Shri B. P. Hira, Works Manager,Central ... vs Shri C. M. Pradhan Etc on 8 May, 1959

Equivalent citations: 1959 AIR 1226, 1960 SCR (1) 137, AIR 1959 SUPREME COURT 1226, 1959-60 17 FJR 149, 1960 (1) SCR 137, 1959 2 LABLJ 397

Author: P.B. Gajendragadkar

Bench: P.B. Gajendragadkar, Bhuvneshwar P. Sinha, K.N. Wanchoo

PETITIONER:
SHRI B. P. HIRA, WORKS MANAGER,CENTRAL RAILWAY, PAREL, BOMBA

Vs.

RESPONDENT:
SHRI C. M. PRADHAN ETC.

DATE OF JUDGMENT:
08/05/1959

BENCH:
GAJENDRAGADKAR, P.B.
BENCH:
GAJENDRAGADKAR, P.B.
SINHA, BHUVNESHWAR P.
WANCHOO, K.N.

CITATION:
1959 AIR 1226 1960 SCR (1) 137

ACT:
Overtime Wages-Claim by employees in railway factory-Validity-Factories Act, 1948 (LXIII of 1948), SS. 2(1),59-The Bombay Shops and Establishments Act, 1948 (Bom. 79 of 1948). SS. 4, 70.

HEADNOTE:
These appeals by special leave arose from applications made by the respondents, who were employed as timekeepers in the time office of the Central Railway Workshop and Factory, Parel, Bombay, claiming payment of overtime wages under the Payment of Wages Act, 1936 (4 of 1936). The case of the respondents was that they were workers within the meaning of S. 2(1) of the Factories Act, 1948 (LXIII Of 1948) and as such were entitled to overtime wages under s. 59 of the said

Act. Alternatively, they urged that even if they were not workers within the meaning of S. 2(1) of the said Act, they would nevertheless be entitled to overtime wages under the s. 59 by reason Ofs. 70of the Bombay Shops and Establishments Act, 1948 (Bom. 79 of 1948). The validity of the claim on both the grounds was disputed by the appellant. The Authority under the Payment of Wages Act found that only four of the respondents, who were required to do the work of progress timekeepers, could claim the status of workers within the meaning Of S. 2(1) Of the Factories Act and the rest were merely employees of the workshop, but the Authority accepted the alternative case made by the respondents and directed the appellant to file a statement showing the overtime wages due to each of the respondents and ordered it to pay the same.

Held, that the Authority was right in the view that it took Of S. 70 Of the Bombay Shops and Establishments Act, 1948, and its decision must be affirmed.

On a proper construction Of S. 70 Of the Act it is clear that the first part of the section excludes a factory and its employees from the operation of the Act; but the second part makes the relevant provisions of the Factories Act applicable to them. The non-obstante clause in the section shows that the employees in a factory, although they might not be workers within the meaning Of S. 2(1) of the Factories Act, are entitled to claim overtime wages as provided for by that Act.

It is not correct to say that S. 4 Of the Bombay Shops and Establishments Act, 1948, has the effect of excluding the operation Of S. 70 Of the Act. Section 4 applies only to establishments and not to factories; but even if it applied, to factories

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that cannot materially affect the application Of s. 70 which is intended to operate not withstanding the other provisions of the Act.

Consistently with its policy, the Act, which provides for overtime wages for employees in all establishments, provides for overtime wages for employees in factories as well by making the relevant provisions of the Factories Act applicable to them.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos.131 to 304 of 1957.

Appeals by special leave from the judgments and order dated October 19, 1955 and January 31, 1956, of the Authority under Payment of Wages Act, Bombay, in Applications Nos. 950-961, 963-967, 970-989, 992, 994-1013, 1015-1016, 1049- 1050 and 11510-11511 and 11513-11517 of 1955

respectively. M.C. Setalvad, Attorney-General for India, R. Ganapathy Iyer and R. H. Dhebar, for the appellants.

Purshottam Tricumdas and G. N. Srivastava, for the respondents in all the appeals except C. A. No. 186 of 1957. 1959 May 8. The Judgment of the Court was delivered by GAJENDRAGADKAR J.-This group of 174 appeals by special leave arises from the several applications made against Mr. B. P. Hira, Works Manager, Central Railway Workshop and Factory, Parel, Bombay (hereafter called the appellant) by the employees at the said factory (hereafter called the respondents) under the Payment of Wages Act, 1936 (IV of 1936) claiming payment of overtime wages since 1948. All these applications were heard by the Payment of Wages Authority, Bombay, as companion matters and they have been disposed of by a common judgment. The main judgment has, however, been delivered by the said Authority in the application filed by Mr. C. M. Pradhan (hereafter called the respondent) which gives rise to Civil Appeal No. 131 of 1957 before us. We would, therefore, deal with this appeal in particular and our decision in this appeal will govern the rest of the appeals in this group.

In his application made before the Payment of Wages Authority the respondent alleged that he had been employed in the factory called the Central Railway Workshop and Factory, Parel, Bombay, and that he had not been paid overtime wages due to him from April 1, 1949, to September 30, 1954. The respondent claimed that the delay made by him in filing the present application should be condoned because jointly with his co-workers he had been in correspondence with the railway administration in regard to the said payment of overtime wages since, 1948 and that the claim made by him and his colleagues had been finally rejected by the railway administration on August 31, 1954. His case was that he had filed the present application soon thereafter and so the delay made by him ,in making the claim before the Authority should be condoned. The Authority heard the parties on the; question of delay and held that the delay only in respect of the claim for the period after May 1953 should be condoned. In the result the claim for overtime wages for the period prior to May 19, 1953, was rejected on the preliminary ground of delay whereas the claim. for the period subsequent to the said date was considered on the merits.

The respondent's case was that he was entitled to the overtime wages for work on such Sundays when he was not given a holiday within three days prior to or three days subsequent to the Sundays on which he worked. The appellant conceded that the respondent had not been given a holiday within the three days prior to or the three days subsequent to the Sundays on which he had worked as required by s. 52 of the Indian Factories Act. The respondent alleged that he was a worker within the meaning of s. 2, sub-s. (1) of the said Factories Act (LXIII of 1948) and as such he was entitled to overtime wages under s 59 of the said Act. Alternatively he urged that even if he was not a worker within the meaning of s. 2(1) of the said Act, he would nevertheless be entitled to overtime wages under the said s. 59 by reason of s. 70 of the Bombay Shops and Establishments Act, 1948 (Bom. 79 of 1948) (hereafter called the Act). Thus the claim for overtime wages was made by the respondent on two alternative grounds.

The appellant disputed the validity of this claim. It was urged on its behalf that the respondent was not a worker under s. 2(1) of the Factories Act and that s. 70 of the Act did not justfy the claim

alternatively made by the respondent for overtime wages.

The Authority considered the evidence led before it in respect of all the repondents for overtime wages. It appears that these respondents are employed by the appellant in the time office of the Parel Workshop and not in the factory itself. The duties of these timekeepers are to maintain initial records of attendance of workshop staff, to prepare pay-sheets for them to maintain their leave accounts, to dispose of final settlement cases of the said staff and to maintain records for statistical information. The Authority held that the time office where the timekeepers work is an integral part of the factory and so it came to the conclusion that the timekeepers are employed in the factory called the Central Railway Workshop and Factory, Parel, Bombay.

The Authority then examined the question as to whether the timekeepers are workers within the meaning of s. 2(1) of the Factories Act. Evidence showed that four timekeepers, are required to do the work of progress timekeepers. This work consists in preparing the progress time-sheets and operation time-sheets of machine-shop staff working on various jobs dealing with the production of railway spare parts. The Authority was disposed to take the view that having regard to the nature of the work assigned to the progress time- keepers they must be held to be persons employed in work incidental to, or connected with the manufacturing process or the subject of the manufacturing process and as such they are workers within the meaning of s. 2(1) of the Factories Act. In the result, the finding made by the Authority was that timekeepers are employees of the workshop, but are not workers under the Factories Act; while the progress time- keepers can claim the status of workers under the said Act.

The Authority then considered the respondent's argument that even if he was not a worker under the Factories Act he was neverthless entitled to claim the benefit of s. 59 of the said Act by virtue of s. 70 of the Act. The Authority accepted this contention and held that, even if the respondent was not a worker under the Factories Act, s. 70 of the Act entitled him to claim overtime wages under s. 59 of the Factories Act. That is why the Authority ordered that the respondents would be entitled for the period 19-5- 1953 to 30-9-1954 to overtime wages at double the ordinary rate for the Sundays on which they worked when they were not given a a holiday on one of the three days immediately preceding or after the said Sunday. The appellant was accordingly directed to file a statement showing the overtime wages to which the several respondents were entitled and orders were passed on each one of the applications directing the appellant to pay the respective amounts to. each one of the respondents. -It is against these orders that the appellant has filed the present group of appeals by special leave.

The first point which has been urged before us by the learned Attorney-General on behalf of the appellant is that the Authority was in error in holding that the progress timekeepers are workers under s. 2(1) of the Factories Act. A worker under s. 2(1) means a person employed directly or through any agency, whether for wages or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process; and the manufacturing process under s. 2(k) means any process for inter alia (1) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking-up,

demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal. It is clear that the duties of the progress timekeepers do not fall within the first part of a. 2(k). The Authority has however, held that the said duties can be treated as incidental to, or connected with, the manufacturing process or the subject of manufacturing process; it is the correctness of this finding that is challenged by the appellant. On the other hand, Mr. Purshottam, for the respondents, argues that the Authority was in error in holding that the timekeepers are not workers under s. 2 (1). His contention is that the expression "incidental to, or connected with, the manufacturing process " is wide enough to include not only the cases of the progress timekeepers but the cases of all timekeepers as a class. It is true that the finding of the.Authority in respect of the timekeepers is against the respondents; but Mr. Purshottam says that he is entitled to support the final order passed by the Authority on the additional ground that the time. keepers, like the progress timekeepers, are workers under s. 2(1) and as such they are entitled to claim overtime wages under s. 59 of the Factories Act.

The final decision of the Authority is, however, based on the view that under s. 70 of the Act the respondents would be entitled to overtime wages under s. 59 of the Factories Act even if they are not workers under s. 2(1). That being so, we think it is necessary first to consider the correctness of this view. If the conclusion of the Authority on the scope and effect of the provisions of s. 70 of the Act is correct, then it would be unnecessary to consider whether the timekeepers and the progress timekeepers are workers under s. 2(1) of the Factories Act. We would, therefore, deal with that question first. It appears that there are three statutes which pro. vide for the payment of extra wages for overtime work. The proviso to s. 71 (c) of the Indian Railways Act (IX of 1890) lays down that the exempted railway servant specified in it shall be paid for overtime at not less than one and a quarter times his ordinary rate of pay. This provision has been subsequently amended by Act 59 of 1956, which makes the rate for overtime one and one-half times the ordinary rate of pay; but it is common ground that we are not concerned with the amended provision in these appeals since the respondents' claim is for. a period prior to the date of the amendment. It is suggested by the appellant that the respondents are railway servants under s. 3 (7) of the said Act, and as such they may be entitled to make a claim for overtime wages under the said proviso; but the respondents have not made, and do not wish to make, a claim under the said provision; and so the question as to the application of the said section need not detain us. If the construction placed on s. 70 of the Act by the Authority is correct, the claims of employees who are working in a factory in the State of Bombay would be governed by that provision; this position is not seriously disputed before us. Section 59 of the Factories Act also deals with the question of extra wages for overtime. It provides for the payment of wages in respect of overtime work at the rate of twice the ordinary rate of wages. This benefit is, however, available only to persons who are workers within the meaning of s. 2(1) of the said Act Since we are dealing with the case on the assumption that the respondents are not -workers under s' 2(1) it follows that s. 59 by itself would not be applicable to them.

The Bombay Shops and Establishments Act, 1948, is the third statute which makes a provision for the payment of extra wages for overtime work. Section 63 of the Act deals with this topic. Section 63(1) provides for the payment of overtime work at the rate of 1-1/2 times the ordinary rate of wages in the case of employees in any establishment other than a residential hotel, restaurant, or eating-house, whereas sub-s. (2) provides for wages for overtime at the rate of twice the ordinary

rate of wages in respect of employees in a residential hotel, restaurant or eatinghouse, subject to the other conditions specified in the said section. It is clear that this section does not apply to the respondents because they are employees in a factory and not in any of the establishments enumerated in its two sub- sections.

The respondents' case, however, is that by virtue of s. 70 of the. Act the provisions of the Factories Act,including a. 59, are extended to the cases of all employees in factories, and so they are entitled to claim wages for overtime under the said section of the Factories Act. This contention has been upheld by the Authority. It is not disputed by the appellant that the Bombay Legislature was competent to prescribe for the extension of the provisions of the Factories Act to employees in the factories within the territory of the State of Bombay; and since sanction for this legislation has been duly obtained from the Governor- General of India on January 3, 1949(1), no question about any repugnance between the provisions of s. 70 and those of the Factories Act can possibly arise. Thus the validity of the said section is not in dispute; and so the only point which calls for our decision is one of construction: Does s. 70 supplement the provisions of the Factories Act by extending them to all employees in factories like the respondents though they are not workers under s. 2(1) of the said Act ?

Before dealing with this point it is necessary to refer briefly to the broad features of the Act. The Act no doubt is a piece of beneficent social legislation intended to serve the cause of labour welfare. It has been passed in order to consolidate and amend the law relating to the regulation and conditions of work and employment in shops, commercial establishments, residential hotels, restaurants, eating-houses, theaters, other places of public amusements and entertainments and other establishments. Section 2, sub-ss. (3), (4) and (27) define respectivly the establishment, commercial establishment and shop. The definitions of commercial establishment and shop exclude inter alia factory. Establishment is defend as meaning a shop, commercial establishment, residential hotel, restaurant, eating-house, theatre or other place of public amusement are entertainment to which the Act applies and includes such other establishment as the State Government may by notification in the official gazette declare (1) Published in the Bombay Government Gazette, Part IV, dated 11-1-1949.

to be, an establishment for the purposes of this Act. It would be noticed that the definition of establishment is very wide, and it does not purport to be exhaustive because it expressly empowers the State Government to include within its purview by notification other establishments not specified in it. Section 2, sub-s. (6) defines an employee as meaning a person wholly or principally employed in, and in connection with, any establishment, and includes an apprentice but does not include a member of the employer's family. This definition shows that the Act intends to confer the benefit of its provision on all persons who fall within the wide definition of the expression " Employee ". It is necessary at this stage to refer to the definition of "factory" under the Act. Section 2(9) defines a factory as meaning any premises which is a factory within the meaning of cl. (m) of s. 2 of the Factories Act or which is deemed to be a factory under s. 85 of the said Act.

Now s. 2(m) of the Factories Act defines a factory as meaning any premises including the precincts thereof " (i) whereon ten or more workers are working, or were working on any day of the preceding

twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (XXXV of 1952), or a railway running shed; "

> and s. 85 confers authority on the State Government to extend the definition of factory to other places subject to the requirements specified in the said section. It is common ground that the place where the respondents are employed is a factory under s. 2(m) of the Factories Act, and so it satisfies the definition of s. 2(9) of the Act.
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> The scheme of the Act shows that it deals separately with shops and commercial establishments (ch. 111), residential hotels, restaurants and eating-houses (ch., IV) and theaters and other places of public amusement (ch. V). Separate provisions are made to regulate these different establishments having regard to the special needs of each one of them. There are, however, general provisions applicable to and regulating all the establishments alike and these are found in chs. VI to IX. It is significant that with the exception of s. 70, no other section of the Act deals with factories.
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> We have already noticed that in defining " commercial establishment " and " shop " respectively the Act has expressly excluded " factories " from the said expressions. It is true that the definition of " establishment " does not expressly exclude factory; but it is plain that factory is treated by the Act as separate and distinct and there can be no doubt that the provisions in the Act which apply to establishment are not intended to, and do not, apply to factories. In other words, though the definition of "

establishment " is wide enough, it does not include factory for the purposes of the Act. It is conceivable that a kitchen attached to an establishment like a residential hotel may satisfy the definition of factory; but it seems to us that such an adjunct of an establishment is prima facie not intended by the Act to be treated apart and separately from the main establishment itself, and so it would be taken as a part of the establishment and be governed by the provisions of the Act in relation thereto. The factory where the respondents are employed is not connected with, much less an inseparable adjunct of, any establishment, and so this academic aspect of the matter which was incidentally posed before us by the learned Attorney-General need not be pursued any further in the present appeal.

The conclusion of the Authority has been challenged by the appellant on the ground that s. 70 on which it is based cannot be invoked by the respondents. In support of this argument reliance is placed on s. 4 of the Act. Section 4 provides that notwithstanding anything contained in the Act its

provisions mentioned in the third column of sch. 11 shall not apply to the establishments, employees and other persons mentioned against them in the second column of the said schedule. The proviso to this section authorises the State Government to add to, omit or alter any of the entries in the said schedule in the manner indicated(by it. It is urged that the establishment of any railway administration is mentioned as sr. no. 5 in sch. II and the entry against it in col. 3 of the said schedule shows that the provisions of the Act are inapplicable to the said establishments. If the establishment in question is exempted from the application of all the provisions of the Act, how can s. 70 be said to apply to it? asks the learned Attorney-General. It is obvious that s. 4 mentions and applies only to establishments and it has no application to factories; and we are dealing with employees in a factory. Indeed as we have already observed, no provision of the Act except s. 70 applies to factories and so it would not be legitimate to base any argument on the assumption that s. 4 is applicable to the present case.

Incidentally the learned Attorney-General suggested, though faintly, that the establishments mentioned at sr. nos. 1 to 6 in col. 2 of sch. II are wider than and different from the establishment as defined by s. 2(8). We do not think that this suggestion is well-founded. There can be no doubt that s. 4 grants exemptions to the said establishments from the application of the provisions mentioned in col. 3 of sch. II; and that itself postulates that but for the exemption thus granted the provisions of the Act would have applied to them. Indeed the scheme of sch. 11 shows that whereas all the provisions of the Act are made inapplicable to the establishments and offices enumerated at sr. nos. 1 to 6 including 6(a) to 6(k), in regard to the others which are enumerated at sr. nos. 7 to 55 it is only some provisions of the Act specified in col. 3 that are excluded. In other words, the remaining sections not so specified would apply to them. If that is so, they must be and are establishments under s. 2(8) of the Act.

In this connection it must be borne in mind thats. 2(8) empowers the State Government to include by notification any office or institution within the definition of establishment; and so the inclusion of any such office or institution in col. 2 of sch. 11 would make it -an establishment under the Act, and as such it would be governed by it subject of course to the corresponding entry in col. 3. That is why we think that the suggestion of the learned Attorney-General as to the denotation and character of establishments enumerated in sr. nos. 1 to 5 in col. 2 of sch. 11 cannot be accepted. All the offices, establishments and other institutions mentioned in col. 2 of sch. II are and must be held to be establishments under s. 2(8).

In regard to the argument that the operation of s. 4 excludes the application of s. 70 we have held that s. 4 applies only to establishments and not to factories. But even if s. 4 is assumed to be applicable to factories, we do not think it would materially affect the application of s.

70. The plain object underlying s. 70 and its context emphatically point out that it is intended to operate independently of the other provisions of the Act and in that sense it stands apart from them. It is this aspect of the matter which is clarified by the Legislature by laying down in s. 70 that nothing in the Act shall be deemed to apply to any persons employed in the factory. That, however, anticipates the argument on the construction of s., 70. Let us therefore,cite the said section and construe it. Section 70 provides that nothing in this Act shall be deemed to apply to any person

employed in or within the precincts of a factory and the provisions of the Factories Act shall, notwithstanding anything in the said Act, apply to such person. This section consists of two parts. The first part makes it clear that no provision in the Act shall be deemed to apply to the persons specified in it. The Legislature knew that in fact the Act contained no provision which in terms or expressly applies to any such person; but in order to remove any possible doubt it has provided that no provision in the Act shall even by inference or fiction be deemed to apply to them. In other words this clause is intended to clarify the position that though factory has been defined by s. 2(9) of the Act, no provision of the Act is intended to be applied to a factory or employees in. it. Having clarified this position the second part of the section extends the application of the Factories Act to the said persons.

It would have been possible for the Legislature to include in the present statute all the relevant provisions of the Factories Act and make them applicable to factories as defined by s. 2(9); but apparently the Legislature thought that the same object can be achieved by enacting the second part of s. 70. This part provides that the provisions of the Factories Act shall apply to the persons in question notwithstanding anything contained in the said Act. The said Act contains the provision by which workers are defined under s. 2(1), and it necessarily involves the consequence that the relevant provision about the payment of overtime wages applies only to workers as defined and not to employees in factories who are not workers. It is in reference to this provision that s. 70 has provided that notwithstanding the said provision the relevant provisions of the Factories Act will apply to persons employed in a factory. The non-obstante clause in s. 70 thus serves the purpose of clarifying the position that the Factories Act is made applicable to employees in factories and that they are not governed by any of the provisions of the Act. This conclusion is obviously consistent -with the policy of the Act. It has itself made provision for the payment of overtime wages to employees in all establishments by s. 63; and it has made applicable inter alia the relevant provisions of the Factories Act in regard to employees in factories. That is the view which the Authority has taken, and in our opinion its validity or correctness is not open to doubt.

In the result the orders passed by the authority are confirmed and the appeals are dismissed with costs in one set.

Appeals dismissed.