

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3268 OF 1995

Mahatma Phule Krishi Vidyapeeth
Rahuri, Dist.Ahmednagar,
Through its Registrar

PETITIONER

VERSUS

1. Dada Kisan Khoje,
R/o Village Rahuri,
At Post & Tal.Rahuri,
Dist.Ahmednagar,

2. Judge,
Second Labour Court,
Ahmednagar,

3. The State of Maharashtra

RESPONDENTS

Mr.M.N.Navandar h/f Mr.K.G.Navandar, Advocate for the petitioner.
Mr.V.S.Bedre, Advocate for respondent No.1.
Respondent Nos. 2 and 3 are deleted.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 18/07/2016

ORAL JUDGMENT :

1. Leave to delete respondent Nos. 2 and 3. Deletion be carried out forthwith.

2. This petition was admitted by this Court on 13/07/1995 and on the condition of depositing Rs.10,000/- within 2 (two) weeks, in the Court below, interim relief in terms of prayer clause "C" was granted. Prayer clause "C" reads as under :-

“Pending decision of this writ petition, the judgment and order passed by the learned Judge, 2nd Labour Court, Ahmednagar in Application (IDA) No.7/88 be stayed and its operation and execution for the recovery payment of the amount under the said order be suspended and stayed.”

3. By order dated 28/03/2008, passed by this Court in CA No.6297/2007, the respondent worker was permitted to withdraw the said amount.

4. I have considered the strenuous submissions of the learned advocates for the respective sides.

5. The respondent had preferred Appl.(IDA) No.7/88 invoking Section 33(C) of the I.D.Act for recovery of overtime wages from the petitioner/employer. By judgment dated 21/01/1995, the application was allowed and the respondent worker was granted overtime wages twice the amount of the normal rate of wages payable to him. As such, an amount of Rs.44,981.54 was granted by the Labour Court 21 years ago.

6. Mr.Navandar has strenuously criticized the impugned judgment. Contention is that under no law applicable to the

petitioner/agricultural university, would render the university liable to pay overtime wages at the rate of twice the amount of normal wages. The University had relied upon a government resolution placed on record dated 19/09/1983 vide which any watchman working overtime, would be entitled for Rs.6 for the duration of overtime. He submits that the said GR would not make the university liable to pay twice the rate of normal wages for each hour of overtime.

7. His grievance is that the Labour Court has not properly considered the GR and has delivered the impugned judgment.

8. He further submits that the petitioner/University is not a manufacturing process and therefore, even if the respondent was working as a Watchman on the Jowar Scheme, he cannot be said to be a watchman guarding a manufacturing establishment. He, therefore, submits that the respondent would be entitled for overtime wages only as per the chart placed on record.

9. Me.Bedre, learned Advocate appearing on behalf of the respondent has contended that the Jowar Scheme was an activity of the petitioner by which the grains were converted into seeds. It was therefore a manufacturing unit and the respondent can therefore be

said to be working as a “Watchman” on the said unit.

10. In rebuttal, the petitioner submits that the grains manufactured are converted into seeds. The petitioner has his Seeds' shop from where such seeds are sold to the farmers. The Jowar scheme therefore will not be a manufacturing establishment.

11. From the submissions of the learned Advocates and the material placed on record before the Labour Court, it would clearly indicate that neither of the sides and nor the Labour Court, have applied their mind to the aspect of law providing for the calculation of overtime wages. Section 2(m) of the Factories Act, 1948 defines a “Factory”. Section 2(k) defines a “Manufacturing process”. Section 2(k) and 2(m) read as under :-

“2(k) :- “Manufacturing process” means any process for -

- (i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or*
- (ii) pumping oil, water, sewage or any other substance, or*
- (iii) generating, transforming or transmitting power ; or*
- (iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding, or*

- (v) *constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or*
- (vi) *preserving or storing any article in cold storage;*

2(m) “Factory” means any premises including the precincts thereof :-

- (i) *whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or*
- (ii) *whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, -*
but does not include a mine subject to the operation of (the Mines act, 1952 (35 of 1952)), or (a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place);”

12. It is, therefore, apparent that any process which is used for making, altering, repairing or otherwise treating any article or substance or adapting such substance with a view to its use, sale, delivery etc. would amount to a manufacturing process.

13. The litigating sides in the first place should have led evidence as to whether the Jowar Scheme on which the respondent was working as a Watchman, would amount to a manufacturing process.

The University did not produce the documents as directed by the Court, to indicate the overtime working of the respondent and at the same time, did not take the efforts to establish before the Labour Court that it is not a manufacturing unit with reference to which the respondent was working as a Watchman. The record available indicated the duration of overtime working. Exhibit U-9 was a document filed by the respondent which indicated that the *Senior Jowar Paidaskar* of the petitioner had instructed the respondent to work between 5 p.m. to 8 a.m., by virtue of which the respondent used to put in 15 hours of work each day and was paid only for the 7 hours shift.

14. Notwithstanding the above, I do not find from the impugned judgment that the Labour Court has considered grant of overtime wages under any specific provision of law. There is no dispute that it is only under section 59 of the Factories Act that overtime wages by way of extra wages at the rate double the amount of normal wages for each hour of work, is to be paid to an employee who works overtime in such a factory or a manufacturing unit.

15. In the light of the above, it is apparent that this issue of calculating overtime wages under a specific provision of law has not

been considered by the Labour Court, which has mechanically granted the respondent an amount of Rs.44,981.54.

16. Learned Advocate for the respondent submits that firstly, a small amount is involved in these proceedings and secondly, the respondent/worker has been litigating before the Labour Court from 17/02/1988, which is practically 28 years ago when he lodged his application for claiming overtime wages.

17. In these peculiar facts as above, neither would it be fruitful to remand the matter to the Labour Court after 28 years of litigation, nor can the impugned judgment of the Labour Court be sustained since it has granted double the wages towards overtime without considering the GR applicable and as to whether the provisions of the Factories Act would be applicable.

18. In this backdrop, in order to do justice to the parties, I find it appropriate to grant a lumpsum amount to the respondent which would be Rs.25,000/- towards his overtime wages. The respondent has already withdrawn Rs.10,000/-. He shall therefore be entitled for a further amount of Rs.15,000/-. Interest that has accumulated on account of depositing of the amount of Rs.10,000/- till today, would

therefore be paid to the respondent. Deducting the said amount of interest from the residual amount of Rs.15,000/-, the petitioner shall pay the remainder amount to the respondent within a period of 6 (six) weeks from today.

19. As such, by allowing this petition partly, the impugned judgment dated 21/01/1995 is modified accordingly and Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)