Workmen Of Bombay Port Trust vs The Trust Of The Port Of Bombay on 18 November, 1965

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Bench: M. Hidayatullah, P.B. Gajendragadkar, K.N. Wanchoo, V. Ramaswami

PETITIONER:
WORKMEN OF BOMBAY PORT TRUST

Vs.

RESPONDENT:
THE TRUST OF THE PORT OF BOMBAY

DATE OF JUDGMENT:
18/11/1965

BENCH:
HIDAYATULLAH, M.
BENCH:
HIDAYATULLAH, M.
GAJENDRAGADKAR, P.B. (CJ)
WANCHOO, K.N.
RAMASWAMI, V.
SATYANARAYANARAJU, P.

CITATION:
1966 AIR 1201 1966 SCR (2) 632

ACT:
Minimum Wages Act (11 of 1948), ss. 13 and 14 and Minimum Wages (Central) Rules, 1950, rr. 24 and 25--Scope of.

HEADNOTE:
The respondent had under its control several docks. The trustees Of the respondent introduced a two shift system of work and that resulted in the crew working in some docks getting 4 hours of overtime in some docks 3 hours of overtime and in others 2 hours of overtime only. In the last category the 12 hours shift wag divided in-to 8 hours

of work, 2 hours of rest and 2 hours of overtime. The 2 hours period of rest was variable depending on the tides or the exigencies of the work, though the crew were informed each day what the, period of rest would be on the following day. The appellants, who belonged to this category, complained that the breakup of the 12 hours shift into 8 hours of duty, 2 hours of rest and 2 hours of overtime offended the Minimum Wages Act, 1948, and that the system of variable recess did not satisfy the requirements of rest which is the basis for fixing statutorily the hours of work in relation to wages. The Industrial Tribunal held that the appellants were not able to establish that the existing system of work needed any modification.

In appeal to this Court,

HELD: There was no breach of the provision of the Minimum Wages Act and the case of the appellants could not be compared with that of the crew working at the other docks, because, there wag no parallel in the work of the three different sets of crew. [643 H]

If an employer takes actual work for 8 hours per day on 6 days in a week he complies with the relevant provisions of the Act and the Rules, namely ss. 13 and 14 of the Act and rr. 24 and 25 of the Minimum Wages (Central) Rules 1950, and need not pay overtime. He may go up to 9 hours on any day without paying any overtime provided he does not exceed 48 hours in the week. He can specify the intervals of rest and spread the 8 or 9 hours, as the case may be, together with intervals of rest over 12 hours in a twelve-hour shift. These periods of rest must not be periods during which the workman is on duty and inaction is due to want of work for him, but they must be predetermined periods of inaction during which the workman is neither called upon nor expected to display physical activity or sustained attention.[641 B-D]

In the present cage the total number of hours of work in a week was 48 (8 hours per day for 6 days). Therefore overtime was payable beyond the period of 8 hours, for that hour or part of an hour during which the workman was either made to work or the interval of rest was not specified. The respondent can say that it will not take more that two hours extra work on any day and specify the remaining two hours as the intervals for rest; and the Trustees would not be guilty of infraction of the Act by keeping the recess variable so long as they specify

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in advance the recess on any particular day. The Trustees could not be compelled to break up the hours of work by interposing intervals for rest. [641 G-H; 643 B-C, D-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 325 of 1965.

Appeal by special leave from the Award dated September 20, 1963 of the Central Government Industrial Tribunal, Bombay in Reference CG IT-25 of 1962.

S. V. Gupte, Solicitor-General, M. Rajagopalan and K. R. Choudhuri, for the appellants.

C. B. Agarwala, J. B. Dadachanji, O. C. Mathur and Ravinder Narain, for the respondents.

The Judgment of the Court was delivered by Hidayatullah J. This is an appeal by special leave against an award dated September 20, 1963 made by the Presiding Officer of the Central Government Industrial Tribunal, Bombay in a reference made by the Government of India under s. 10(2) of the Industrial Disputes Act, 1947. The appellants are the workmen of the Bombay Port Trust, who are and have been represented in this dispute by the Bombay Port Trust Employees' Union. The respondents to this appeal are the trustees of the Port of Bombay. The reference was made on a joint application of the parties. and the matter in dispute was stated to be :

> "Whether the existing system of work of the shore crew of the Prince's and Victoria Docks under which each shift consists of 8 hours' normal duty, 2 hours' variable recess and 12 hours' overtime needs any modification? The Tribunal, by the award impugned here, held that the Union was not able to establish that the existing system of work needed any modification.
>
> The Port Trust had under its control several docks. Reference in this judgment will be made to the Prince's and Victoria Docks, the Alexandra Docks, Butcher Island and the Flotilla Crew. These represent different areas of work where different groups of workmen were employed. From the facts appearing on the record it appears that the Trustees first introduced a two shift system of work in the Alexandra Docks on June 30, 1953 and the same system was extended to the Prince's and Victoria Docks on December 15, 1953. Previously, the shore crew at all these places worked in a single shift and were liable to be called out at any hour of the day or night. When the two shift system began, each shift of 12 hours was broken up into 8 hours' duty, 2 hours' variable recess and 2 hours' overtime. The hours of rest were kept variable as they depended on the tides. In 1956 the workmen, who were then represented by the Port Trust General Workers' Union, made a demand for a fixed recess of two hours. The Trustees apprehended that this was a device to get 4 hours' overtime and rejected the demand. The General Workers Union was informed that if the demand was pressed a three-shift system would be introduced. The workmen then retraced their steps and accepted a 2 hours' variable recess but requested that it should be as near the middle of the shift as possible. The Trustees agreed to accept the hours of rest at fixed hours in the Alexandra Docks but at the Prince's and Victoria Docks they kept it variable agreeing to fix it as near the middle of the duty hours as possible. Under this arrangement the shore crew working at the Prince's and Victoria Docks were informed each day what the period of rest would be on the following day. In

explanation of this difference it may be pointed out that the Alexandra Docks work on a system of lock gates which enables the depth of water at the docks to be artificially regulated but the Prince's and Victoria Docks, being tidal, work only at high tide. It was thus possible to fix rest hours at the Alexandra Docks for half the crew different from the rest hours of the other half so that a part of the crew was always available on hand. As the lock gates control the depth of water in the Alexandra Docks, fixed hours of rest could be maintained from day to day except in the monsoon months when the, storm gates had some time to be closed. During these months recess time at the Alexandra Docks was also variable and was made to coincide with the closure of the storm gates. The workmen at the Alexandra Docks seemed to have accepted a variable recess of two hours but the Port Trust gave a notice under s. 9A of the Industrial Disputes Act on June 25, 1960 announcing the introduction of variable recess although in the months other than the monsoon months recess was actually at fixed hours. The workmen opposed the change from fixed to variable recess. Meanwhile studies were being made and it was found that the work hours at the different Docks were not equal: they were heavier at the Alexandra Docks than at the other docks. The Trustees, therefore, resolved that the shore crew at the Alexandra Docks should work for 8 hours and that there should be a variable recess of one hour and overtime of three hours should be paid. Thus the 12 hours' shift at the Alexandra Docks was 8 hours' of duty, 3 hours' overtime and one hour variable recess. This system was, however, not extended to the prince's and Victoria Docks and Butcher Island. At these docks 8 hours' duty, 2 hours' rest at variable times and 2 hours' overtime were prescribed. The claim of the shore crew at the Prince's and Victoria Docks and Butcher Island for reducing the hours of rest and increasing overtime to three hours was not accepted because the amount of work in the, opinion of the Trustees did not justify the change. The Union contended that this division of 12 hours' shift into 8 hours' work, 2 hours' rest and 2 hours' overtime violated the provisions of the Minimum Wages Act and that the so-called period of rest was illusory since, being variable, it was some times given right at the commencement of the shift and some times at the end, depending on the tides or the exigencies of the work. The Union claimed that a 12 hours' shift should be divided into 8 hours' work and 4 hours' overtime as was the case with the Flotilla Crew. This claim was opposed by the Trustees. According to them, there was no breach of the provisions of the Minimum Wages Act. They contended that, regard being had to the number of actual work hours, the case of shore crew at the Prince's and Victoria Docks and the Butcher Island could not be compared with that of the crew at the Alexandra Docks or the Flotilla Crew. The Tribunal accepted the entire case put forward on behalf of the Trustees and the Union has appealed to this Court.

On behalf of the Union the learned Solicitor General has argued the case almost entirely from the legal stand- point and has attempted to establish that the break-up of a 12 hours' shift into 8 hours' duty, 2 hours' rest and 2 hours' overtime offends the Minimum Wages Act. He, has in addition submitted that the system of variable recess does not satisfy the requirements of rest which is the basis for fixing statutorily

the hours of work in relation to wages.

The Minimum Wages Act was enacted to enable Government to fix minimum rates of wages in certain employments. Since fixation of minimum wages must take into account the work- load also, provision must not only be made for prescribing the minimum wage but to correlate it to a specified amount of work. Any extra work beyond the specified work-load must be paid for at a higher or what is known as "overtime" rate. Similarly, intervals of rest must punctuate suitably the hours of work and they must also be provided for in a scheme of the work-day of a workman. The Minimum Wages Act makes provision for all these matters either by itself or through Rules. The Central Government has framed the Minimum Wages (Central) Rules, 1950. The Act and the Rules between them provide not only for fixation of minimum wages but also for the work-load in relation to which the minimum wages are to be prescribed. They provide on the one hand for minimum wages, lay down the procedure for fixing or revising them and prescribe the rules in accordance with which the wages must be paid. On the other hand, the Act and the Rules fix the number of hours of work, payment of overtime and for hours of rest in the work-day of the workman. The provisions of the Act and of the Rules are applicable to some employments only and they are shown in a Schedule appended to the Act. It is admitted that the present workmen come under the Schedule. The hours of work and the payment of overtime are, therefore, governed by the provisions of the Minimum Wages Act and the Minimum Wages (Central) Rules, 1950 and the controversy in this case must be appreciated and resolved in accordance with them. We shall now turn to these provisions.

We are concerned with two sections and two rules. The sections are Nos. 13 and 14 and the rules Nos. 24 and 25. The whole of the matter in dispute admittedly is governed by these, four provisions. We shall begin by setting out the relevant parts of these provisions :-

"13. Fixing hours for a normal working day, etc. (1) In regard to any scheduled employment minimum rates of wages in respect of which have been fixed under this Act, the appropriate Government may-

(a) fix the number of hours of work which shall constitute a normal working day, inclusive of one or more specified intervals;

(b) provide for a day of rest in every period Of seven days which shall be allowed to all employees or to any specified class of em-

ployees and for the payment of remuneration in respect of such days of rest;

(c) provide for payment of work on a day of rest at a rate not less than the overtime rate.

(2) The provisions of sub-section (1) shall, in relation to the following classes of employees, apply only to such extent and subject to such conditions as may be prescribed:-

(a).....

(b).....

(c) employees whose employment is essentially intermittent;

(d).....

(e)..... (3) For the purposes of clause (c) of sub-section (2), employment of an employee is essentially intermittent when it is declared to be so by the appropriate Governmen t on the ground that the daily hours of duty of the employee, or if there be no daily hours of duty as such for the employee, the hours of duty, normally include, periods of inaction during which the employee may be on duty but is not called upon to display either physical activity or sustained attention."

14. Overtime.

(1) Where an employee, whose minimum rate of wages is fixed under this Act by the hour, by the day or by such a longer wage-

period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate fixed under this Act or under any law of the appropriate Government for the time being in force, whichever is higher.

(2) Nothing in this Act shall prejudice the operation of the provisions of section 59 of the Factories Act, 1948 in any case where those provisions are applicable."

Rule 24. "Number of hours of work which shall constitute a normal working day-

(1) The number of hours which shall constitute a normal working day shall be:-

(a) in the case of an adult, 9 hours,

(b) in the case of a child, 41 hours.

(2) The working day of an adult worker shall be so arranged that inclusive of the intervals for rest, if any, it shall not spread over more than twelve hours on any day.

(3) The number of hours of work in the case of an adolescent shall be the same as that of an adult or a child according as he is certified to work as an adult or a child by a

competent medical practitioner approved by the Central Government.

(4).....

(4-A) No Child shall be employed or permitted to work for more than 4-1/2 hours on any day.

(5) Nothing in this rule shall be deemed to affect the provisions of the Factories Act, 1948".

Rule 25.Extra wages for overtime--

(1) When a worker works in an employment for more than nine hours on any day or for more than forty-eight hours in any week, he shall, in respect of overtime work, be entitled to wages,

(a) in the case of employment in Agriculture, at one and a half time the ordinary rate of wages;

(b) in the case of any other scheduled employment, at double the ordinary rate of wages.

Explanation-The expression "ordinary rate of wages" means the basic wage plus such allowances including the cash equivalent of the advantages accruing through the concessional sale to the person employed of foodgrains and other articles as the person employed is for the time being entitled to but does not include a bonus.

(2) A register showing overtime payment shall be kept in form IV.

(3) Nothing in this rule shall be deemed to affect the provisions of the Factories Act, 1948."

The controversy in the present case is a narrow one. It is whether the fixing of a two hours' rest and two hours' overtime involves a breach of the two sections of the Act and the two rules quoted here ? The workmen claim that under a scheme of 12hour shifts with 8 hours' work, overtime should be at least 3 hours, if not 4, and by fixing only two hours' overtime the Trustee are B guilty of the breach of the Act and the Rules. Unfortunately the provisions of the Minimum Wages Act and the Minimum Wages (Central) Rules, 1950, are not as clear as the corresponding provisions of the Factories Act, 1948 and they have led to long arguments before us. We shall refer to the provisions of the Factories Act later because for the present we must consider the provisions of the Act and the Rules without drawing any assistance from the Factories Act.

Section 13 of the Act does not itself fix the hours of work or rest or overtime. That is done by the Rules. Section 13 only authorises Government to fix the number of hours which shall constitute a normal working day, inclusive of on,-. or more specified intervals. The normal working day thus includes (a) hours of actual duty, and (b) one or more specified intervals. There may be one interval of rest or there may be more intervals but whatever their number, they must be specified. By interval under s. 13 is obviously meant interval of rest and this is clear from Rule 24(2). There is no definition of interval either in the Act or the Rules but the provisions of S. 13 (2) (c) read with S. 13 (3) give us an indication of what is meant by an interval of rest. It means a break in the work during

which a workman, though present on duty, is not called upon to display either physical activity or sustained attention. But it is not a period of more inaction because there is no work for him. If it is the latter, it is counted as actual work period: if the former, it is counted as a period of rest, provided the period is specified beforehand, and the workman is neither called upon to work nor expected to work.

Having thus distinguished between period of work and interval of rest we may now turn to Rule 24 which prescribes the number of hours of work which is to constitute a normal working day. Sub-rule (1) (a) provides that the number of hours constituting a normal working day for an adult shall be 9. As the heading of the Rule shows these are the hours of work. Sub-rule (2) then lays down that the working day of an adult shall be so arranged that inclusive of intervals for rest it shall not spread over more than twelve hours on any day. The distinction between intervals of rest and hours of work is thus made clear. From this it follows that on any single day the number of hours of work must not exceed 9 and together with the hours of rest the total period of work and rest should not go beyond 12 hours. It is wrong to contend that the period of 9 hours must always include intervals of rest. It may or it may not. There is no provision in the Act and the Rules corresponding to s. 55 of the Factories Act to which reference will be made hereafter. In a 12-hour shift, the nine hours of work on any day can be spread over 12 hours and the extra hours will necessarily be hours of rest. The contention of the workmen is that S. 13 fixes the number of hours in a normal working day and this number is inclusive of one or more specified intervals. They read Rule 24, which prescribes a normal working day of 9 hours, as including within the 9 hours one or more intervals of rest. We do not think this is a correct reading either of s. 13 or of Rule 24. There is clear antinomy between hours of work and intervals of rest in sub-rules (1) and (2) of Rule 24 and the phrase 'inclusive of one or more specified intervals' governs the normal working day and not the number of hours of work.

Under sub-rule (2) of Rule 24 the working day of an adult can be so arranged that inclusive of intervals of rest it does not exceed 12 hours on any day. A working day may extend to 12 hours but the number of hours of work cannot exceed 9. A working day of 12 hours is thus made up of hours of work and hours of rest and the number of hours of work (which cannot exceed 9) is part of the normal working day which may also include one or more specified intervals of rest. This determines what is a normal working day and what is meant by an interval of rest. We now come to the question of overtime.

If work on any day is taken which goes beyond 9 hours the provisions of s. 14 apply. That action speaks of overtime. Overtime is payable for work in excess of the number of hours constituting a normal working day. From s. 13 read with Rule 24 we know that the number of hours constituting a normal working day is 9. We shall now read into S. 14 this number leaving out those provisions which have no bearing upon the matter. The section so read lays down :-

> "Where an employee..... works on any day in excess of 9 hours, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate..... "

Under Rule 25 (1) (b) this overtime rate is double the ordinary rate of wages. Therefore, an employer can take actual work on any day upto 9 hours in a 12-hour shift, but he must pay a double rate for any hour or part of an hour of actual work in excess of 9 hours. He need not, however, pay for any interval of rest provided it is specified beforehand. These provisions are subject to one more check which we may now mention. The check is found in the latter part of Rule 25(1) which says that the maximum number of hours of work in a week shall not exceed 48 and for any work in excess of 48 hours a week overtime shall be payable. As there is a prescribed day of rest in a week we get a working week of six days with a maximum of 48 hours' work. Average duration of actual work payable at ordinary rate of wages per day thus comes to 8 hours. Thus if an employer takes actual work for 8 hours per day on 6 days in a week he complies with all the provisions and need not pay overtime. He may go up to 9 hours on any day without paying any overtime provided he does not exceed 48 hours in the week. He can specify the intervals of rest and spread the 8 hours or 9 hours, as the case may be, together with intervals of rest over 12 hours in a twelvehour shift. These periods of rest must not be periods during which the workman is on duty and inaction is due to want of work for him, but they must be pre-determined periods of inaction during which the workman is neither called upon nor expected to display physical activity or sustained attention.

We have seen that an employer having a 12-hour shift can fix 48 hours of work per week of six days at 8 hours per day. He is not compelled to give overtime for the remaining four hours unless he takes work during those hours, provided he has specified those hours as intervals of rest. If he takes work during the extra 4 hours or fails to specify the hours of rest he must pay overtime. He can spread 8 hours with intervals of rest to 9, 10, 11 or 12 hours as he likes. For the hours of rest he is not required to pay overtime but he must specify those hours. Overtime under s. 14 is only payable when the workman works in excess of the number of hours constituting a normal working day. That number is 9 hours for any day and work up to 9 hours on any day can be taken without paying overtime if the total number of hours in the week does not exceed 48. As in the present case the total number of hours of work in a week is 48 (8 hours per day for 6 days) overtime is payable for that hour or part of an hour beyond the 8 hours in which the workman is either made to work or the interval is not specified. The Port Trust can say that it will not take more than two hours extra work on any day and specify the remaining two hours as the intervals for rest. It is, not compelled to fix only one interval or to make the interval of one hour only. It can fix two or three or even four without in any way going against the provisions of s. 13 or Rule 24.

At this stage it is instructive to look into the provisions of the Factories Act, 1948 dealing with the daily hours of work, intervals for rest and spread over of the working time. Sections 54, 55 and 56 are the relevant provisions. Omitting the portions not necessary for the purpose of comparison, these sections read "54. Daily hours.

> "54.Daily hours Subject to the provisions of section 51, no adult worker shall be required or allowed to work in a factory for more than nine hours in any day Provided.....
>
> "55. Intervals for rest.

(1) The periods of work of adult workers in a factory each day shall be so fixed that no period shall exceed five hours and that no worker shall work for more than five hours before he has had an interval for rest of at least half an hour.

(2).....

"56. Spread over.

The periods of work of an adult worker in a factory shall be so arranged that inclusive of his intervals for rest under section 55 they shall not spread over more than ten and a half hours in any day:

Provided that the Chief Inspector may, for reasons to be specified in writing, increase the spread over to twelve hours."

Almost the same provisions are to be found in some other Acts of the State Legislatures controlling shops, establishments etc. It will be noticed that the arrangement of these sections is almost the same as the cognate provisions of the Minimum Wages Act. Here too, the hours of work cannot be more than 9 in a day and taken with the intervals for rest these 9 hours may be spread over 10-1/2 hours. The only difference is that a worker must not be made to work for more than 5 hours at a stretch before he has had an interval for rest of half an hour at the least. There is no provision in the Minimum Wages Act which breaks up the hours of work by interposing a compulsory period of rest as is done by the latter part of s. 55 of the Factories Act. The reason, perhaps, is that in some employments time for work depends on some extraneous factors and hours of rest cannot always be fixed to, break up those hours. It is proverbial that time and tide do not wait for any man. Workers at a tidal dock must work when the tide is in and take their rest when the tide is out. It is for this reason that a variable recess is in force at the Prince's and Victoria Docks and due. notice of the interval is given by specifying a day in advance the hours of rest. We do not think that the Trustees are guilty of infraction of the Minimum Wages Act by keeping the recess variable so long as they specify in advance the recess on any particular day. It will also be noticed that the scheme of the Minimum Wages Act compels the inclusion of an hour of rest in a normal working day. This is achieved by pres- cribing that the hours of work in a six-day week shall not exceed 48, although on any particular day the hours of work in a day may go up to 9. In this indirect way one hour of rest is included in a normal working day because the total number of work hours in a six-day week cannot go beyond 48. What has not been done by the Act or the Rules is to specify that the interval for rest shall break up the hours of work. The Trustees cannot be compelled to break up the hours of work by interposing intervals for rest, if owing to the nature of the work there is difficulty in giving the intervals for rest in that manner on any particular day. According to their resolution the recess is fixed as near the middle of the work as possible, depending on the tides.

The workmen compared the case of the Prince's and Victoria Docks with the cases of the Alexandra Docks and the Flotilla Crew. They point out that in the former there is 3 hours' overtime and in the latter there is 4 hours of overtime in the 12-hour shifts, but at the Prince's and Victoria Docks there is 2 hours' overtime only. They claim equal treatment. This is not possible. The crew at the Prince's

and Victoria Docks work in a different way and their case cannot be compared with that of the Flotilla Crew or the crew at the Alexandra Docks. The Flotilla Crew has to remain on duty for full 12 hours and they work as and when they are required. Although their hours of duty are only 8 they are entitled, if present for work, for overtime up to four hours. The crew at the Alexandra Docks get a specified interval of one hour for rest and this makes up their 9 hours which is 8 hours' work and one hour interval for rest. They are, therefore, entitled to three hours' overtime if required to work beyond the 9 hours on any day. There is no parallel in the work of the three different crew and we are satisfied that no conclusion can be based upon the practice existing at the Alexandra Docks or in respect of the Flotilla Crew. We hold, therefore, that the decision of the Central Government Industrial Tribunal is right in a circumstances of this case. The appeal must therefore fail. It will be but in the circumstances of the case we make no order about costs.

Appeal dismissed.