if the

contract rate is higher than the rate prescribed under the provisions and rules of the said Act.

7. Now Rule 25 must be read with Section 14 of the said Act. Material words in section are 'at the overtime rate fixed under this Act.' Section 3(2)(d) makes it clear that the expression 'overtime rate' as used in the said Act means a minimum rate in substitution for the minimum rate otherwise applicable, in respect of overtime work. Section 4 uses the expression 'basic rate of wages,' and lays down what that rate shall consist of. Explanation to Rule 25, while defining the expression 'ordinary rate of wages,' lays down that it shall consist of 'basic wage' plus allowances and concessions referred to in Section 4, but not bonus. Section 13(c) provides for payment for work done on a day of rest at a rate not less than over-time rate. In view of these provisions there can be no doubt that the said Act is intended to secure for employees minimum wages not only for normal work, but also for over-time work, and a duty is cast on the appropriate Government to fix rates of such minimum wages. In these cases the employees' claim is under the Minimum Wages Act 1948, and under any other law of appropriate Government as mentioned in Section 14. The question for consideration is whether the expression 'ordinary rate of wages', used in Rule 25, means 'Ordinary contract rate of wages' or 'ordinary minimum rate of wages for normal work fixed by the said Act.' As stated above, in view of Sections 3(2)(d), 4, 13 and 14 there can be no doubt that the Legislature intended to fix the minimum rate of wages for overtime work also, and a duty is cast upon the appropriate Government to fix that rate. Reading Rule 25 with the above-mentioned provisions of the Act, we think that expression 'ordinary rate of wages' in Rule 25 means the ordinary, i.e. minimum rate for normal work (not overtime work) fixed under the Act, as contrasted with 'overtime rate.' Moreover if the expression 'ordinary rate of wages' in Rule 25 is interpreted to mean 'ordinary contract rate of wages,' such interpretation would enlarge the scope of Rule 25 beyond that of the provisions of the said Act, which cannot be done. In our opinion, the said Act does not interfere with the domain of contract so long as the contract provides the total minimum wages fixed by that Act.

8. The next question for our consideration is ther Rule 25 imposes liability on the employer to pay overtime wages at the rate fixed according to the provisions and rules under the Minimum Wages Act, 1948, irrespective of the fact that under the contract of employment the employer pays the employees the total remuneration, including over-time wages, to which they would be entitled according to the provisions and rules under the said Act. Section 25 would not be helpful while considering this question, because it only lays down that if an employee gives up his right to the minimum. wages as provided by the said Act, the contract of employment will be void to that extent. The material section would be section 12. That is the section which determines employer's liability. That section makes it quite clear that the only liability that is imposed on the employer is that he shall pay every employee engaged in a scheduled employment wages at a rate not less than the minimum rate of wages fixed by a notification under section 5 for that class of employment. It is true that Section 13 of the said Act deals with fixing the hours of a normal working day. It also makes provision for a day of rest during seven days. These provisions also are, however, made primarily with a view to fix minimum wages, which cannot be done without

reference to hours of work and other working conditions. Section 3 sub-section (2) (d), however, makes it quite clear that 'overtime rate' is a component part of the 'minimum rate of wages.' There is no provision in the said Act, nor in the Rules there under, except Rule 24(4A), which prohibits overtime work, such as Section 51 of the Factories Act. On the other hand, Section 14 as well as Rule 25 contemplate over-time work, and provide wages for such overtime work. Our attention was invited to the Railway Servants (Hours of Employment) Rules, 1951. Rule 5 of those rules provides that a railway servant, whose employment is continuous, shall not be employed for more than 54 hours a week on the average in any month. Reading this rule along with Rule 25 framed under the Minimum Wages Act, 1948, it is clear that if an employee works for more than 48 hours a week (but not more than 54 hours), he would be entitled to overtime wages as prescribed by Rule 25. Section 14 provides wages for the over-time work done by the employees. Considering the relevant provisions of the said Act, it appears that although certain provisions of the Act deal with fixing the hours of a normal working day, or with providing a day of rest during the week, the dominant object in making all these provisions is to provide a minimum wage with reference to the work done by the employee. The main object of the said Act does not seem to be to regulate the mode of work or the hours of work without reference to wages. If that is so, it would be difficult to accept the contention that because hours of work are regulated, the employer is liable to pay for over-time work, even though the total wages paid under the contract of employment are equal to or more than the total minimum wages, including wages for over time work, fixed according to the provisions and rules of the said Act. In our opinion, the liability of the employer is determined by Section 12 of the said Act. Considering the relevant provisions of the said Act together, it appears to us that so long as the employer pays the employees the total minimum wages, including overtime wages, as provided by the said Act and the rules thereunder, the domain of contract is left untouched. The object of the Act seems to be to secure minimum wages for the employees according to the nature and duration of the work done by the employees. In this respect, reference may usefully be made to a decision of the Madras High Court in *Chairman, Madras Port Trust v. Claims Authority*[1], In that case, it was urged that there was no default on the part of the employer, inasmuch as the employer had paid the wages prescribed by the Minimum Wages Act, considering the total payments actually made to the employees. While considering this contention, the Court observed :

> "Basically what the employee is entitled to is wages. The scheme of the Act is to provide for a minimum wage for each employee. The minimum applies to the rate. But what is payable is still the wages. The Act provides for the payment of a minimum. So long as that minimum is paid, the contractual wage structure is left unaffected and the component parts of the wages can still be regulated by the contract between the employer and the employee.
> ... ...

Section 3 directs that the minimum rates of wages shall be fixed by the appropriate Government for the different classes of employees. When those rates are fixed and notified under Section 5(2)

of the Act, the employee's right is to be paid at the minimum rate applicable to him and the employer's duty, as defined by Section 12(1), is to pay at that minimum rate to the employee. Except for that liability, the contract between the employee and the employer is left intact. If for instance, the contract rate of wages is higher, the statutory right and obligation do not come into play. The statutory right of the employee itself is to receive wages at a rate not lower than the notified minimum rate."

With respect, we agree with the view expressed in these observations. It appears to us that except for the liability imposed on an employer by section 12 sub-section (1), the contract between the employee and the employer in regard to payment of wages is left intact. In the above-said case, the Court also took the view that section 4 of the said Act did not permit the Government to alter the contractual wage structure, and fix different minima for the component parts of the wages payable to the employee. The Court observed :-

> "What is payable, as we said, is wages at the contract rate or wages at the prescribed minimum rate, whichever is higher. It is against this background that we have to construe the scope of Section 4 of the Act. . . .
> . . . .It is for the minimum rate that Section 4(1) provided, though that rate could consist of component parts. Section 4 (1) did not postulate different minima for the several components; nor could each such minimum constitute the minimum rate of wages within the meaning of Section 4(1). The Government had no statutory authority to provide for separate enforceable minima for the several components in the wage structure."

In our opinion, this would be the correct view of the provisions of the Minimum Wages Act, 1948.

9. Reference was also made to *Bahadursingh Birsing v. C. P. Fernandes*[2],

[1] AIR 1957 Mad 69 [2] 57 Bom LR 1020 : (AIR 1956 Bom 95)

and the decision of the Supreme Court in Workmen of the *Bombay Port Trust v. Trustees of the Port of Bombay*[3]; In our opinion, these decisions do not deal with the point that we have to consider.

10. Thus, in our opinion, the object of the Act being to provide minimum wages to the employees according to the nature and the duration of the work done by the employees, we have to find out what is the total liability imposed on the employer in order to achieve that object; as pointed out above, Section 12 (1) is the only section which defined that liability of the employer as regards the payment of wages. Thus it is clear that so long as the employer pays the total minimum wages as provided by the said Act and the rules thereunder, the employer will not be liable to pay anything more, merely because the Act provides for the regulation of the hours of work, and because Rule 25 prescribes wages for the overtime work at double the ordinary rate of wages.

11. In these applications, it is the contention of the Central Railway that what is being actually paid to the employees in question is either equal to or more than the total minimum wages according to the provisions and rules of the said Act. In these cases it is not disputed that the employees in question belong to the category whose employment falls in the category at Serial No. 7 and 8 mentioned in Part I of the Schedule to the Minimum Wages Act, 1948.

12. The Authority does not seem to have decided the question whether the employees concerned are paid the total minimum wages as provided by the said Act, as contended by the Central Railway. Hence we shall have to remand these cases back to the Authority. The Authority shall allow the parties to lead further evidence, if they desire to do so. The Authority shall then find out whether the wages, that are actually paid to the employees in these cases, fall short of the total minimum wages as provided by the said Act, including wages for overtime work as provided by Rule 25, as per rates mentioned in the relevant notification. If the wages actually paid fall short, then the employees will be entitled to get the amount by which they fall short.

13. In Special Civil Application No. 1319 of 1961, it appears that the Advocate for the Central Railway retired for want of instructions, and hence order was passed ex parte in favour of the employees. It is admitted before us both by Mr. Parikh for the Central Railway and Mr. Namjoshi for the employees that the question as to whether the employees in this application are entitled to the claim allowed by the Authotiry, would depend upon a consideration of their rights in the light of the observations made above. Hence the order made in favour of respondents Nos. 2 to 30 in Special Civil Application No. 1319 of 1961 also will have to be set aside, and their cases also will have to be considered again by the Authority.

14. For reasons indicated above, we set aside the order made by the Authority in each of the above applications, and send the cases back to the Authority for disposal according to law, in the light of the observations made above.

15. The contention taken up by the Central Railway before us was not specifically and in the same form taken before the Authority, and hence we make no order as to costs in all
[3] Civil Appeal No. 529 of 1959 D/-10-10-1961 : AIR 1962 SC 481
these applications.

Cases sent back.