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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: October 19,2015

+ **LPA 435/2015**

UNION OF INDIA & ORS Appellants
Represented by: Mr.Ruchir Mishra, Advocate

versus

CPWD MAZDOOR UNION (REGD) Respondent
Represented by: Mr.Varun Prasad, Advocate

+ **LPA 439/2015**

DIRECTOR GENERAL OF WORKS CPWD Appellant
Represented by: Mr.S.K.Tripathi, Advocate

versus

SUSHIL KUMAR & ORS Respondents
Represented by: Mr.R.K.Kapoor, Advocate
with Ms.Astha Nigam,
Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

CM No.11956/2015 in LPA No.435/2015

CM No.12020/2015 in LPA No.439/2015

For the reasons stated in the applications delay of 104 days in filing
the appeals is condoned.

Applications are allowed.

LPA No.435/2015 & LPA No.439/2015

1. The issue raised in WP(C) No.14846/2004 filed by the Union of the workmen and WP(C) No.7219/2012 filed by the appellant was the same; concerning overtime wages and the rate thereof to be paid to the workmen engaged by the Director General, CPWD. Concerning WP(C)No.7219/2012, it was filed by the appellants in the backdrop of a series of past litigation. It began by some workmen filing a claim before the Regional Labour Commissioner for overtime wages at double the rate of ordinary wages which was dismissed by the Regional Labour Commissioner in view of the decision of the Supreme Court reported as (1998) 2 SCC 443 Municipal Council Hatta vs. Bhagat Singh & Ors. The decision was challenged by the workmen under WP(C)5743/2001 which was dismissed in limine against which LPA No.13/2003 filed by the workmen was also dismissed in limine. SLP(C)No.7420/2004 filed by the workmen challenging the order dated December 03, 2003 dismissing the LPA resulted in the Supreme Court remanding the matter to this Court. On January 24, 2012 the LPA was disposed of remanding the matter back to the Regional Labour Commissioner, who passed an order on June 25, 2012 allowing the claim filed by the workmen. This order was challenged by CPWD in WP(C)No.7219.2012.

2. It is not in dispute that pursuant to a settlement dated September 05, 1986 between the Director General, CPWD and the Union of the workmen it was agreed that for working over time the workers would be paid wages at double the wage payable for normal duty hours working. This was withdrawn by CPWD when a two Judge Bench of the Supreme Court gave

a decision reported as (1998) 2 SCC 443 Municipal Council Hatta vs. Bhagat Singh & Ors.

3. The issue which was debated before the learned Single Judge centred on whether in view of a three Judge Bench decision pronounced by the Supreme Court on April 12, 1972, reported as (1972) 2 SCC 108 Y.A.Mamarde & Nine Ors. and Ghanshyam & Eight Ors. Vs. Authority Under the Minimum Wages Act, the decision in Municipal Corporation Hatta's case had to be ignored as a precedent. The impugned decision would show that the case of the appellant was that there was no repugnancy in two decisions because as per the appellants if wages were being paid to the workmen as per the Minimum Wages Act, alone then could the law declared in Y.A.Mamarde's case be applicable and if wages were paid as per a scale of pay the decision in Municipal Council Hatta's case would apply.

4. Section 14 of the Minimum Wages Act 1948 reads as under:-

“14. Overtime – (1) Where an employees, 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.”

5. In Y.A.Mamarde's case (supra) said Section came up for consideration and the Supreme Court noted that as per the mandate of the Section for overtime the workmen were entitled to payment at a rate fixed under the Act or under any law framed by the appropriate Government. The Supreme Court noted that the appropriate Government had notified the M.P.

Minimum Wage Rules 1951, Rule 25 whereof read as under:-

“Extra Wages for overtime. – (1) When a worker works in an employment for more than nine hours on any day or for more than fifty-four hours in any week, he shall, in respect of overtime work, be entitled to wages –

(a) In the case of employment in agriculture, at one and a half time the ordinary rate of wages;

(b) In the case of any other scheduled employment, at double the ordinary rate of wages.

(2) A register showing overtime payments shall be kept in Form IV.

(3) Nothing in this rule shall be deemed to affect the provisions of the Factories Act, 1948.”

6. The argument of the authorities was that since it was paying wages to its employees more than the minimum wages notified under the Minimum Wages Act the employees were not entitled to wages for extra work done with reference to the wages received by them. The rival arguments were noted by the Supreme Court in para 12 which reads as under:-

“12. It is common ground between the parties that Sunday has been declared to be a day of rest and the normal working hours per day are 9 hours a day or 54 hours a week. According to Shri Dhabe the appellants' learned counsel the words "at double the ordinary rate of wages" used in clause (b) of Rule 25 mean double the rate of wages which are actually being paid to the employees concerned and not double the rate of wages fixed under the Act as minimum wages, whereas according to Dr. Barlingay, learned counsel for the respondent, the Act is only concerned with providing for minimum wages and if an employee is being paid more, than minimum wages so provided, the Act does not operate and the employer cannot be compelled to pay higher wages. The employees of the corporation are already

being paid much higher wages than those fixed under the Act as minimum wages and, therefore, so contended Dr. Barlingay, there is no legal obligation on the employer to pay higher wages. The provision requiring payment at double the ordinary rate of wages contained in Rule 25, must, according to the respondent's argument, be read as "the ordinary rate of minimum wages fixed."

The Supreme Court answered as under:-

“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 rulemaking 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 why 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 that workmen as a fact. The Bombay High Court has no doubt held in Union of India v. B. D. Rathi (Supra) 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 54 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 Section 3,4 and 5 of the Act. The decision of the Mysore High Court in Municipal Borough, Bijapur v. Gundawan (M.N.) & ors. and of the Madras High Court in Chairman of the Madras Port Trust v. Claims Authority & ors., also take the same view as the Bombay High Court does. We need not, therefore, deal with them separately.”

8. It is apparent that the Supreme Court took note of the fact that the Minimum Wages Act 1948 was intended to fix minimum wages for different categories of workmen but held that in harmony with the general scheme of industrial legislation in India it could not be said that the expression ‘*at double the ordinary rate of wages*’ in Rule 25 of the M.P. Minimum Wages Rules 1951 would mean at double the minimum wages. Thus, the claim of the workmen that for extra work they should be paid double wages with reference to the wages received by them, notwithstanding the same being more than the minimum wages notified under the Minimum Wages Act was upheld.

9. In Municipal Council Hatta’s case (supra) noting that wages received

by the workmen were as per a scale of pay notified under M.P.Municipal Services (Scale of Pay and Allowances) Rules, 1967 and not under the Minimum Wages Act 1948 the Supreme Court held that the workmen could not claim benefit under Section 14 of the Minimum Wages Act 1948 for overtime work.

10. In Municipal Council Hatta's case authored by a two Judge bench, the three Judge bench decision in Y.A.Mamarde's case was not noted.

11. The learned Single Judge has held that the law declared in Y.A.Mamarde's case would bring out that the law declared by the Supreme Court was that because of Rule 25 of M.P.Minimum Wage Rules 1951 the employees of the municipality would be entitled to overtime wages at double the rate of the existing wages and thus it was fallacious to argue that the Supreme Court in said decision was not concerned with the linkage of overtime wages to the minimum wages notified under the Minimum Wages Act. The learned Single Judge has held that the decision would show that even if wages higher than the minimum wages were being paid to the employees in a scheduled employment, the employees would be entitled to overtime as per Rule 25 of the 1951 Rules and further the doubling of the rate had to be with reference to the wages received. In that view of the matter the learned Single Judge had held that he would be bound by the law declared by the three Judge bench in Y.A.Mamarde's case.

12. The facts noted by us would evince that the Director General, CPWD and the employees of the Union had entered into an agreement which was notified on September 05, 1986 that for overtime work the employees would be paid double wages with reference to wages received for normal work. Though the entitlement of the workmen of CPWD may not be under any

statutory rules framed under Section 14 of the Minimum Wages Act, but would be certainly flowing out of the agreement. The reason to resile from the agreement given by the Director General, CPWD is the subsequent decision of the Supreme Court in Municipal Council Hatta's case, which to our mind, as rightly held by the learned Single Judge, would not be the precedent to be followed because it has been rendered ignoring the three Judge bench decision in Y.A.Mamarde's case and we find that the ratio is in direct conflict with that in Mamarde's case because in Mamarde's case it has been categorically held by the Supreme Court that entitlement to overtime wages cannot be linked to the minimum wages as per the Minimum Wages Act 1948. Thus and it hardly matters whether the wages, more than the minimum wages, are paid under any standing orders issued pursuant to a settlement or as per a scale of pay notified by Pay Rules.

13. The appeals are accordingly dismissed but without any order as to costs.

CM No.11955/2015 In LPA No.435/2015 & CM No.12019/2015 in LPA No.439/2015

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

OCTOBER 19, 2015
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