

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 12.01.2015

+ W.P.(C) 7219/2012

DIRECTOR GENERAL OF WORKS, CPWD

..... Petitioner

versus

SUSHIL KUMAR & OTHERS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr V. K. Tandon.

For the Respondents : Mr R. K. Kapoor and Mr S. Rama
for respondents.

Mr Amit Mahajan, CGSC with Mr Nitya
Sharma for respondent/UOI.

AND

+ W.P.(C) 14846/2004 & CM No.10601/2004

CPWD MAZDOOR UNION (REGD)

..... Petitioner

versus

UNION OF INDIA & OTHERS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Varun Prasad.

For the Respondents : Mr Amit Mahajan, CGSC with Mr Nitya
Sharma for respondent/UOI.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The Writ Petition (W.P.(C) No.7219/2012) has been filed by the Director General (Works), CPWD seeking quashing of order dated

25.06.2012 passed by the Authority under Minimum Wages Act, 1948 and Regional Labour Commissioner (Central) (hereafter referred to as the 'impugned order') whereby the claims made by eight CPWD Pump Operators (hereafter 'workmen') with respect to overtime wages were allowed. The said Authority held that that the workmen had worked overtime and were entitled to overtime allowance under Section 14 of the Minimum Wages Act, 1948 (hereafter the 'Act') and Rule 25 of the Minimum Wages (Central) Rules 1950 (hereafter '1950 Rules').

2. The writ petition (W.P.(C) No.14846/2004) has been filed by the CPWD Mazdoor Union (hereafter 'Union') seeking quashing of the Office Memorandum dated 30.12.2003 passed by respondent no. 2 - Director General (Works), CPWD (hereafter the 'impugned memorandum') whereby the payment of double overtime wages to the Work charged establishment and regular classified establishment employees of CPWD has been withdrawn.

3. Briefly stated, the relevant facts pertaining to W.P.(C) No.14846/2004 are as follows:

3.1 On 05.09.1986, a Memorandum of Settlement (hereafter 'MoS') under Section 12(3) of the Industrial Disputes Act, 1947 (hereafter the 'ID Act') was entered into between the Union and the Management of CPWD (hereafter 'Management'). In terms of the MoS dated 05.09.1986, it was agreed that *'workers will get double overtime for working on Sunday/ weekly day of rest'*.

3.2 Thereafter, by Office Memorandum (hereafter 'OM') dated 18.09.1986 Director General (Works), CPWD ordered that in accordance with Rule 25 of the 1950 Rules, overtime wages to work charged staff/muster roll/categories of regular classified establishment covered under the Act will be paid at double the ordinary rates of wages.

3.3 On 15.11.1989, a MoS under Section 12(3) of the ID Act was entered into between the Union and the Management, whereby the Management agreed to pay overtime wages in accordance with the provisions of the Act, to the workers covered under the Act, as per the new pay scales with effect from 01.01.1986.

3.4 Subsequently, by OM dated 15.12.1998 (being OM No. 23/5/98-EC.X) Director General (Works), CPWD ordered that with effect from 01.01.1996 CPWD workers covered under the Act will be paid overtime wages at double the ordinary rates based on their revised wages. The relevant extract of the said OM dated 15.12.1998 reads as under:

“2. It has now been decided in consultation with the Government that the CPWD workers who are covered by the provisions of Minimum Wages Act, 1948 will be paid overtime wages at double the ordinary rates based on their revised wages w.e.f. 1.1.1996.”

3.5 The Central Government, by notification in the Official Gazette dated 23.05.2002 (being S.O. No. 563(E)), directed that the provisions of Section 2(h), Section 14 of the Act and Rule 25 of the 1950 Rules, shall not apply to the employees in the Work Charged Establishment and Regular Classified Establishment in CPWD, provided they are not engaged in any

scheduled employment and their wages have not been fixed or revised under the Act. The said notification dated 23.05.2002 reads as under:

“S.O. 563(E) - In exercise of the power conferred under sub-section 2 A of Section 26 of the Minimum Wages Act, 1948 (11 of 1948) read with sub-section b(i) of Section 2 ibid. the Central Government hereby direct that the provisions of Section 2(h), Section 14 of the Act and Rule 25 of the Minimum Wages(Central)Rules, 1950 shall not apply to the employees in Work Charged Establishment and Regular Classified Established in the Central Public Works Department (CPWD) under Ministry of Urban. Development and Proverty Alleviation having regard to the following:-

- a) These workers have not been engaged in any scheduled employment.
- b) Their wages have not been fixed or revised under the Minimum Wages Act 1948.”

3.6 Subsequently, by notification in the Official Gazette dated 08.01.2003, the Central Government withdrew the notification dated 23.05.2002 (S.O. No. 563(E)).

3.7 By the impugned memorandum dated 30.12.2003 respondent no. 2 withdrew the OM dated 15.12.1998 (being OM No. 23/5/98-EC.X) and also withdrew the payment of double overtime wages to the work charged establishment and regular classified establishment employees of CPWD. The relevant extract of the impugned memorandum dated 30.12.2003 reads as under:

- “4. The Authority under Minimum Wages Act, 1948 and the Regional Labour Commissioner (C), New Delhi while disposing of the Claim Application No. MWA-20/2001

filed by CPWD workers, issued ordered 31.12.2001 stating that the Section- 14 of the Minimum Wages Act provides for the payments of overtime allowance only to those employees who are getting minimum rates of wages under the provisions of the Minimum Wages Act, 1948. It does not apply to those who are getting better wages under other statutory rules. CPWD workers were not granted the benefit of overtime allowance under the Minimum Wages Act by this Regional Labour Commissioner(Central)'s order.

5. The above order of Regional Labour Commissioner (C) , New Delhi has also relied upon the Supreme Court Judgement in the Municipal Council, Hatta V/s Bhagat Singh in 6th February, 1998 which stated categorically that workers whose wages are not fixed under the Minimum Wages Act are not entitled to overtime allowance under the Minimum Wages Act.
6. The Ministry of Law was also consulted in the matter. In their legal advice, vide their U.O No. 20297/03 dated 18.2.2003 they have brought out that since the CPWD workers are not in receipt of minimum wages fixed under the Minimum Wages Act, 1948 and are getting pay in the scales of pay prescribed by the Ministry of Finance , these employees are not entitled for overtime wages at double rates as prescribed under the Section —14 of the Minimum Wages Act, 1948 which is not applicable to them as per the Supreme Court Judgement in the case of Municipal Council Hatta.
7. Keeping in view the above, namely the I.D Note of Labour Ministry, the order of the Minimum Wages Authority and Regional Labour Commissioner dated 31/12/2001 and the Judgement of the Supreme Court in

the Municipal Council, Hatta case (Civil Appeal No. 4826 of 1991) on 6th Feb, 1998, and Section — 14 of the Minimum Wages Act 1948, the following orders are issued with reference to the CPWD workers borne on the Work- charged Establishment and Regular Classified Establishment.

8. The following rates shall apply to the Work-charged Staff and Regular Classified Staff for the purpose of overtime allowance

Emoluments (Rs.)	Rate of OTA per hour for working days for those with 48 hours duty (in Rs.)	Rate of OTA per hour Sundays / weekly off days/effective holiday (in Rs.)
Upto 1200	7.95	10.60
1201-1450	9.55	12.75
1451/1700	11.35	17.55
1701/1950	13.15	17.55
1951-2200	14.95	19.95
2201/ and above	15.85	21.15

4. Briefly stated, the relevant facts pertaining to W.P.(C) No.7219/2012 are as follows:

4.1 The workmen filed a claim application (being MWH 21/2001) on 23.04.2001 with the Authority under Minimum Wages Act, 1948 and Regional Labour Commissioner (Central) (hereafter the 'Authority') claiming difference of over time wages alleged to be due and over time wages paid for the period November 1988 to October 2000 amounting to ₹3,44,706/- along with compensation.

4.2 The Authority following the decision of the Supreme Court in **Municipal Council, Hatta v. Bhagat Singh & Ors.:** (1998) 2 SCC 443 rejected the claim of the workmen by an order dated 31.07.2001. The relevant extract of the said order is as under:

“The term "wages" has been defined in section 2 (h) and the term over time in section 14(1) and there is a term 'minimum rates of wages' defined in section 4(1) of the Act. There is prescribed procedure for fixing and revising the minimum wages in section 5 of the Act. Under the definition of wages in section 2(h), fulfillment of the term of contract of employment is a condition precedent for payment of wages and it continues to be a condition precedent under the Act by the govt. The minimum wages is co-related to the work load performed by the employee and if the employee did any extra work in excess of the existing work load he has to be paid for excess over the fixed work load. It is because of the fact that wages are co-related to the work done, the legislature intended to fix the minimum considering whether wages fixed could be said to be higher than the minimum wages, it is not the quantum of different component that matters but it is the total wage packet the worker ultimately receives, if that exceeds the minimum wages there cannot be a cause for complaint to an employee and he is entitled to have the benefit of the statute. Section 12 stipulates payment of minimum rates of wages in respect of schedule employment where a notification under section 5 is in force. The employer shall pay to every employee engaged in a scheduled employment under him wages, at the rate not less than minimum rates of wages for that class of employees in that employment. If the employee is paid his wages which are more than the minimum wages and the over time prescribed under the Act, then he is not entitled

to claim any thing from his employer under this Act. Section 14 of the Act deals with OT which reads as under:

Section 14 OT:

Where an employee, whose minimum rates of wages is fixed under this Act by the hour, by the day or by such a longer wage period as may be prescribed, work on any day in excess the number of working hours constituting normal work day the employer shall pay him for every hour or for part of an hour so worked in excess at the over time rate fixed under this Act..."

The Hon'ble Supreme Court in civil appeal no.4826 of 1991 between Municipal Council Hatta vs Bhagat Singh and others (1998-2-SC-443) held that:

"Overtime under section 14 is payable only to those employees who are getting a minimum rate of wages as prescribed under the Minimum Wages Act, 1948. In the present case the respondents cannot be described as employees who are getting a minimum rate of wages fixed under the Minimum Wages Act, 1948. They are getting much more and that too under the Madhya Pradesh Municipal Services (Scale of pay and allowances) Rules, 1967. Therefore, section 14 has no application to them. The application under section 22 of the Minimum Wages Act, is therefore, misconceived. The respondents seems to have proceeded on the basis that because employment under any local authority is issued as item 6 in the schedule of the Minimum Wages Act, 1948 they would automatically get over time under the said Act. Section 14, however clearly provides for payment of overtime only to those employees who are getting minimum rate of wages under the Minimum Wages Act, 1948. It does not apply to those getting between wages under other statutory rules."

On perusal of the claim application it is observed that the employees have worked overtime and have submitted copy of log book which bears the signature of operator on duty on various dates for which claimed rates per hour has also been shown. The claimed rates per hour is between Rs.47 to Rs.76 which is more than in accordance with the minimum rates of wages fixed and the over time fixed under the statute One reason for this higher rate is that the employees are regular employees enjoying all the benefits under various rules applicable to the Central Govt employees including a scale of pay which is supported by an annual increment and the overtime rate depends on the scale of pay to which employees are entitled to receive from employer i.e. OP 1/2.

During the course of hearing the OP submitted a copy of office order no.26(12)/AE(E)V/84 dated 18.3.99 and dates 4.4.2000 which is placed on record which contains instruction regarding restriction of number of hours for payment of overtime. Examination in foregoing paras establishes that the employees are not covered within the ambit of provisions contained in the Act, and Rules made thereunder. This Authority is to exercise function under section 20 for claim arisen out of payment of less than the minimum rates of wages or of wages at the over rate under section 14 only as enumerated above. In view of the above pump operators are not termed as employees because they are receiving wages more than minimum rates of wages and their wages of overtime rate is also more than what is prescribed under the Act, therefore, they are not covered under the Act. The employees are not entitled to claim over time as per their claim application in view of departmental instructions governing restrictions, conditions, rules and procedure of the department of the govt. Claim application presented for direction by the AR of applicants is disposed off.”

4.3 Thereafter, the workmen filed a Writ Petition before this court (being W.P.(C) No.5743/2001) impugning the order dated 31.07.2001. This Court by an order dated 25.11.2002 dismissed the said Writ Petition.

4.4 Against the order dated 25.11.2002, the workmen filed a Letters Patent Appeal (being LPA no. 13/2003), which was also dismissed by an order dated 03.12.2003. The relevant extract of the same reads as under:

“The Authority had, therefore, rightly rejected their claim on the premise and so had the writ court. We find no scope to interfere, more so, because the rejection followed the Supreme Court judgment in Municipal Council Hatta's case.

We have also gone through the other Supreme Court judgments cited by learned counsel but we find them wholly distinguishable interpreting as it was Rule 25 of the Rules framed under the Minimum Wages Act. This judgement does not deal with Section 14 of the Act and therefore can't be invoked to over-ride the legal position enunciated in Municipal Council Hatta's case.

Viewed thus, we find no merit in this appeal which is dismissed.”

4.5 Subsequently, the workmen filed a Special Leave Petition before the Supreme Court (being SLP (Civil) No. 7420/2004), which was allowed and converted into an appeal (being Civil Appeal No. 6710/2004). By an order dated 14.01.2010, the Supreme Court set aside the order dated 03.12.2003 and remanded the matter to the Division Bench of this Court restoring the LPA no. 13/2003. The relevant extract of the order dated 14.01.2010 reads as under:

“3. One of the objections raised by Ms. Indra Jaising, learned Additional Solicitor General appearing for the Respondents is that the appellants are being paid salary and wages under the Central Civil Services (Revised Pay) Rules, 1997 and, therefore, The Minimum Wages Act, 1948 and the rules framed thereunder are not applicable to them.

4. On the other hand, Mr. R.K. Kapoor, learned counsel for the appellants submits that the provisions of the Minimum Wages Act, 1948 and the rules framed thereunder are applicable to the appellants.

5. Upon a perusal of the judgment of the High Court, we find that this controversy has not been examined. our considered view, it would be in the fitness of things if the High Court reconsiders the entire matter in the backdrop of the aforesaid contentions and other pleas that may be raised by the parties.

6. We, consequently, set aside the impugned judgment and order passed by the Division Bench of High Court on 03.12.2003. Letters Patent Appeal No. 13/2003 is restored to the file of the Delhi High Court for re-hearing and re-consideration in accordance with law and the observations made above. The parties shall be at liberty to file additional affidavits and documents before the High Court.”

4.6 This Court by an order dated 24.01.2012 remanded the matter to the Authority directing it to consider the entitlement of the workmen. The relevant extract of the said order is:

“6. In view of the rival submissions, we notice that the authority in the first instance ought to have adjudicated on the entitlement of the present appellants, i.e. whether they had worked during the relative time on overtime basis so as to claim their wages as was done by them. The only relief sought

is for a determination of their entitlement. However, the authority's determination went off tangentially, by applying the *Municipal Council, Hatta (supra)* case, without rendering any findings on the facts of the case.

7. In the light of the above observations, we are of the opinion that the matter should be reexamined by the Authority; the appeal is entitled to succeed in the above terms. The matter is remitted for examination by the Authority under the Minimum Wages Act, appointed by the appropriate government (in the present case, the Central Government). The Authority is directed to consider the entire material on record, including the records of overtime of the Establishment as well as the other documents in support of the Appellants' claims. The Authority shall first decide whether the appellants are entitled to the overtime wages for the period claimed by them or in part thereto and then proceed to consider the rival submissions as to what should be the rate, having regard to the law declared by the Supreme Court in *Y.A. Mamarde and Nine Ors. (supra)* and *Municipal Council, Hatta (supra)*."

4.7 The Authority, by the impugned order dated 25.06.2012, allowed the claims of the workmen.

5. The Authority under the Act had struck the following issues:-

- "1. Whether the Applicants/Appellants are entitled to the overtime wages for the period claimed by them or in part there to.
2. What should be the rate having regard to the law declared by the Supreme Court in *Y.A. Mamardey and 9 others (supra)* and *Municipal Council of Hatta (supra)*."

6. The Authority found that applicants therein - workmen (respondents in W.P.(C) 7219/2012) had worked overtime for a period in excess of 30 hours per month and their overtime allowance could not be restricted to a period of 30 hours per month. By the impugned order, the Authority held as under:

“To sum up, section 14 of the Act and Rule 25 of Minimum Wages (Central) Rules, 1950 did not have their applicability to CPWD during the period only from 23.5.2002 to 7.1.2003.

Therefore, it can be concluded beyond doubt that the employees in this case were employed in a 'scheduled employment' in respect of which minimum rates of wages have been fixed by the government. As such they are covered by the provision of Section 14 of the Act and Rule 25 of Minimum Wages (Central) Rules 1950.

In view of the above stated conclusions, the 'Claim' of the applicant is allowed subject to modifications as per the log-books as mentioned earlier and as reflected in the eight annexures annexed hereto. As there was no dispute between the parties regarding the rate of overtime wages, the rate at which overtime wages for 30 hours a month was paid by the O.P. has been taken for calculating the relief as the rate is not more than the ordinary rate of wages. I am of the considered opinion that ends of justice shall be met if overtime wages as calculated in the employee-wise statements annexed to this order as a part of this order together with compensation of Rs. 10/-(Rupees Ten only) for each wage period for 28 wage periods amounting to Rs.280/-(Rupees Two hundred eighty only) per employee are paid by the O.P.”

7. The learned counsel for CPWD (petitioner in W.P.(C) 7219/2012) did not assail the findings of the Authority under the Act with respect to the

issue whether the applicants therein were entitled to overtime wages for the period claimed by them. The learned counsel for CPWD has limited his challenge to the Authority's decision with respect to the second issue, that is, the conclusion that the workmen would be entitled to overtime allowance in accordance with the decision of the Supreme Court in **Y.A. Mamarde and Ors. v. Authority under the Minimum Wages Act: (1972) 2 SCC 108.** The learned counsel for the Union (petitioners in W.P.(C) 14846/2004) has assailed the impugned Memorandum dated 30.12.2003 solely on the ground that the same is contrary to the provisions of Rule 25 of the 1950 Rules and is contrary to the decision of the Supreme Court in *Y.A. Mamarde (supra)*.

8. As the, essential, question in both the petitions relates to the applicability of Rule 25 of the 1950 Rules and Section 14 of the Act to the work charged establishment/regular classified establishment employees of CPWD and the applicability of the decisions of the Supreme Court in *Y.A. Mamarde (supra)* and *Municipal Council, Hatta (supra)*, the petitions have been heard together.

9. The controversy that is to be addressed is whether Rule 25 of the 1950 Rules is applicable to work charged staff and regular classified staff of CPWD for the purpose of overtime allowance.

10. It was contended by the learned counsel for CPWD/Union of India that workers in question are not paid wages as per the Act and their wages have been fixed under the Central Civil Services (Reserved Pay) Rules, 1997 (hereafter 'CCS Rules'). It is submitted that overtime wages, if any, are to

be considered as per the CCS Rules and not as per Rule 25 of the 1950 Rules. It was further submitted that the Act is not applicable in view of the fact that the wages paid to the workers in question exceed the minimum wages fixed under the Act.

11. The learned counsel appearing for the workmen union submitted that the Act was applicable to the workmen in question and it would be erroneous to contend otherwise, merely because the wages payable to them exceeded the minimum wages payable under the Act. It was further submitted that there was no ambiguity in the language of Rule 25 of the 1950 Rules and on a literal construction of the said Rule, the workmen were entitled to overtime wages at twice the rate of ordinary wages.

12. The learned counsel for the workmen/union also contended that the decision of the Supreme Court in *Y.A. Mamarde* (*supra*) would be binding; the decision of the Supreme Court in *Municipal Council, Hatta* (*supra*) being contrary to the larger bench ruling in *Y.A. Mamarde* (*supra*) would not be a binding authority.

13. Before proceeding further it would be necessary to examine the object of enacting the Act. The introduction of the Act indicates that the need was felt for a legislation for fixing the minimum wages in India on account of the necessity of protecting the interest of personnel demobilized after the World War-II. The statement of objects and reasons indicates that the purpose of the Act was to ensure that minimum wages are paid in industries where sweated labour was more prevalent and where there is more chance of exploitation of labour. In my view, the provisions of the

Act must be read in perspective of the aforesaid object. The remuneration payable to an employee is, clearly, the subject matter of contract between an employer and an employee and except as provided under any law, the terms of the contract would be binding and enforceable. Section 12 of the Act enjoins an employer of an employee engaged in scheduled employment to pay wages at a rate not less than the minimum wages fixed under the Act. The purpose of the Act is, clearly, to ensure that minimum remuneration is paid to workers employed in a scheduled industry and they are not exploited. In conformity with the scheme of the Act, Section 25 of the Act expressly provides that any contract or agreement, whereby an employee relinquishes or reduces his right to minimum rate of wage or any benefit accruing under the Act, would be null and void. Section 14 of the Act provides for payment of wages at the overtime rate fixed under the Act for the hours worked by an employee in excess of the number of hours constituting a normal working day. It thus stands to reason that provisions of Section 14 of the Act would not be applicable only where the wages being paid to a workman are otherwise in excess of the minimum wages fixed under the Act (including overtime allowance). The Supreme Court in ***Municipal Council, Hatta*** (*supra*) examined the provisions of Section 14(1) of the Act and held that:

“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.”

The Supreme Court further explained that

“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.”

14. Indisputably, the workmen would not be entitled to overtime wages under Rule 25 of the 1950 Rules by virtue of the decision of the Supreme Court in ***Municipal Council, Hatta*** (*supra*). However, it was contended by the learned counsel for the workmen/union that the said decision is *per incuriam* as it did not take note of the earlier decision by a larger Bench of the Supreme Court in ***Y.A. Mamarde*** (*supra*).

15. Concededly, if there is any repugnancy in the decisions of the Supreme Court, the decision of the larger Bench would prevail. Thus, the only question to be examined is whether there is any conflict between the decision of the Supreme Court in ***Y.A. Mamarde*** (*supra*) and ***Municipal Council, Hatta*** (*supra*). The learned counsel for CPWD/Union of India has referred to the decision of the Division Bench of this Court in LPA 13/2003, decided on 03.12.2003 whereby the Division Bench had held that the decision of the Supreme Court in ***Y.A. Mamarde*** (*supra*) is not applicable as it had only interpreted Rule 25 of the 1950 Rules and had not considered Section 14 of the Act. It was urged on behalf of CPWD that the Supreme Court had not commented on the reasoning of the Division Bench and, therefore, the same would be binding. I am unable to accept this contention as the Supreme Court by its order dated 14.01.2010 had set aside the decision dated 03.12.2003 and restored the LPA before the Division Bench. LPA 13/2003 was finally disposed of by an order dated 24.01.2012

directing the Authority to decide the claim of the workmen for overtime wages having regard to the law as laid down by the Supreme Court in *Y.A. Mamarde (supra)* and *Municipal Council, Hatta (supra)*. The question as to the conflict between the two decisions was, therefore, left open for the Authority to consider.

16. On a plain reading of the decision of the Supreme Court in *Y.A. Mamarde (supra)*, it is apparent that there is a conflict between the two decisions of the Supreme Court in *Y.A. Mamarde (supra)* and *Municipal Council, Hatta (supra)*. In *Y.A. Mamarde (supra)*, the Supreme Court had considered the claim of the employees for overtime wages in accordance with Rule 25 of the 1950 Rules and held that the expression “ordinary rate of wages” would mean the wages being paid to the employees and not the minimum wages notified under the Act. The relevant extract from the said judgment is quoted below:-

“13. Let us first deal with this question. The Act which was enacted in 1948 has its roots in the recommendation adopted by the International Labour Conference in 1928. The object of the Act as stated in the preamble is to provide for fixing minimum rates of wages in certain employments and this seems to us to be clearly directed against exploitation of the ignorant, less organised and less privileged members of the society by the capitalist class. This anxiety on the part of the society for improving the general economic condition of some of its less favoured members appears to be in supersession of the old principle of absolute freedom of contract and the doctrine of laissez faire and in recognition of the new principles of social welfare and common good. Prior to our Constitution this principle was advocated by the movement for liberal employment in civilised countries and the Act which is a pre-Constitution measure was the offspring

of that movement. Under our present Constitution the State is now expressly directed to endeavour to secure to all workers (whether agricultural, industrial or otherwise) not only bare physical subsistence but a living wage and conditions of work ensuring a decent standard of life and full enjoyment of leisure. This Directive Principle of State Policy being conducive to the general interest of the public and, therefore, to the healthy progress of the nation as a whole, merely lays down the foundation for appropriate social structure in which the labour will find its place of dignity, legitimately due to it in lieu of its contribution to the progress of national economic prosperity. The Act has since its enactment been amended on several occasions apparently to make it more and more effective in achieving its object which has since secured more firm support from the Constitution. The present rules under Section 30, it may be pointed out, were made in October 1950, when the State was under a duty to apply the Directive Principles in making laws. No doubt the Act, according to its preamble, was enacted to provide for fixing minimum rates of wages, but that does not necessarily mean that the language of Rule 25 should not be construed according to its ordinary, plain meaning, provided of course, such construction is not inconsistent with the provisions of the Act and there is no other compelling reason for adopting a different construction. A 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. It is only in case of doubt or ambiguity that recourse may be had to the preamble to ascertain the reason for the enactment in order to discover the true legislative intendment. By using the phrase “double the ordinary rate of wages” the rule-making authority seems to us to have intended that the worker should be the recipient of double the remuneration which he, in fact, ordinarily receives and not double the rate of minimum wages fixed for him under the Act. Had it been intended to provide for merely double the minimum rate of wages fixed under the Act the rule-making authority could have so expressed its intention in clear and explicit words like

“double the minimum rate of wages fixed under the Act”. This intendment would certainly have been stated in the explanation added to Rule 25(1) in which the expression “ordinary rate of wages” has been explained. The word “ordinary” used in Rule 25 reflects the actuality rather than the worker's minimum entitlement under the Act. To accept Dr Barlingay's suggestion would virtually amount to recasting this phrase in Rule 25 for which we find no justification. This rule calls for practical construction which should ensure to the worker an actual increase in the wages which come into his hands for his use and not increase calculated in terms of the amount assured to him as a minimum wage under the Act. The interpretation suggested on behalf of the respondents would have the effect of depriving most of the workers who are actually getting more than the minimum wages fixed under the Act of the full benefit of the plain language of Rule 25 and in case those workers are actually getting more than or equal to double the minimum wages fixed, this provision would be of no benefit at all. This construction not only creates a mere illusory benefit but would also deprive the workers of all inducement to willingly undertake overtime work with the result that it would to that extent fail to advance and promote the cause of increased production. We are, therefore, clearly of the view that Rule 25 contemplates for overtime work double the rate of wages which the worker actually receives, including the casual requisites and other advantages mentioned in the explanation. This rate, in our opinion, is intended to be the minimum rate for wages for overtime work. The extra strain on the health of the worker for doing overtime work may well have weighed with the rule-making authority to assure to the worker as minimum wages double the ordinary wage received by him so as to enable him to maintain proper standard of health and stamina. Nothing rational or convincing was said at the bar while fixing the minimum wages for overtime work at double the rate of wages actually received by the workmen should be considered to be outside the purpose and object of the Act. Keeping in view the

overall purpose and object of the Act and viewing it harmoniously with the general scheme of industrial legislation in the country in the background of the Directive Principles contained in our Constitution the minimum rates of wages for overtime work need not as a matter of law be confined to double the minimum wages fixed but may justly be fixed at double the wages ordinarily received by the workmen as a fact. The Bombay High Court has no doubt held in *Union of India v. B.D. Rathi*, that “ordinary rate of wages” in Rule 25 means the minimum rate for normal work fixed under the Act. The learned Judges sought support for this view from Section 14 of the Act and Rule 5 of the Railway Servants (Hours of Employment) Rules, 1951. The workers there were employees of the Central Railway. With all respect we are unable to agree with the approach of the Bombay High Court. 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 period so worked in excess at the overtime rate fixed under the Act. This section does not militate against the view taken by us. Nor does a provision like Rule 5 of the Railway Rules which merely provides for fifty-four hours employment in a week on the average in any month go against our view. The question is not so much of minimum rate as contrasted with the contract rate of wages as it is of how much actual benefit in the form of receipt of wages has been intended to be assured to the workman for doing overtime work so as to provide adequate inducement to them willingly to do overtime work for increasing production in a peaceful atmosphere in the industry. The problem demands a liberal and rational approach rather than a doctrinaire or technical legalistic approach. The contract rate is not being touched by holding that Rule 25 contemplates double the rate of wages which actually come into the workman's hands any more than it is touched by fixing the minimum rate of wages under Sections 3, 4 and 5 of the Act. The decision of the Mysore High Court in *Municipal Borough, Bijapur v. Gundawan (M.N.)* [AIR

1965 Mys 317] and of the Madras High Court in *Chairman of the Madras Port Trust v. Claims Authority* [AIR 1957 Mad 69] also take the same view as the Bombay High Court does. We need not, therefore, deal with them separately.”

17. It is apparent from the above that the Supreme Court proceeded on the basis that even if wages higher than the minimum wages were being paid to employees in a scheduled employment, the employees would be entitled to overtime in accordance with Rule 25 of the 1950 Rules.

18. The Supreme Court had also referred to Section 14 of the Act and held that the same did not militate against the view taken by the Court. In view of the above, I am unable to accept that the decision in *Y.A. Mamarde (supra)* is not applicable to the facts of the present case.

19. The learned counsel for CPWD/Union of India had also referred to a decision of a Single Judge of the Gujarat High Court in *State of Gujarat v. Savailal H. Shah*: (2003) II LLJ 641 Guj. whereby the Court had sought to distinguish the decision in the case of the *Y.A. Mamarde (supra)* by holding that the Court had not specifically considered the question whether an employee receiving wages higher than the minimum wages is entitled to the benefit of Section 14 of the Act. I am respectfully unable to concur with this view. The decision of the Supreme Court in *Y.A. Mamrade (supra)* proceeds on the basis that the employees would be entitled to overtime allowance notwithstanding that the employees were being paid wages higher than the minimum wages fixed under the Act. The court had held that notwithstanding that the wages payable to employees were higher than the wages notified under the Act, the workmen were entitled to receive overtime allowance at twice the rate of the wages payable to them. This,

clearly, militates against the view that section 14 of the Act would not be applicable if the wages paid or payable to the workmen are higher than the minimum wages notified under the Act.

20. Although it has been contended on behalf of CPWD/Union of India that the Act would not be applicable if the wages payable are higher than the minimum wages notified under the Act, this contention is not sustainable; the applicability of the Act is not conditional on the wages paid to workmen.

21. In view of the aforesaid, the impugned memorandum is liable to be set aside. The Central Government, had issued a notification excluding employees, employed in Work Charged Establishment and Regular Classified Established in the Central Public Works Department (CPWD) under Ministry of Urban Development and Poverty Alleviation, from the purview of the Act. However that notification was withdrawn. In the circumstances, it is not open for the CPWD to contend that the Act is inapplicable to the workmen in question.

22. For the aforesaid reasons, the petition W.P.(C) 14846/2004 is allowed and impugned memorandum is set aside. I find no reason to interfere with the impugned order and, accordingly, the W.P.(C) 7219/2012 is dismissed. Pending application also stands disposed of.

VIBHU BAKHRU, J

JANUARY 12, 2015
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