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

% **Date of order: 9th October, 2023**

\+ W.P.(C) 1516/2019

SHRI OM PRAKASH ..... Petitioner

Through: Appearance not given

versus

CENTRAL WARESHOUSE CORPORATION AND ORS.

..... Respondents

Through: Mr. K K Tyag, Mr. Iftekhar Ahmad and Ms. Garima Tyagi, Advocates for CWC

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Articles 226/227 of the Constitution of India read with Section 151 of the Code of Civil Procedure, 1908 has been filed on behalf of the petitioner seeking the following reliefs:

> *"a) Writ/order/directions in the nature of mandamus, certiorari or any other writ directing the respondents to make payment of overtime dues to petitioner for the duty done by him from September 2015 to November 2015 as per circular dated 05.07.2011.*
> *b) Setting aside the impugned order dated 15.09.2016 and*
> *c) Any other order which this Hon'ble court may deem fit and proper may also be passed in favour of the petitioner."*

2. The petitioner was working as *Chowikdar* (watchman) with the respondent no.1, Central Warehousing Corporation since 1986 and retired as Chaukidar- 1, Central Warehouse, Ghaziabad- 1 on 31st May 2018.

3. The petitioner did over time duty as the respondent for the period of September 2015 to November 2015. Subsequently, the petitioner submitted an overtime allowance bill to the respondent no.3, warehouse manager of the respondent no.1 for the remuneration of the said overtime.

4. The respondent no. 2 rejected petitioner's claim on 15th September 2016 of Rs. 2,47,544/-, and while only allow a claim of Rs. 34,056/- towards the overtime expenses of the petitioner.

5. The petitioner gave representations on 16th September 2016 and 8th August 2017, to respondents pertaining to reimburse the balance amount of the reimbursement for overtime as claimed by the petitioner.

6. The respondents replied to the said representations on 30th June 2017, stating that the overtime allowance sent by the petitioner has been approved and the payment sent to the petitioner. Therefore, there are no dues pending of the petitioner.

7. Aggrieved by the no response to the said representations, the petitioner has preferred the instant petition.

8. Learned counsel for the petitioner submitted that the petitioner worked overtime for more than 8 hours and even on holidays i.e., Sundays, Saturdays and national holidays since there was a shortage of security personnel and accordingly submitted his overtime allowance bills to respondents.

9. It is further submitted that the petitioner was forced to do duty for two- three shifts in days amounting to almost 24 hours in a day in the month of October 2015. Therefore, the total hours of the shift of the petitioner amounted to 120 days during the said period.

10. It is submitted that the said bills were approved by the respondent no. 2 and accordingly, sent to respondent no.3. The said approval of the respondent no. 2 indicates the fact that the petitioner had actually worked for the time he submitted his overtime.

11. It is contended that as per letter dated 28th December 2015 and 27th April 2016, written by the respondent no. 3 to respondent no. 2 directing that the bills of the petitioner pertaining to overtime expenses be cleared as soon as possible. However, the respondent no. 2 did not comply with the same.

12. It is further contended that despite such direction, the respondent no. 2 rejected the overtime dues of the petitioner arbitrarily and without any reason.

13. It is submitted that as per the circular of the respondent namely "Measures for engagement of employees on overtime at ICDs/ CFSs and Warehouses" dated 5th July 2011, had elaborated upon the aspect that it is the responsibility of the Controlling Officer and not employees to take prior approval of the Regional Manager. Therefore, the Controlling Officer acted irresponsibly by not sending for prior approval for the petitioner's overtime.

14. It is submitted that the petitioner is facing financial hardship due to denial of his overtime dues. Moreover, the said action of the respondent is a violation of legal rights of the petitioner, since, the petitioner has a right to

be paid for his overtime dues.

15. In view of the foregoing circumstances, the instant petition may be allowed and the prayers as sought by the petitioner may be granted by this Court.

16. *Per Contra*, the learned counsel appearing on behalf of the respondent vehemently opposed the arguments advanced on behalf of the petitioner and submitted that since, the petitioner resides in Uttar Pradesh and performed his duty on the said position at Uttar Pradesh, therefore, the entire cause of action lies in the state of Uttar Pradesh. Therefore, this Court does not have the territorial jurisdiction to entertain the instant petition

17. It is further contended that the respondents have already paid the petitioner for overtimes as due to the petitioner i.e., Rs. 34,056/-

18. It is submitted that the instant petition is liable to be dismissed on the ground that the dues as demanded by the petitioner is in complete contraction to office circular dated 5^{th} July 2011, referred to by the petitioner.

19. It is further submitted that as per the circular there is a mandate that there no employee shall be allowed to be engaged on overtime beyond the maximum ceiling of $1/3^{rd}$ of the wages during the month. The overtime payment would be on a specific prior authorization with the full particulars of job expected to be carried out during such overtime.

20. It is contended that in the instant case, there was no prior authorization given by the respondent to engage petitioner for overtime and the entitlement to the said overtime allowance is limited to $1/3^{rd}$ of the wages

during the month and the same has already been released to the petitioner.

21. It is submitted that respondent again vide communication dated 29th December 2017, informed the petitioner that the payment has been made as per his eligibility and entitlement and nothing more is payable.

22. Hence, in view of the foregoing submissions, the respondent seeks that this Court may be pleased to dismiss this revision petition thereby, upholding the impugned order.

23. Heard and perused the pleadings on record.

24. It is the case of the petitioner that dues as claimed by the petitioner of Rs. 2,47,544/-, were rejected and only a claim of Rs. 34,056/- towards the claim of overtime expenses of the petitioner was given to him.

25. The respondent opposed the said submissions of the petitioner and contended that there was no prior approval for the petitioner's overtime and there is a ceiling of 1/3rd of the wages upto which any employee including the petitioner could be engaged by the respondent for overtime. It further submitted that the dues of the petitioner as per the statutory mandate of the respondent have been duly paid to the petitioner.

26. For the purpose of adjudication of the instant petition, this Court has reproduced herein below the Circular dated 5th July 2011, pertaining to overtime payment to the petitioner as follows:

> *"A. Measures for engagement of employees on overtime in the Corporate Office and Regional Offices*
>
> *i. The engagement of employees on overtime is so to regulated that no employee permitted to be / engaged on the overtime beyond the*

maximum ceiling of 1 of the wages during the month. The controlling officers are directed to regulate the engagement of employees on overtime accordingly.

ii. Overtime payment would be on specific prior authorization with full particulars of job expected to be carried out during such overtime."

27. Upon perusal of the circular, it is evident that the engagement of an employee for overtime must not exceed the maximum ceiling of 1/3rd of the wages of the employee. Moreover, there was a mandatory requirement pertaining to prior authorisation on overtime payment with the full particulars of job expected to be carried put during such overtime.

28. The petitioner has challenged the impugned order dated 15th September 2016 has been reproduced herein below:

"Approval Order

With the approval of competent officer over time allowance as indicated oppose to their name, for the following personnel, is being approved:-

S.no	Name and post of personnel	Posted at	Time Period	Approved Sum	Remark
1.	Omprakash, Chowkidar -1	Gaziabad	30.09.15	Rupees 2,248/-	
			01.10.15 to 31.10.15	Rupees15,904/-	
			01.11.15 to 31.11.15	Rupees 15904/-	
	Total : Thirty four thousand and fifty six rupees only			Rupees 34,056/-	

29. Upon perusal of the impugned order, the petitioner was paid Rs. 34,056/- for his overtime during the period of September 2015 to November 2015 by the respondent.

30. The petitioner has furthermore challenged the order dated 30th June 2017, which has been reproduced herein below:

> *"Kindly take the notice of office letter no. CWC/ XXIV-12/ SCT(G)/ Lucknow/ Rectt./ 2012 / 645A dated 26.04.2017 and CWC/ XXIV-12/ SCT(G)/ Lucknow/ Rectt./ 2012 / 440A dated 07.06.2017 through which on the correspondence of Shri Om Prakash by his letter dated 07.04.2017 and letter dated 15.05.2017 requested the payment of his overtime dues for the months of September, October and November. In that regard after inspecting and appropriate investigation has asked to be informed.*
>
> *Therefore you are being informed in the abovementioned subject matter that the payment of overtime allowance bills sent by Shri. Om Prakash, Chowkidar, Central Warehouse, Ghaziabad-l has been approved as per rules by Regional Office, Lucknow by approval order no. D-1861 dated 15/09/2016 and the payment is already made regarding the same, no other dues of Shri Om Prakash are unpaid."*

31. As per the said order, the respondent conducted proper investigation and inspection as to the amount of overtime allowance due to the petitioner. Upon conclusion of the said enquiry done by the respondent, came to the conclusion that the overtime wages as approved by way of order dated 15th September, is already made and there remains no outstanding liability of the respondent towards the petitioner. Therefore, the claims as stated by the petitioner were not admitted by the respondent.

32. In instant matter, the respondent has challenged the two impugned orders as reproduced above and prayed relief from this Court that a writ may be issued to respondents for directing the payment of overtime dues to the petitioner for the overtime done by the petition during the period of September 2015 to November 2015 in accordance with the circular dated 5th November 2011.

33. This Court is of the view that the respondent has acted in accordance with the Circular dated 5th November 2011 hence, paid overtime wage upto the maximum ceiling of 1/3rd of its wages during the month and the same was with the prior approval of the authority. Since, the respondent has acted in accordance with the statutory rules, there is no incidence for this Court to intervene with the decision of the respondent in granting the overtime wage.

34. Under Article 226, the Court may intervene only in cases where there is gross violation of the right of the party before this Court, the public authority is acted in an illegal manner, etc. The Courts should not intervene with the executive's day to day functioning unless the Court is of the opinion that the matter requires the intervention of this Court as the protector of the rights of the people.

35. In view of the discussion, the respondent has acted in consonance with the said circular, there is no illegality or infirmity which can be established by the said conduct of the respondent. The impugned orders does not suffer from illegality, therefore, this Court is not inclined to set aside the said orders.

36. Therefore, in view of the discussions, the facts, circumstances, the

submissions made, contentions raised, this Court does not find any cogent reason for allowing the instant writ petition and hence, the writ petition is accordingly dismissed.

37. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

OCTOBER 9, 2023
gs/db/ds

Click here to check corrigendum, if any