A

Y. A. MAMARDE AND ORS.

v.

AUTHORITY UNDER THE MINIMUM WAGES ACT (SMALL CAUSES COURT) NAGPUR & ANR.

April 12, 1972

B [C. A. VAIDIALINGAM, I. D. DUA AND G. K. MITTER, JJ.]

Minimum Wages Act, 1948—*S.* 20—*Whether the workmen entitled to double the wages with regard to overtime work done by them on weekly rest-days under Rule*, 25 *of the M.P. Minimum Wages Rules*, 1951.

Nine employees of the octroi department, 13 employees of the water works department and a time keeper of Nagpur Corporation applied under
C s. 20 of the Minimum Wages Act to the Small Causes Court of Nagpur for overtime wages at the rate of double the wages for the period they worked beyond prescribed hours and holidays.

The authority raised several issues but they were decided against the applicants and their applications were dismissed. Being aggrieved the said decision, four applications were presented before the High Court under Art. 227 of the Constitution and the High Court also upheld the
D view of the authority.

It was contended by the appellants that under Rule 25 of M.P. Minimum Wages Rules, 1951, they were entitled to overtime wages at double the ordinary rate of wages for the period they worked beyond prescribed hours and holidays. For their claims they relied on 2 minimum wages notifications—one dated 21-2-51 and the other dated 23-2-56.

E On behalf of the appellants the only point canvassed before this Court was the rejection of their claim with regard to overtime work done by them and work done on weekly rest days.

The respondent contended that as the employees of the Corporation were paid higher wages than those fixed under the Act as minimum wages, the Act did not operate, and the employer could not be compelled to pay higher wages. Secondly, the second notification did not supersede the first notification—which only applied to unskilled labour—so as to
F cover all employees, skilled or unskilled. Further, the provision inquiring payment at double the ordinary rate of wages contained in Rule 25 must be read as the ordinary rate of minimum wages fixed, Allowing the appeal,

HELD : (i) Rule 25 contemplates overtime work at double the rate of wages, which the worker actually receives, including the casual requisite and other advantages mentioned in the explanation. By using
G the phrase "double the ordinary rate of wages", the rule making authority intended that the worker should be the recipient of double the remuneration which he, in fact, ordinarily receives, and not double the rate of minimum wages fixed for him under the Act. Had it been intended to provide for merely double the minimum rate of wages fixed under the Act, the rule making authority could have so expressed its intention in clear and explicit words. The word "Ordinary" used in rule 25 reflects the actuality rather than the workers' minimum entitlement under the Act.
H [169A-D]

(ii) The second notification was not applicable to all categories of labour as wrongly held by the High Court. The second notification has to be read in the background of the first notification with the result that

the later notification must also to be held to be confined to unskilled labour in so far as it varies or revises some of the rates fixed in the earlier notification without extending its operational boundaries by deleting the word "unskilled" from the explanation "unskilled labour". [170G] A

Union of India v. *B. D. Rathi*, A.I.R. 1963 Bom. 54, referred to and distinguished.

CIVIL APPELLATE JURISDICTION : C.A. No. 1704 and 1937 of 1967. B

Appeals by special leave from the judgment and order dated August 19, 1966 of the Bombay High Court, Nagpur Bench in Special Civil Applications No. 853 and 941 of 1965 respectively.

H. W. Dhabe and *A. G. Ratnaparkhi*, for the appellants (in both the appeals). C

W. S. Barlingay and *P. C. Bhartari*, for respondent No. 2 (in both the appeals).

The Judgment of the Court was delivered by—

Dua, J.—These two appeals by special leave (C. As Nos. 1704 and 1937 of 1967) are directed against the judgment of a Division Bench of the Bombay High Court dated August 19, 1966 dismissing four applications under Art. 227 of the Constitution arising out of orders made by the Authority under the Minimum Wages Act 11 of 1948 (hereinafter called the Act) in respect of claims made by employees of the 'City of Nagpur Corporation' (hereinafter called the Corporation) working in various Departments of the Corporation. D E

On July 13, 1964 Sitaram Madhorao, Chaukidar and 9 other employees of the Octroi Department of the Corporation filed an application under s. 20 of the Act in the Court of Small Causes at Nagpur, which was the Authority appointed under the Act. The application was presented through the General Secretary of the Nagpur Corporation Employees' Association which was a registered trade union. The application is brief and, therefore, we consider it proper to reproduce its material parts in its own words : F

"The applicants above named beg to submit as under :

(1) That the applicants are employees working in non-applicant No. 1, Nagpur Corporation in Department of School & ors. The Minimum wages notification has been issued in respect of this industry by Government on 21-2-1951 and the minimum rates of wages are fixed 1-12 per day for eight hours. G

(2) That the applicants have not been paid overtime wages for this period though they are entitled to get double the wages as they are required to work beyond prescribed hours and holidays. H

A (*Dua, J.*)

(3) That the applicants have been required to work overtime for 30, 65, 8 and 51 hours every week during the period from 1-1-1964 to 30-6-1964 and total claim are shown in the annexure. The total amount claimed is Rs. 8670.18.

B (4) That the applicants estimate the value of the relief sought by them of the sum of Rs. 8670.18.

(5) Applicants pray that a direction may be issued under section 3 of the Section 29 for (a) payment of the difference between the wages due according to minimum rate of wages fixed by job and wages actually paid amount overtime wages Rs. 8670.18.

C (B) Compensation amounts to Rs. 100.00.

(6) That demand has been made for this overseer claim from 1-1-1964 to 30-6-1964."

D Earlier on June 26, 1964 T. R. Khante, Time-keeper and 13 other employees of the Water Works Department of the Corporation had similarly applied under s. 20 of the Act through B. M. Mahale, General Secretary of the Nagpur Corporation Employees' Association. This application reads :

E "The applicants above named beg to submit as under :

(1) That the applicants are employees working in non-applicant No. 1, Nagpur Corporation in Department of Water Works. The minimum wages notification has been issued in respect of this industry by Government on 21-2-1951 and the minimum rates of wages are fixed

F 1-12 per day for eight hours.

(2) That the applicants have not been paid overtime wages for this period though they are entitled to to get double the wages as they are required to work beyond prescribed hours and holidays.

G (3) That the applicants have been required to work overtime for 8 hours every week during the period from 1-8-63 to 31-1-64 and the total claim are shown in the annexure. The total amount claimed is Rs. 1987.48.

(4) That the applicants estimate the value of the

H relief sought by them of the sum of Rs. 1047.48.

(5) Applicants pray that direction may be issued under section (3) of the section 29 for (a) payment of

the difference between the wages due according to the minimum rate of wages fixed by the job and wages actually paid amount overtime wages Rs. 1047.48.

(6) That compensation amounts to Rs. 140.00.

(7) That demand has been made for this claim from 1-8-63 to 31-8-64."

On November 10, 1964 some preliminary objections raised by the Corporation were disallowed by the Authority and the applications were directed to be tried on the merits.

On February 17, 1965 the Authority made an order on the following four issues which arose out of the claims made by the employees :

"1. Whether the applicants employed as a time-keeper, wireman and lineman belong to the category of unskilled workers ?

2. Whether the applicants who belong to the category of skilled or semi-skilled labour can apply under section 20 of the Minimum Wages Act ?

3. Whether the applicants have worked on weekly days of rest (Sundays) ?

(a) If so, whether they are entitled to wages for work done on the weekly days of rest ?

4. Whether the Chowkidars and Motor-drivers have worked in excess of the number of hours constituting a normal working day ?

(a) If so, to what wages for overtime work are they entitled ?"

Under issue no. 1 the wireman was held to be a skilled worker and the time-keeper and lineman, semi-skilled, disagreeing with their contentions that they were unskilled workers. Under issue no. 2 the Authority held that the second notification of 1956 only provided for the minimum rates of wages of unskilled labour including casual labour in the employment of the City of Nagpur Corporation. The applicants mentioned in issue no. 2 who had worked on weekly days of rest *i.e.*, Sundays were accordingly held disentitled to claim wages for work done on those days in the absence of any provision made by the State Government under s. 13(1)(c) of the Act. Rule 25 of the M.P. Minimum Wages Rules was held not to provide for payment for work on a day of rest envisaged by s. 13(1)(c) of the Act. Though in view of this decision under issue no. 2 issue no. 3 was held not to survive, still a decision on issue no. 3 was also recorded, the details of which

A are not necessary to mention. Under issue no. 3(a) in the absence of a provision by the State Government under s. 13(1)(c) of the Act for payment for work done on weekly days of rest the applicants were held disentiled to claim payment under the Act. Issue No. 4 and 4(a) were decided against the chowkidars and the motordriver concerned. All the four applications were accord-
B ingly dismissed with costs.

Feeling aggrieved by the order of the Authority four special civil applications were presented in the Bombay High Court, Nagpur Bench, under Art. 227 of the Constitution. The High Court disagreed with the view of the Authority on the interpretation of the second notification and held that the second notification was
C intended to apply to all employees and was not confined only to unskilled workmen as was the case with the notification of 1951. It, however, upheld the view of the Authority that ordinary rate of wages contemplated by r. 25 means ordinary minimum rate of wages, considering this view to be in accordance with the view taken by the Bombay High Court in the *Union of India* v. *B. D.*
D *Rathi*(1).

On behalf of the appellants the only point canvassed in these two appeals arises out of the rejection of their claim with regard to overtime work done by them and work done by them on weekly rest days. On behalf of the respondents, however, it was contended that the High Court was wrong in the construction placed by it on
E the notification of 1956.

Minimum Wages were fixed by the Government by means of a notification under s. 5 of the Act on February 21, 1951. According to this notification the Government fixed "minimum rates of wages for unskilled labour including casual labour in respect of
F scheduled employments" mentioned in the schedule in that notification. The item which concerns us is item No. 2 which reads as "employment under any Local Authority". Various rates were fixed for certain categories of employees against this item. This notification so far as relevant reads :

G "Nagpur, the 21st February, 1951.

No. 848-1758-XXIII of 1950—In exercise of the powers conferred by sub-section (2) of s. 5 of the Minimum Wages Act 1948 (XI of 1948) the State Government are pleased to fix the following minimum rates of wages for unskilled labour including casual labour in
H respect of the scheduled employments as mentioned in the schedule below, the same having been previously published as inquired by clause (b) of sub-section (1) of

(1) A.I.R. 1963 Bom. 54.

the said section and further to direct that they shall come into force at once :— A

Schedule of the Minimum rates of Wages

Serial No. and name of Schedule employment	Minimum rates of wages for unskilled labour (including casual labour)
2. Employment under any local authority	Re. -12/- per day for adult female labour at all other centres. B
	Re. 1/- per day for adult male at Nagpur town and in Bhandara, and Balaghat Districts.
	Re. -/14/- in Wardha, Buldana, Akola, Nimar, Hoshangabad and Nagpur districts (including Nagpur town).
	Re. -/13/- in Jabalpur, Katni, and Sagar towns and places within 10 miles radius of these towns. Re. -/12/- in Amravati, Yeotamal, Betul and Chanda Districts. C

In this notification minimum wages in respect of some other categories of employees which do not concern us were also fixed. D

On February 23, 1956 the Government issued the following notification fixing revised minimum rates of wages in supersession of those fixed under the notification of 1951 :

"No. 566-451-XXIII.—In exercise of the powers conferred by clause (b) of sub-section (1) of section 3 read with sub-section (2) of section 10 of the Minimum Wages Act, 1948 (XI of 1948) and after consulting the Advisory Committee and the Advisory Board as required by sub-section (1) of section 5 thereof, the State Government are pleased to revise the minimum rates of wages, in respect of the scheduled employment as mentioned in schedule below in supersession of those fixed under this department notification no. 484-1758-XXIII of 1950 dated the 21st February, 1951 and to further direct that the minimum rates of wages so revised shall come into force at once : E F G

SCHEDULE

Name of scheduled employment : (Employment under any local authority).

Minimum rates of wages : Re. 1/2/- per day for adult male and Rs. -/12/- for adult female labour at Nagpur, Jabalpur and Akola. Re. -/14/- per day for adult male and Re. -/9/- for adult female labour in all other centres. H

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> The above rates are inclusive of dearness allowance or compensatory cost of living allowance and are subject to reduction on account of concessions in respect of supplies of essential commodities at concession rates supplied by the employer when so authorised under section 11 of the said Act."

B As observed earlier, the respondents raised the question that the second notification did not supersede the earlier notification so as to take within its fold all employees as held by the High Court but it was only confined to unskilled labour including casual labour the minimum rates of whose wages were determined under the earlier notification of 1951. To this aspect we will revert C later.

The point strenuously canvassed on behalf of the appellants relates to the construction to be placed on r. 25 of the M. P. Minimum Wages Rules, 1951 made under s. 30 of the Act. That rule provides for extra wages for overtime and reads :

> "25. Extra wages for overtime : When a worker D works in an employment for more than nine hours on any day or for more than fifty-four hours in an 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;
>
> E (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 in cluding the cash equivalent of the advantages accruing through the concessional sale to the person employed of F food-grains and other articles as the person employed is for the time being entitled to but does not include bonus.
>
> (2) A register showing overtime payments shall be kept in Form IV.
>
> (3) Nothing in this rule shall be deemed to affect G the provisions of the Factories Act, 1948."

It is common ground between the parties that Sunday has been declared to be a day of rest and the normal working hours per day are 9 hours a day or 54 hours a week. According to Shri Dhabe the appellants' learned counsel the words "at double the ordinary rate of wages" used in cl. (b) of r. 25 mean double the H rate of wages which are actually being paid to the employees concerned and not double the rate of wages fixed under the Act as minimum wages, whereas according to Dr. Barlingay, learned counsel for the respondent, the Act is only concerned with providing

for minimum wages and if an employee is being paid more than minimum wages so provided, the Act does not operate and the employer cannot be compelled to pay higher wages. The employees of the corporation are already being paid much higher wages than those fixed under the Act as minimum wages and, therefore, so contended Dr. Barlingay, there is no legal obligation on the employer to pay higher wages. The provision requiring payment at double the ordinary rate of wages contained in r. 25, must, according to the respondent's argument, be read as "the ordinary rate of minimum wages fixed."

Let us first deal with this question. The Act which was enacted in 1948 has its roots in the recommendation adopted by the International Labour Conference in 1928. The object of the Act as stated in the preamble is to provide for fixing minimum rates of wages in certain employments and this seems to us to be clearly directed against exploitation of the ignorant, less organised and less privileged members of the society by the capitalist class. This anxiety on the part of the society for improving the general economic condition of some of its less favoured members appears to be in supersession of the old principle of absolute freedom of contract and the doctrine of *laissez faire* and in recognition of the new principles of social welfare and common good. Prior to our Constitution this principle was advocated by the movement for liberal employment in civilised countries and the Act which is a pre-Constitution measure was the offspring of that movement. Under our present Constitution the State is now expressly directed to endeavour to secure to all workers (whether agricultural industrial or otherwise) not only bare physical subsistence but a living wage and conditions of work ensuring a decent standard of life and full enjoyment of leisure. This Directive Principle of State Policy being conducive to the general interest of the public and, therefore, to the healthy progress of the nation as a whole, merely lays down the foundation for appropriate social structure in which the labour will find its place of dignity, legitimately due to it in lieu of its contribution to the progress of national economic prosperity. The Act has since its enactment been amended on several occasions apparently to make it more and more effective in achieving its object which has since secured more firm support from the Constitution. The present rules under s. 30, it may be pointed out, were made in October, 1950 when the State was under a duty to apply the Directive Principles in making laws. No doubt the Act, according to its preamble, was enacted to provide for fixing minimum rates of wages, but that does not necessarily mean that the language of r. 25 should not be construed according to its ordinary, plain meaning, provided of course, such construction is not inconsistent with the provisions of the Act and there is no other compelling reason for adopting a different construction. A preamble though a key to open the mind of the Legislature, cannot be

A used to control or qualify the precise and unambiguous language of the enactment. It is only in case of doubt or ambiguity that recourse may be had to the preamble to ascertain the reason for the enactment in order to discover the true legislative intendment. By using the phrase "double the ordinary rate of wages" the rule-making authority seems to us to have intended that the worker should be B the recipient of double the remuneration which he, in fact, ordinarily receives and not double the rate of minimum wages fixed for him under the Act. Had it been intended to provide for *merely* double the minimum rate of wages fixed under the Act the rule-making authority could have so expressed its intention in clear and explicit words like "double the minimum rate of wages fixed under C the Act". This intendment would certainly have been stated in the explanation added to r. 25(1) in which the expression "ordinary rate of wages" has been explained. The word "ordinary" used in r. 25 reflects the actuality rather than the worker's minimum entitlement under the Act. To accept Dr. Barlingay's suggestion would virtually amount to recasting this phrase in r. 25 for which we find D no justification. This rule calls for practical construction which should ensure to the worker an actual increase in the wages which come into his hands for his use and not increase calculated in terms of the amount assured to him as a minimum wage under the Act. The interpretation suggested on behalf of the respondents would have the effect of depriving most of the workers who are actually getting more than the minimum wages fixed under the Act of the E full benefit of the plain language of r. 25 and in case those workers are actually getting more than or equal to double the minimum wages fixed, this provision would be of no benefit at all. This construction not only creates a mere illusory benefit but would also deprive the workers of all inducement to willingly undertake overtime work with the result that it would to that extent fail to ad- F vance and promote the cause of increased production. We are, therefore, clearly of the view that r. 25 contemplates for overtime work double the rate of wages which the worker actually receives, including the casual requisites and other advantages mentioned in the explanation. This rate, in our opinion, is intended to be the minimum rate for wages for overtime work. The extra strain on the health of the worker for doing overtime work may well have G weighed with the rule-making authority to assure to the worker as minimum wages double the ordinary wage received by him so as to enable him to maintain proper standard of health and stamina. Nothing rational or convincing was said at the bar why fixing the minimum wages for overtime work at double the rate of wages actually received by the workmen should be considered to H be outside the purpose and object of the Act. Keeping in view the overall purpose and object of the Act and viewing it harmoniously with the general scheme of industrial legislation in the country in the background of the Directive Principles contained in our

Constitution the minimum rates of wages for overtime work need not as a matter of law be confined to double the minmium wages fixed but may justly be fixed at double the wages ordinarily received by the workmen as a fact. The Bombay High Court has no doubt held in *Union of India* v. *B. D. Rathi*(1) that "ordinary rate of wages" in r. 25 means the minimum rate for normal work fixed under the Act. The learned Judges sought support for this view from s. 14 of the Act and r. 5 of the Railway Servants (Hours of Employment) Rules, 1951. The workers there were employees of the Central Railway. With all respect we are unable to agree with the approach of the Bombay High Court. Section 14 of the Act merely lays down that when the employee, whose minimum rate of wages is fixed by a prescribed wage period, works in excess of that period the employer shall pay him for the period so worked in excess at the overtime rate fixed under the Act. This section does not militate against the view taken by us. Nor does a provision like r. 5 of the Railway Rules which merely provides for 54 hours employment in a week on the average in any month go against our view. The question is not so much of minimum rate as contrasted with the contract rate of wages as it is of how much actual benefit in the form of receipt of wages has been intended to be assured to the workman for doing overtime work so as to provide adequate inducement to them willingly to do overtime work for increasing production in a peaceful atmosphere in the industry. The problem demands a liberal and rational approach rather than a doctrinaire or technical legalistic approach. The contract rate is not being touched by holding that r 25 contemplates double the rate of wages which actually come into the workman's hands any more than it is touched by fixing the minimum rate of wages under ss. 3, 4 and 5 of the Act. The decision of the Mysore High Court in *Municipal Borough, Bijapur* v. *Gundawan (M.N.) & ors.*(2) and of the Madras High Court in *Chairman of the Madras Port Trust* v. *Claims Authority & ors.*(3) also take the same view as the Bombay High Court does. We need not, therefore, deal with them separately.

Coming now to the notifications, in our view the notification dated February 23, 1956 has to be read in the background of the notification dated February 21, 1951 with the result that the later notification must also be held to be confined to unskilled labour. It is no doubt true that the notification of 1951 dealt with several categories of employees. But that in our opinion does not militate against the construction that the second notification has only to be adjusted with and fitted into the first notification in so far as it varies or revises some of the rates fixed in the earlier notification without extending its operational boundaries by deleting the word "unskilled" from the expression "unskilled labour". The

(1) A.I.R. 1963 Bom. 54. (2) A.I.R. 1965 Mys. 317. (3) A.I.R. 1957 Mad. 69

A High Court was, therefore, not right in holding the second notification to be applicable to all categories of labour. The result, therefore, is that both the appeals are allowed and the case is sent back to the Authority under the Minimum Wages Act for a fresh decision in accordance with law and in the light of the observations made above. Dr. Barlingay undoubtedly desired us to go into
B various claims of the employees but in our view it would be more in the interest of justice that the matter is remitted back to the Authority for a fresh decision. The appellants would get their costs in this Court.

S.N. *Appeals allowed.*