

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO. 11248 OF 2022

1. Maharashtra State Electricity Transmission
Co. Ltd. (MSETCL), Auda Project & Sanvasu Parimandal,
3rd Floor, Old Saikheda Road, Raka Plot,
Near Durga Mata Mandir, Jail Road,
Nashik Road, Nashik.
Through its Chief Engineer.
2. Superintending Engineer,
Maharashtra State Electricity Transmission
Co. Ltd. 400 KV Sub-station, PO Khadka,
Tq. Bhusawal, Dist: Jalgaon.
3. Executive Engineer,
Maharashtra State Electricity Transmission
Co.Ltd., 132 KV Sub-station, Dhule,
Mumbai Agra Road, Tq. & Dist. Dhule. ...Petitioners

Versus

Shivaji Tukaram Kumawat
Age : 61 years, Occ.: Retired;
R/o : Surva Park, Plot No.2, Karanjgao Road,
Chalisgaon, Tq. Chalisgaon, Dist. Jalgaon. ...Respondent

Advocate for Petitioners : Mr. S. V. Adwant

Advocate for Respondent : Mr. B. R. Kedar

CORAM : SHAILESH P. BRAHME, J.
RESERVED ON : 3rd NOVEMBER 2023
PRONOUNCED ON : 28th NOVEMBER 2023

JUDGMENT :

1. Rule. Rule is made returnable forthwith with the consent of the parties. Heard learned Counsel for both the sides.

2. The petitioners are challenging judgment and order dated 18.05.2022 passed by the learned Judge Labour Court Jalgaon in IDA application No.6/2018, awarding an amount of Rs.1,60,860/- with interest at the rate of 10% from 01.11.2014 to the respondent. The respondent is the original applicant in proceedings under Section 33C(2) of Industrial Dispute Act (hereinafter referred to as Act).

3. The respondent was working as Senior Operator with the petitioner from 03.04.1979 till 31.05.2015 i.e. age of superannuation. The grievance of the respondent is that he has not been paid the over time remuneration for the period April, 2014 to October 2014 for the period of 303 hrs. He therefore claimed Rs. 1,60,860/- under Section 33C(2) of the Act. The proposal for the over time remuneration was forwarded by the petitioner no.2. But it was not considered. It is the case of the respondent that previously also he was awarded the

remuneration for the overtime work. The action of the petitioners was stated to be arbitrary and against the Factories Act and the Industrial Disputes Act.

4. The claim is contested by the petitioners contending that the respondent is not entitled for the overtime payment. There is a ceiling of 75 hours for three months as stipulated by Circular dated 26.06.2000. From time to time, the instructions have been issued to the Sub-ordinate Officers not to forward the proposals of claims which are contrary to the Circular. The claim of the respondent was disputed and therefore it was not within purview of Section 33C(2) of the Act.

5. The learned Judge of the Labour Court considered the documentary evidence and oral evidence led before her. It is held that previously the respondent was awarded the overtime remuneration from July 2008 to September 2008 which was exceeding 75 hours. Despite the Circular 26.06.2000, the selfsame respondent was awarded overtime wages exceeding 75 hrs. No alternate arrangements have been made by the petitioners and extracted the services of the respondent, therefore petitioners were held to be liable to pay the remuneration.

6. The learned Counsel for the petitioners submits that there is no

legal right or the vested right of the respondent to claim overtime wages contrary to the provision of the Circular dated 26.06.2000. The respondent's claim is exceeding the ceiling of 75 hrs. quarterly. The petitioners have disputed actually rendering of overtime work.

7. The learned Counsel for the petitioners submits that just because on previous occasion he was awarded payment for 88 hrs. cannot operate as a promissory estoppel. The respondent can have no legitimate expectation to claim overtime wages. He would further submit that already there was a policy operating in the field and the instructions were issued to the Sub-ordinate Officers not to forward the proposals. Despite that proposal was forwarded which is illegal and arbitrary. The impugned order is without jurisdiction considering provisions of the Second Schedule of the Act.

8. It is submitted that in the absence of any adjudication of entitlement of the respondent, Labour Court had no jurisdiction to award disputed claim. The Labour Court arrogated to itself the jurisdiction of adjudication on the purported right of the respondent and computing the benefits. It is further submitted that the overtime dues ought to have been decided by the Competent Authority under Minimum Wages Act and under Section 10 of the Act.

9. The learned Counsel for the petitioners has relied upon the following judgments :

- (i) P.K. Maitra and Others Vs. Board of Trustees of Calcutta Port Trust and Others
- (ii) Bombay Chemicals Industries Vs. Deputy Labour Commissioner and Anr. (2022)5 SCC 629
- (iii) Rai Bahadur Narainsingh Sugar Mills Ltd. Vs. Mangey Ram, (2019) 9 SCC 365
- (iv) Nagar Council Rajpura Vs. Tajinder Singh & Ors., (2012)12 SCC 273.
- (v) State of UP and Another Vs. Brijpal Singh, (2005)8 SCC 58
- (vi) State Bank of India Vs. Ram Chandra Dubey, (2001) 1 SCC 73
- (vii) Sahrjerao Janardhan Hande and Others Vs. Maharashtra State Co-operative Marketing Federation Ltd., 2013(2) Mh.L.J. 204
- (viii) Getwell Board & Paper Pvt. Ltd. Vs. Fakruddin S. Lokhandwala & Ors., 2007(1) Mh.LJ. 246.

10. The submissions of the petitioners have been repelled by the respondent. The learned Counsel for the respondent submits that the learned Judge has only calculated the amount which is executory in nature and within purview of Section 33C(2). He would submit that there was no dispute over the rate, hours and the amount to be disbursed, hence the impugned order is rightly passed. It is further submitted that

previously also the respondent was awarded the remuneration for the 88 hours despite Circular dated 26.06.2000.

11. Learned Counsel submits that it is not that respondent voluntarily rendered services for the overtime hours. He was compelled to render the services because there were vacancies and short of hands to discharge the work. The respondent could not have refused the work otherwise disciplinary action would have been taken against him. Hence after extracting the work it is not permissible for the petitioners to deny the wages for the work rendered. Learned Counsel invited my attention to the proposal forwarded by the petitioner no.2 to petitioner no.1.

12. The learned Counsel for the respondent submits that the right of overtime is recognized under Section 59 of the Factories Act. It is a statutory right which cannot be denied to the respondent. The action of the petitioners was found to be arbitrary and therefore rightly considered by the Lower Court. The learned Counsel submits that the judgments cited by the petitioners are not applicable to the present case. He therefore would urge to dismiss the petition.

13. I have considered the rival submissions canvassed by the parties and case law cited by them.

14. There are few relevant and admitted facts in the matter. A circular dated 26.06.2000 is issued to restrict the overtime hours up to 75 hours for three months. The respondent was awarded the overtime wages for 88 hours, exceeding the ceiling for the period July, 2008 to September, 2008. The proposal for the overtime wages of the respondent for 303 hours from April, 2004 to October, 2014 was forwarded by the petitioner no.2 to the petitioner no.1 with necessary details which are placed on record at Exhibit-R1. There was correspondence between the deputy Executive Engineer, Chalisgaon and Executive Engineer, Dhule indicating that few posts are vacant in the substation.

15. The respondent made representation to the petitioners claiming overtime remuneration for the relevant period vide various application from 2014 to 2018. The proposal of the claim of overtime wages was prepared by the Additional Executive Engineer substation, Chalisgaon and forwarded to Executive Engineer, Dhule on 17.05.2018 with necessary details which are at page nos.74 to 76. The petitioners have not raised any doubt or dispute regarding the claim made by the respondent more specifically the numbers of overtime hours, the duration and the rate. It was the sub-ordinate Officer of the petitioners who forwarded and recommended for the overtime remuneration. The petitioners have for the first time when matter reached Labour Court

disputed the entitlement of the respondent.

16. Another glaring fact which has surfaced from the correspondence of the petitioners with their sub-ordinates is that there were vacancies in the substation. The extra work was required to be done from the employees rendering the services. The letters dated 06.06.2014 and 01.11.2014 which are produced on record indicate this particular scenario. In this situation, the submission of the respondent that there was no man power and he was required to render the overtime duties and he had no choice to be accepted. If an employee under compelling circumstances has discharged overtime work then he cannot be deprived of the wages for the work done.

17. The petitioners have unable to satisfy this Court that there was sufficient strength of the staff, the respondent was not required to render the overtime duties, it was respondent without any requirement discharged the overtime duties. If there is a short of hands and the existing employees are required to render the overtime work then the respondent is justified in saying that refusal to render the work might have incurred disciplinary action. These are the compelling circumstances for exceeding the overtime hours. I do not find that the respondent is responsible for that. Respondent cannot be deprived of

his legitimate right of wages for the work done.

18. The learned Counsel for the petitioners has vehemently argued that there is no pre-existing right. My attention is invited by the respondent to the provisions of the Factories Act. Section 59 is as follows.

59. Extra wages for overtime____

(1) Where a worker works in a factory for more than nine hours in any day or for more than forty-eight hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages.

(2) For the purposes of sub-section (1), "ordinary rate of wages" means the basic wages plus such allowances, including the cash equivalent of the advantage accruing through the concessional sale to workers of foodgrains and other articles, as the worker is for the time being entitled to, but does not include a bonus and wages for overtime work.

(3) Where any workers in a factory are paid on a piece rate basis, the time rate shall be deemed to be equivalent to the daily average of their full-time earnings for the days on which they actually worked on the same or identical job during the month immediately preceding the calendar month during which the overtime work was done, and such time rates shall be deemed to be ordinary rates of wages of those workers :

Provided that in the case of a worker who has not worked in the immediately preceding calendar month on the same or identical job, the time rate shall be deemed to be equivalent to the daily average of the earning of the worker for the days on which he actually worked in the week in which the overtime work was done.

19. In view of the statutory provision referred above as well as in view of the circular dated 26.06.2000 which is a policy of the petitioners it cannot be said that the overtime wages is not a pre-existing right. It is

recognized by the petitioners. There is a statutory sanction for the same. Once the petitioners extract services from the employee they are bound to pay for the services. In the present matter, I am of the considered view that there is pre-existing right as well entitlement of the respondent.

20. The submission of the petitioners is that there is no adjudication or determination by the Competent Authority regarding entitlement of the respondent or his pre-existing right and therefore Section 33C(2) cannot be invoked. I have already recorded my finding that there is a pre-existing right under the statutory provisions. No determination as such for the entitlement of the respondent is required. The petitioners themselves have recognized the overtime work rendered by the respondent by forwarding the proposal to the higher Authorities. Therefore the claim of the respondent is well within the purview of Section 33C(2).

21. The learned Counsel for the petitioners has vehemently argued by relying upon various judgments that there is a dispute to the entitlement of the respondent and the Labour Court under Section 33C(2) has no jurisdiction to adjudicate the dispute of the entitlement on the basis of the claim of the workmen. No doubt, while contesting the application

filed by the respondent, the petitioners have filed reply and contested claim. This particular dispute or the contest is for the first time raised when matter reached Labour Court. At the cost of reputation, I am constrained to hold that the petitioners themselves have recognized the claim of the respondent. The material particulars of the claim of the respondent have not been disputed. Before reaching the matter to the Labour Court there was no communication or indication by the petitioners raising challenge to the entitlement. Therefore the petitioners are raising an ostensible dispute for the entitlement of the respondent.

22. The endeavour of the petitioners is to deprive the respondent from monetary benefits. Their defence to entitlement of the respondent is illusory. I am of the considered view that the present case does not fall under Section 10(1) of the Act or under the provisions of Minimum Wages Act. It is not a case where provision of Section 18 and 19 of the Act are attracted. I have carefully considered the law laid down by the various Courts indicating the scope of Section 33C(2), as cited by the petitioners. The Labour Court has rightly exercised the jurisdiction.

23. The petitioners have heavily relied upon the Circular dated 26.06.2000 and objected the claim as it is exceeding 75 hours. Despite the ceiling on the overtime hours, the petitioners and their sub-ordinates

have extracted work from the respondent. Under compelling circumstances, the respondent is required to render work exceeding 75 hours. The instructions following from Circular dated 26.06.2000 are for the officers of the petitioners. Once the work is extracted, the workman is bound to receive the wages for the same. This has been aptly appreciated by the impugned order by observing that the respondent is entitled to the claim.

24. The learned Counsel for the petitioners has relied upon the various judgments. Those are in respect of the scope of Section 33C(2). Those principles are undisputed and guiding but in the present matter, I have already recorded that an ostensible dispute is raised by the petitioners to the claim of overtime wages. I am of the view that the claim of the respondent falls within the purview of Section 33C(2) and Labour Court has rightly exercised the jurisdiction.

25. The overtime wages is a right of an employee is held by the Supreme Court in the matter of **The Workmen of the Calcutta Electric Supply Corporation Ltd. Vs. Calcutta Electric Supply Corporation**, AIR 1973 SC 2143. Paragraph No.4 and 5 are helpful in the present matter.

26. The petitioners have also pressed into service the principles of

promissory estoppel. Just because on previous occasion, the respondent was paid the wages for exceeding 75 hours cannot be a ground to claim similar relief. Though the learned Labour Court has considered the previous payment made to the respondent as a ground to allow the claim of the respondent, that is not a sole ground. I have already recorded my finding that the respondent was compelled to render the overtime duties, the petitioners were not having sufficient staff to manage the work and the petitioners themselves have forwarded the proposal of the claim of the respondent.

27. For the reasons assigned above, I do not find any merit in the petition. The writ petition is dismissed. Rule is discharged.

[SHAILESH P. BRAHME, J.]

28. After the pronouncement of the judgment, learned Counsel for the petitioners requests to stay the operation of this order for sometime to approach the Higher Forum. The request is opposed by the learned Counsel for the respondent. He submits that no amount has been deposited by the petitioners and the order is in the form of money decree.

29. An interim relief is in operation till this date staying the

disbursement of the amount to the respondent. I do not find that any prejudice would be caused to continue the stay to the disbursement for further period of four weeks. There shall be stay to the disbursement for further period of four weeks and thereafter it shall stand automatically vacated.

[SHAILESH P. BRAHME, J.]