

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO.1100 OF 2019

IN

REVIEW PETITION (L) NO.82 OF 2019

The VVF Ltd. Employees Union

...Petitioner

vs

VVF India Ltd.

...Respondent

WITH

REVIEW PETITION (L) NO.82 OF 2019

IN

WRIT PETITION NO.1920 OF 2014

The VVF Ltd. Employees Union

...Petitioner

vs

VVF India Ltd. And Anr.

...Respondents

.....

Mr. Sanjay Singhvi, Senior Advocate, i/b. Mr. Bennet D'Costa and Ms. Jignasha Pandya, for Review Petitioner.

Mr. Kiran Bapat, i/b. Mr. Prashant C. Pavaskar, for the Respondents.

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CORAM : S.C. GUPTE, J.

DATED: 22 JUNE, 2021

PC. :

. Heard learned Counsel for the Review Petitioner (Review Petition (L) No.82 of 2019) and learned Counsel for the Respondent Company. This review petition seeks review of the order passed by this Court on 25 July 2019 to the extent that it does not consider the argument of the Review Petitioner (original Petitioner in this Court in Writ Petition No.1920 of 2014) concerning allowances included by the Industrial Tribunal in its award, which was in challenge before this

Court, for calculation particularly for overtime. There is a delay in filing the review petition. For reasons stated in the interim application for condonation of delay, the delay is condoned and the review petition is taken up for admission.

2. It is submitted by Mr. Singhvi, learned Senior Counsel for the Review Petitioner, that under Section 59 of the Factories Act, 1948, workers working in a factory for more than nine hours in any day, or for more than forty-eight hours in any week, are entitled, in respect of overtime work, to wages at the rate of twice the rate of ordinary wages. Ordinary rate of wages under Section 59 implies not only basic wages but also allowances including cash equivalent of advantage accruing through concessional sale to workers of food grains and other articles. The only exclusions are in respect of bonus and overtime work itself. Relying on the judgment of the Supreme Court in **Gujarat Mazdoor Sabha vs. State of Gujarat**¹, it is submitted that this being an important legal right of workman, which is given by the legislature as part of its public policy, no workman can contract out of it. It is submitted that despite settlements made by the Union to the contrary, these allowances need to be reckoned for calculating overtime wages. Mr. Bapat, learned Counsel appearing for the Respondent Company, objects to this point being considered in review. It is submitted that the Respondent Company has filed its affidavit-in-reply inter alia taking up a position that the argument concerning inclusion of these allowances for the purposes of calculating overtime wages, was not advanced when the matter was argued before this Court. That is a statement made on oath and there is no counter to the statement. In any event, this being a matter argued

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before this Court quite some time back, I cannot recollect whether it was argued before this Court. Mr. Singhvi does not admit that the argument was not raised before the Court. Learned Counsel submits that considering that so much time has elapsed since the matter was originally argued, he is not sure and cannot make a statement in that behalf. No doubt, Mr. Singhvi points out that this point was part of his written submissions in the original petition, which were filed after the conclusion of the hearing and in response to the directions passed by this Court. If the submission was not made at the hearing of the original petition, it cannot possibly be advanced in review of the original judgment. The only basis, on which a review petition can be entertained by this Court, is that after the conclusion of the hearing where the original order was passed, the Petitioner has come across some important material or evidence, which was not in his possession when the original matter was argued or the original order was passed, or that there is some error apparent on the face of the order or for a like reason the order deserves to be reviewed. If a particular contention was not advanced in Court in support of a claim, it cannot be considered in a review petition.

3. Accordingly, I do not see any merit in reviewing the order of 25 July 2019. Anyway, I am told that the parties are already before the Supreme Court in an SLP from the order dated 25 July 2019. If so advised, the Petitioner Union can always take up these contentions before the Supreme Court in the pending SLP. I see no reason to exercise review jurisdiction and consider these arguments for the first time.

4. Accordingly, the review petition is dismissed. No order as to costs.

(S.C. GUPTE, J.)