

212 (2 cases)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-26914-2014

Date of decision: 16.11.2022

Ashok and others

...Petitioners

VS

State of Haryana and others

...Respondents

CWP-23756-2015

Randhir Singh &Ors

...Petitioners

VS

State of Haryana &Ors

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Naveen Daryal, Advocate,
For the petitioners.

Mr. R.D.Sharma, DAG, Haryana.

ARUN MONGA, J. (ORAL)

This common order will dispose of CWP No. 26914-2014 and CWP 23756-2015 as facts are analogous and common questions arise for determination. For brevity, facts are taken from CWP No. 26914-2014.

2. The petitioners seek a writ of certiorari for quashing the impugned order dated 04.11.2014 (Annexure P-8) whereby their claim for overtime allowance was rejected. Further, they seek a writ of mandamus directing the respondents to pay the overtime allowance claimed by them.

3. Undisputably, the petitioners, while working as drivers and conductors had worked overtime on various dates during 2012

and 2013. They availed of the benefit of compensatory day of rest in lieu of overtime allowance.

4. It is claimed by the petitioners that they are also entitled to overtime allowance and that their claim has been wrongly rejected on the ground that they had availed of the benefit of rest in lieu of overtime allowance.

5. The short question for determination is whether or not the petitioners having availed of the benefit of rest in lieu of overtime allowance, are still entitled to overtime allowance for the same overtime work.

6. The relevant provisions of Sections 13,19,20 and 26 of the Motor Transport Workers Act, 1961 are reproduced below:

“13. Hours of work for adult motor transport workers

--No adult motor transport worker shall be required or allowed to work for more than eight hours in any day and forty-eight hours in any week:

Provided that where any such motor transport worker is engaged in the running of any motor transport service on such long distance routes, or on such festive and other occasions as may be notified in the prescribed manner by the prescribed authority, the employer may, with the approval of such authority, require or allow such motor transport worker to work for more than eight hours in any day or forty-eight hours in any week but in no case for more than ten hours in a day and fifty-four in hours in a week, as the case may be :

Provided further that in the case of a breakdown or dislocation of a motor transport service or interruption of traffic or act of God, the employer may, subject to such conditions and limitations as may be prescribed, require or allow any such motor transport worker to work for more than eight hours in any day or more than forty-eight hours in any week.

19. Weekly rest.--

(1) The State Government may, by notification in the Official Gazette, make rules providing for a day of rest in every period of seven days, which shall be allowed to all motor transport workers. (2) Notwithstanding anything contained in sub-section (1), an employer may, in order to prevent any dislocation of a motor transport service, require a motor transport worker to work on any day of rest which is not a holiday so, however, that the motor transport worker does not work for more than ten days consecutively without a holiday for a whole day intervening.

(3) Nothing contained in sub-section (1) shall apply to any motor transport worker whose total period of employment including any day spent on leave is less than six days.

20. Compensatory day of rest. --

Where, as a result of any exemption granted to an employer under the provisions of this Act from the operation of section 19, a motor transport worker is deprived of any of the days of rest to which he is entitled under that section, the motor transport worker shall be allowed within the month in which the days of rest are due to him or within two months immediately following that month, compensatory days of rest of equal number to the days of rest so lost.

26. Extra wages for overtime.—

(1) Where an adult motor transport worker works for more than eight hours in any day in any case referred to in the first provision to section 13 or where he is required to work on any day of rest under sub-section (2) of section 19, he shall be entitled to wages at the rate of twice his ordinary rate of wages in respect of the overtime work or the work done on the day of rest, as the case may be.”

7. I am of the opinion that a rational, reasonable and fair construction, deducible on a cumulative reading of these provisions, is that overtime allowance is admissible only in the cases where the worker is deprived of rest in lieu of having worked overtime. It cannot be said that for the overtime work, the worker is/ should be

entitled to double benefits- firstly compensatory day of rest and secondly, overtime allowance for the same work. Admittedly, in present case the petitioners had availed of the benefit of rest in lieu of overtime allowance.

8. Learned counsel for the petitioners has relied upon the Division Bench judgment dated 23.03.2011 rendered in **LPA No. 858 of 2009 titled “The General Manager, Haryana Roadways, Chandigarh vs. Azad Singh and others”** (with connected cases) and the judgment dated 18.01.2012 passed in **CWP No. 20483 of 2010 titled “Mewa Singh and others vs. State of Haryana and others”** (with connected cases) passed by the learned Single Judge of this Court. Their perusal indicates that the question whether or not the workers having availed of the benefit of rest in lieu of overtime, are also entitled to overtime allowance for the same overtime work, was not gone into and decided in the cases *ibid*. With utmost respect to the said judgments, I am of the opinion that they do not help the petitioners in the instant case on two counts: firstly, they do not show if the transport workers had availed of the benefit of rest as compensation for overtime work, secondly, the Court did not go into and decide the question whether or not the workers having availed of the benefit of rest in lieu of overtime allowance, are also entitled to overtime allowance for the same overtime work.

9. I have opined above that a rational, reasonable and fair construction deducible on a cumulative reading of relevant statutory

provisions of the 1961 Act is that overtime allowance is admissible only in the cases where the worker is deprived of rest in light of having worked overtime. It cannot be said that for the same overtime work, the worker is or should be entitled to double benefits- firstly the rest as compensation for overtime work and secondly overtime allowance for the same overtime work. In view of this and the undisputed fact that the petitioners had availed of the benefit of rest in lieu of overtime work, I am unable to accept the contention of the learned counsel for the petitioners that they are also entitled to overtime allowance for the same overtime work.

10. As a result of the above discussion, these petitions are dismissed.

A photocopy of this order be placed on the connected case file.

(ARUN MONGA)
JUDGE

November 16, 2022
vandana

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No