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UNION OF INDIA AND ORS.

v.

SURESH C. BASKEY AND ORS. ETC. ETC.

NOVEMBER 13, 1995

B

[KULDIP SINGH AND B.L. HANSARIA, JJ.]

Factories Act, 1948 : Section 59.

C

Workmen—Calcutta Mint—Employees in occupation of Government accommodation—Overtime allowance—Computation of—Inclusion of notional element of House Rent Allowance in overtime allowance held not permissible—Government orders regarding computation of overtime allowance—Held should be read in conformity with provisions of the Act.

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Words and Phrases : 'Ordinary rate of wages'—Meaning of—Section 59(2) Factories Act, 1948.

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The question in these appeals is whether the employees-workmen of the Government Mint, Alipur, Calcutta who are occupying Government accommodation and as such are not being paid House Rent Allowance are entitled to compute the overtime allowance payable to them after taking into account notionally the element of house rent allowance.

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Following its earlier decision in O.A. No. 13 of 1987 decided on April 17, 1990 the Central Administrative Tribunal, Calcutta answered the question in favour of the employees. Accordingly, it directed the respondents to implement Government Order dated 11th November, 1985 read with order dated 28th September, 1984 and Mint Diary Order No. 130/84 dated 26th October, 1984 and include the House Rent Allowance as part of the 'ordinary rate of wages' for computing the overtime allowance. Union of India preferred appeals before this Court.

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Allowing the appeals and setting aside the impugned judgment of the High Court, this Court

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HELD : 1. The respondents and other employees of the Government Mint who are occupying Government accommodation are not entitled to include the house rent allowance as part of the "ordinary rate of wages" for computing the overtime allowance. [160-G]

Govind Babu Salvi and Ors. v. Viswanath Janardhan Joshi and Ors., [1995] Supp. 1 SCC 148 and *The Master of the Mint v. Kashi Nath Dutta and Anr.*, [1995] 7 scale SP 7. A

2. It is no doubt correct that the Government instructions specifically provide that "overtime allowance will be computed on the basis of emoluments including house rent allowance", but it is nowhere provided in the said instructions that even those employees who are occupying Government houses and as such are not being paid the house rent allowance, are also entitled to include House Rent Allowance, notionally, in their wages for the purposes of computing the overtime allowance. A bare reading of the Government instructions relied upon by the Tribunal goes to show that the said instructions do not give any right to the respondents and others similarly situated to have the house rent amount included in their emoluments for the purpose of computing overtime allowance. [157-E-F; 158-G] B C

3. Even otherwise the Government instructions have to be read in conformity with the provisions of the Act. The overtime allowance has to be computed on the basis of the "ordinary rate of wages". Sub-section (2) of Section 59 of the Factories Act defines "ordinary rate of wages" to mean the basic wages plus such allowance as the worker is for the time being entitled to, but does not include the bonus and wages for overtime work. Thus the ordinary rate of wages is the basic wages plus the allowances to which a worker is entitled for the time being. If a worker is not entitled to a particular allowance the same cannot be included in the "ordinary rate of wages". In the present case, admittedly, the respondents are not entitled to the house rent allowance and as such the same cannot be included while determining the ordinary rate of wages. It would be wholly fallacious to include an allowance 'notionally' which has been excluded specifically. The legislature in its wisdom included the cash equivalent of the advantage accruing through the concessional sale to workers of foodgrains and other articles in the definition of "ordinary rate of wages". The legislature has not done so in respect of the house rent allowance. [159-D-F] D E F G

4. It is directed that the respondents or other employees of the Government-Mint similarly situated who have already been paid overtime allowance in terms of the Tribunal judgments shall not be asked to refund the same. [160-H] H

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1837 of 1991 Etc.

From the Judgment and Order dated 6.9.90 of the Central Administrative Tribunal, Calcutta, in O.A. No. 983 of 1990.

B V.C. Mahajan, Ms. Shashi Kiran, S.N. Terdol, C.V.S. Rao, D.S. Mehra and B.K. Prasad for the Appellants

Krishan Mahajan, P.H. Parekh and S. Fazl for the Respondents.

Tapas Ray and H.K. Puri for the Respondent in S.L.P. No. 4854/90.

C The Judgment of the Court was delivered by

D **KULDIP SINGH, J.** The question before the Central Administrative Tribunal Calcutta Bench (the Tribunal) was whether the employees (workmen) working in the Government-Mint, Alipur, Calcutta - who were allottees of Government accommodation and as such were not being paid house rent allowance - were entitled to compute the over-time allowance payable to them after taking into account, notionally, the element of house rent allowance. Following its earlier decision in QA 13 of 1987 (decided on April 17, 1990) the Tribunal answered the question by the impugned judgment dated September 6, 1990 in the affirmative and decided the same in favour of the employees. This appeal, by the Union of India is against the judgment of the Tribunal.

F It is not necessary for us to go into the chequered history of litigation on the question whether the employees of Government- Mint were entitled to the over-time allowance. It is not disputed before us that the employees of the Government-Mint who come within the definition of workmen under the Factories Act, 1948 (the Act) are entitled to extra wages for over-time under Section 59 of the Act. It is further not disputed that all those employees who have not been allotted Government accommodation and are in receipt of house rent allowance are entitled to commute the over-time allowance by including house rent allowance into the "ordinary rate of wages." The short question before us is whether the employees who are occupying Government accommodation and as such are not being paid house rent allowance, are entitled to compute the "ordinary rate of wages" by notionally adding the amount of house rent allowance which they would have got, had they not been allotted the Government accommodation.

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The Tribunal accepted the contention of the respondents-applicants before it that they were entitled to similar relief as was given to the employees of the Government-Mint in OA 13 of 1987. On the concession of the learned counsel for the Union of India, the Tribunal allowed the application by the impugned order in the following terms :

"Mr. C.R. Bag very fairly concedes that the facts of this case are identical with those in OA 13 of 87 (*Nirmal Ch. Bhowmich & Ors. v. Union of India & Ors.*).

In that view of the matter, we dispose of this application at the admission stage itself with a direction to the respondents to dispose of the representation of the applicants dated 8.12.86 (Annexure-C) in the light of the aforesaid two judgments and pass an appropriate order giving the same benefits within 60 days from today."

We may, therefore, examine the judgment of the Tribunal in OA 13 of 1987. It would be useful to reproduce the operative part of the judgment:

"It is the grievance of the applicants that although an order has been made on 11th November, 1985 directing that overtime should be calculated inclusive of house rent allowance, the respondents are not implementing the same. This application has been taken out for implementation of the order dated 11th November, 1985 read with order dated 28th September, 1984 and Mint Diary Order No. 130/84 dated 26th October, 1984.

Mr. Samir Ghosh appearing for the applicants invites my attention to annexure 'A' at page 22 of the application which is the letter dated 11th November, 1985. The subject matter of this letter is "Computation of overtime allowance on the basis of emoluments including house rent allowance - payment of arrears regarding....". This letter is addressed to The General Manager, India Govt. Mint, Bombay/Hyderabad/Calcutta and is written by the Under Secretary to the Govt. of India, Ministry of Finance, Department of Economic Affairs. This letter reads as follows :-

"I am directed to convey the approval of the Govt. of India, Ministry of Finance, Department of Economic Affairs, for making payments of arrears of overtime allowance from 1.1.1956 onwards on the basis of emoluments including house rent allowance to the

A industrial employees as well as the classified staff of the India Government Mints at Bombay, Calcutta and Hyderabad.

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B This issues with the approval of IFA in the department vide their U.O. No. 3825/IFA/85 dated 7.11.1985."

The letter dated 28th September, 1984 at page 23 of the application is addressed to Shri H.N. Gupta, General Manager, India Govt. Mint, Calcutta. Paragraph 1 of this letter states as follows :-

C "Please refer to the correspondence resting with our letter of even number dated 28th June, 1984 regarding computation of O.T.A. on the basis of emoluments including H.R.A. addressed to the General Manager, India Govt. Mint, a copy of which has been endorsed to you."

D The third letter annexed to the application at page 24 is dated 26th October, 1984, the subject matter of which is - "Computation of overtime allowance on the basis of emoluments including house rent allowance for work between 37½ and 48 hours a day". This letter records as follows :-

E "Computation of overtime allowance on the basis of emoluments including house rent allowance was under consideration of the Government of India, Ministry of Finance (D.E.A.) since quite some time. It has now been decided by the Government that overtime allowance will be computed on the basis of emoluments including house rent allowance with effect from 9th May, 1984 for work done between 37½ hours to 48 hours per week in respect of all employees of the three (3) Mints."

G Going through the annexures to the application, the correctness of which has not been disputed by the respondents, I have no doubt in my mind that overtime allowance payable to the applicants must be computed inclusive of house rent allowance."

H The Tribunal, thereafter, allowed OA 13 of 1987 in the following terms :

"In view of the facts stated above, this application is allowed. The respondents are directed to give effect to the Government Order dated 11th November, 1985 read with order dated 28th September, 1984 and Mint Diary Order No. 130/84 dated 26th October, 1984, as appended in annexure 'A' of the application collectively, so far as the applicants are concerned the respondents are directed to draw and disburse the overtime allowance in terms of the said order. This order should be complied with within three months from date. All arrears payable to the applicants be paid to them within the said period.

Matter is disposed of. There will be no order as to costs."

Special leave petition 4854 of 1990 filed against the above quoted judgment of the Tribunal in OA 13 of 1987 was dismissed by this Court on February 26, 1990 by the following order :

"We find no grounds to condone the delay. Interlocutory application for condonation of delay is dismissed. Consequently, the special leave petition is dismissed as barred by time."

The judgment of the Tribunal in OA 13 of 1987 shows that the Tribunal, after quoting the three Government instructions, directed the Union of India to give effect to the said instructions. It is no doubt correct that the Government instructions specifically provide that "over-time allowance will be computed on the basis of emoluments including house rent allowance", but it is nowhere provided in the said instructions that even those employees who are occupying Government houses and as such are not being paid the house rent allowance, are also entitled to include House Rent Allowance, notionally, in their wages for the purposes of computing the over-time allowance. We are of the view that on the plain reading of the instructions relied upon by the Tribunal it is not possible to interpret the same to mean that the employees of the Government-Mint who are occupying Government accommodation and as such are not being paid house rent allowance, are entitled to compute the over-time allowance by including the house rent allowance - notionally - in their emoluments. Since the Tribunal in its judgment in OA 13 of 1987 did not interpret the Government instructions the same shall be read in the light of the interpretation given by us.

A This Court on July 26, 1994 passed the following order :

B "C.A. No. 1837/91 This appeal is directed against the judgment of the Central Administrative Tribunal, Calcutta Bench dated September 6, 1990 in O.A. No. 983/90. The Tribunal in turn relied upon its earlier judgment in O.A. No. 13/87 decided on September 1, 1989. Special Leave Petition against the judgment on the Tribunal in O.A. No. 13/87 was dismissed by this Court on the ground of delay.

C Since this Court has granted leave to appeal against the judgment of the Calcutta Bench in O.A. No. 983/90, the matter has to be finally decided on merits. There is a connected appeal on the same point from the judgment of the Central Administrative Tribunal, Bombay.

D We are *prima facie* of the view that any decision on merits in these two appeals is likely to affect the respondents in SLP (C) (CC No. 23481) filed against the judgment of the Central Administrative Tribunal, Calcutta Bench, in O.A. No. 13/87. The special leave petition was dismissed on the ground of delay on February 26, 1990. We direct the Registry to issue notices to the respondents in S.L.P.(C) No... (CC No. 23481) which was dismissed on February 26, 1990. The notices shall be returnable on September 7, 1994. The Union of India to obtain *dasti process* in addition to serve those respondents".

F In response to the above quoted order, Nirmal Ch. Bhowmich has filed affidavit on behalf of the respondents in SLP 4854/90.

G We have heard learned counsel for the parties. We agree with the contention of the learned counsel for the appellant that a bare reading of the Government instructions relied upon by the Tribunal goes to show that the said instructions do not give any right to the respondents and others similarly situated to have the house rent amount included in their emoluments for the purpose of computing over-time allowance.

H Even otherwise the Government instructions have to be read in conformity with the provisions of the Act. The claim of the respondents for grant of over-time allowance is based on Section 59 of the Act.

Sub-sections (1) and (2) of Section 59 of the Act, which are relevant, are as under : A

"*Extra wages for over-time* - (1) Where a worker works in a factory for more than nine hours in any day or for more than forty eight hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages. B

(2) For the purposes of sub-section (1), 'ordinary rate of wages' means the basis wages plus such allowances, including the cash equivalent of the advantage accruing through the concessional sale to workers of foodgrains and other articles, as the worker is for the time being entitled to, but does not include a bonus and wages for overtime work". C

The over-time allowance has to be computed on the basis of the "ordinary rate of wages". Sub-section (2) of Section 59 of the Act defines "ordinary rate of wages" to mean the basic wages plus such allowances as the worker is for the time being entitled to, but does not include the bonus and wages for over-time work. In other words, the ordinary rate of wages is the basic wages plus the allowances to which a worker is entitled for the time being. If a worker is not entitled to a particular allowance the same cannot be included in the "ordinary rate of wages". In the present case, admittedly, the respondents are not entitled to the house rent allowance and as such the same cannot be included while determining the ordinary rate of wages. It would be wholly fallacious to include an allowance 'notionally' which has been excluded specifically. The legislature in its wisdom included the cash equivalent of the advantage accruing through the concessional sale to workers of foodgrains and other articles in the definition of "ordinary rate of wages". The legislature has not done so in respect of the house rent allowance. D E F

We respectfully agree with the law laid down by this Court in *Govind Babu Salvi and Others v. Vishwanath Janardhan Joshi and Others*, [1995] Supp. 1 SCC 148 and in *The Master of the Mint v. Kashi Nath Dutta and Another*, (1995) 7 Scale SP 7. G

We are inclined to agree with the learned counsel for the appellant that despite the respondents getting a slightly lesser rate for computing the overtime allowance they are placed in an advantageous position as com- H

A pared to those who are not in occupation of Government accommodation. In the additional affidavit filed on behalf of the Union of India, multiple benefits which accrue to a Government employee, who is allotted Government accommodation, have been shown as under :

"Government Accommodation	Private Accommodation
1. Nominal Licence fee upto 10% of basis pay	- exorbitant rent-incremental at the mercy of landlord.
2. No HRA payable	- HRA admissible approx. Rs. 250 for this category of employees.
3. In the vicinity of Mint	- Far from Mint.
4. No expenditure on transport.	- some expenditure on transport and inconvenience.
5. Little time taken to reach Mint	- some time taken to reach Mint.
6. Free maintenance by Government	- minor maintenance has to be attended by the allottee - all other maintenance by the landlord at his convenience.
7. One can live till the age of superannuation and 6 months thereafter.	- at the mercy of landlord.
8. In case of 'die in harness' the quarter is allotted to deceased dependent."	- No such provision exists.

We, therefore, hold that the respondents and others employees of the Government-Mint who are occupying Government accommodation are not entitled to include the house rent allowance as a part of the "ordinary rate of wages" for computing the over-time allowance.

We allow the appeals, set aside the impugned judgments of the Tribunal. We, however, direct that the respondents or other employees of the Government-Mint similarly situated who have already been paid over-time allowance in terms of the Tribunal judgments shall not be asked to

refund the same.

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In OA 13 of 1987 the Tribunal directed that the Government instructions relied upon by the Tribunal be implemented. Since we have interpreted the Government instructions and also the provisions of Section 59 of the Act, it would be in the interest of justice that the law laid down by us be made applicable to the applicants in OA 13 of 1987 (respondents in SLP 4854/90) prospectively from the date of this judgment. No costs.

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T.N.A.

Appeals allowed.