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

+ LPA 702/2022 & C.M.NOS. 52569-52570/2022

A. RADHIKA

..... APPELLANT

Through: Mr.Fidel Sebastian, Advocate.

versus

M/S WISHWA PRAKASHAN PUBLISHERS AND EXPORTS
PVT. LTD.

..... RESPONDENT

Through: Mr.Ankit Dwivedi, Advocate.

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Date of Decision: 14th July, 2023

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MANMOHAN, J: (ORAL)

1. Present appeal has been filed challenging the judgement dated 25th May, 2022 in *W.P.(C) 8266/2022* passed by a learned Single Judge of this Court, whereby the appellant-petitioner's writ petition against the order dated 23rd December, 2019 of the Labour Court declining relief of Rs.63,717.62/- claimed by appellant as overtime wages for working on Saturdays from 4th July, 2011 to 31st August, 2013 was dismissed.
2. Learned counsel for the appellant states that as per Section 9A of the Industrial Disputes Act, 1947 ('the Act'), the conditions of service of a workman could not have been changed without giving her a prior notice.
3. He states that in appellant's case, since the appellant was reinstated specifically with a direction of continuity of service and all other benefits,

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the respondent could not have increased five days working week to six days while reinstating her, that too without giving the appellant any notice under Section 9A of the Act.

4. He also states that both Labour Court as well as the learned Single Judge have misread Clause 6 of Service Rules and Regulations dated 08th December, 1980. He further relies upon the evidence tendered by Mr. M.K. Dubey (WW2).

5. A perusal of the paper book reveals that the appellant was first employed by Wiley Exports Private Limited by way of an appointment letter dated 20th September, 1988. As per clause 13 of the said appointment letter, the employment of the appellant in company was to be governed by the service rules of the company. The Labour Court as well as the learned Single Judge have held that Clause 6 of Service Rules dated 8th December, 1980 stipulate a six day working week with one hour break. The relevant Clause 6 of the Service Rules is reproduced hereinbelow:-

“6. HOURS OF WORK, HOLIDAYS:

i) The periods of hours of work for all categories of employees shall be as per the provisions of the shops & Establishment Act, 1948, and as exhibited on the Notice Board from time to time. Currently the office timing will be as follows:

	<u>Monday to Friday</u>	<u>Saturday</u>
<i>Bangalore</i>	<i>10.00 AM to 6.00 PM 45 minutes lunch</i>	<i>9.30 AM to 1.15 PM</i>
<i>Bombay</i>	<i>9.30 to 5.30 PM 45 minutes lunch</i>	<i>9.30 AM to 1.15 PM</i>
<i>Calcutta</i>	<i>10.00 AM to 6.00 PM 45 minutes lunch</i>	<i>9.30 AM to 1.15 PM</i>
<i>Delhi</i>	<i>9.00 AM to 6.00 PM with on hour lunch.</i>	

ii) Holiday with pay will be allowed in a year to employees in accordance with the National & Festival and other holidays will be posted on the Notice Board.”



6. In view of the above, this Court is of the opinion that the working hours mentioned against Delhi not only applies from Monday to Friday but also to Saturday, as against Saturday, the expression 'holiday' is not mentioned. Further, the evidence of Mr. M.K. Dubey (WW2) does not inspire any confidence as his services had been terminated by the respondent and he has challenged the same before the Labour Court.

7. In any event, this Court of the view that the issue raised by the appellant, being a disputed question, could not have been adjudicated by the Labour Court under Section 33C(2) of the Act which is akin to an execution proceeding. Accordingly, the present appeal along with pending applications is dismissed.

MANMOHAN, J

MINI PUSHKARNA, J

JULY 14, 2023
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