2026 INSC 74

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.5185-5192 OF 2016

UNION OF INDIA & OTHERS **... Appellant (s)**

VERSUS

HEAVY VEHICLES FACTORY EMPLOYEES' UNION AND ANOTHER **... Respondent(s)**

JUDGMENT

Rajesh Bindal, J.

1. Aggrieved against the order passed by the Division Bench of the High Court[1] dated 30.11.2011, the present appeals have been filed by the Union of India. Vide the aforesaid judgment, the order passed by the Central Administrative Tribunal[2] dated 24.12.2010 passed in a bunch of applications filed by the respondents, was set aside.

[1] High Court of Judicature at Madras
[2] Central Administrative Tribunal, Madras Bench (Hereinafter, "CAT")

2. Briefly, the issue is as to whether compensatory allowances, such as House Rent Allowance[3], Transport Allowance[4], Clothing and Washing Allowance[5] and Small Family Allowance[6], would fall within the term ''ordinary rate of wages'' for calculation of overtime wages in terms of Section 59(2) of the Factories Act, 1948[7].

3. Learned counsel appearing for the appellants, taking us through the historical background, has drawn our attention to various letters issued by different Ministries, in terms of which the respondents will not be entitled to add various components of compensatory allowances for the purpose of calculation of overtime wages.

3.1 The learned counsel referred to a letter dated 01.09.1959 from the Government of India, Ministry of Defence, addressed to all the factories, clarifying that wages payable for overtime to the civilian employees for work in excess of normal working hours and up to 9 hours on any day or 48 hours in a week, overtime will be payable on basic pay and dearness allowance only. For any period in excess of that, the overtime shall be calculated on total wages including various allowances.

---

[3] Hereinafter, ''HRA''.
[4] Hereinafter, ''TA''.
[5] Hereinafter, ''CWA''
[6] Hereinafter, ''SFA''
[7] Hereinafter, ''the 1948 Act''

3.2 Further, reference was made to a letter dated 12.06.2000 issued by the Ministry of Labour, Government of India which provided that travelling allowance should be added in the basic rate of wage for calculation of overtime wages in terms of Section 59(2) of the 1948 Act.

3.3 Further, reference was made to an Office Memorandum dated 14.11.2002 issued by the Ministry of Finance, Government of India which provided that wages as provided under Section 59(2) of the 1948 Act for the purpose of calculation of overtime will only include basic pay and dearness allowance/additional dearness allowance and any other allowances, which are uniformly applicable to all the government employees. It was specifically mentioned therein that HRA, TA, and CWA are excluded therefrom.

3.4 Thereafter, reference was made to an Office Memorandum dated 19.11.2007 issued by the Ministry of Labour and Employment, Government of India. It referred to an earlier Office Memorandum dated 16.03.2007 issued by the Ministry of Defence, clarifying that the TA being compensatory in nature, may not be taken into consideration for calculating overtime wages under the 1948 Act. With reference to the aforesaid Office Memorandum, the Government of India, Ministry of Defence issued another Office Memorandum on 26.03.2008 taking the same position.

3.5 The aforesaid Office Memorandum was followed by another Office Memorandum dated 27.05.2009 issued by the Ministry of Labour and Employment, Government of India clarifying that allowances of compensatory nature including HRA, TA, SFA, etc., may be excluded for the purpose of computing overtime wages under the 1948 Act. The same was endorsed by the Government of India, Ministry of Defence vide Office Memorandum dated 26.06.2009.

4. Aggrieved against the aforesaid interpretation made by the appellants, multiple Original Applications[8] were filed before the Tribunal by employee unions of various factories engaged in production of defence equipments controlled by the Ministry of Defence. It was submitted by the learned counsel for the appellants that the CAT rightly appreciated the contentions raised by the parties and dismissed the applications vide order dated 24.12.2010. The respondents challenged the same before the High Court by filing the Writ Petitions[9]. The High Court misdirected itself and wrongly interpreted the provisions of the 1948 Act by not giving any weightage to various clarifications issued by the Ministry of Finance, Ministry of Labour and Employment and Ministry of Defence and gave an

[8] O.A. Nos. 1143, 1144, 1132, 1157, 1170, 1214 and 1266 of 2009; O.A.Nos. 631, 1113, 1114 and 1115 of 2010.
[9] W.P. No.609, 1276, 1466, 1980, 1981,1982 and 21035 of 2011.

interpretation which runs contrary to the scheme of 1948 Act. The wrong interpretation given by the High Court has put exorbitant financial burden on the factories. Hence, interference by this Court is called for.

5. Taking us through the logic behind it, the argument raised by the appellant is that there may be different allowances paid to different kinds of employees. The quantum may also be different. Thus, there would be disparity in calculation of the wages for the purpose of further calculation of overtime wages for different employees. There may be a case where some of the workmen may be travelling by factory buses whereas some may be getting travelling allowance. Similar may be the position with respect to accommodation provided to some of the employees whereas some may be getting the HRA. Similar can be the position with reference to CWA and SFA. In support of the arguments, reliance was placed on the judgments of this Court in ***Bridge and Roofs Co. Ltd. Versus Union of India and Ors.***[10]***, Govind Bapu Salvi and Ors. Versus Vishwanath Janardhan Joshi and Ors.***[11] and ***Union of India and Ors. Versus Suresh C. Baskey and Ors.***[12]***.***

[10] 1962 SCC Online SC 164
[11] (1995) Supp (1) SCC 148
[12] 1995 INSC 721; (1996) 11 SCC 701

6. In response, learned counsel for the respondents has taken us through the scheme of the 1948 Act, and the scope of powers vested with the Central and the State Governments. While referring to Section 59 thereof, he submitted that the plain and simple meaning thereof is that, whatever wages, in any form, a workman is getting, the overtime is to be paid equivalent to the double of that rate. No other meaning can be assigned. The exclusions that are sought to be made by the appellants are not permissible. The interpretation, as is sought to be projected before this Court only by the Ministry of Defence, cannot be accepted, as any law framed by the Parliament cannot have different application in different establishments. He referred to a letter dated 22.05.2011 issued by the Government of India, Ministry of Railway (Railway Board) to General Managers of All India Railways and Production Units, with reference to grant of overtime wages to the railway employees from which it is clearly evident that HRA, TA, etc., are to be taken into consideration for the purpose of calculation of overtime wages.

6.1 Further, he submitted that various letters/Office Memorandums, referred to by the learned counsel for the appellants, go in different directions. In fact, these are merely views of different Ministries which cannot be said to be giving true meaning of the

provisions. There is no power vested with the aforesaid ministries to issue any clarifications with reference to Section 59(2) of the 1948 Act.

6.2 The argument raised is that in the absence of any power delegated under the provisions of the 1948 Act, no circular/letter could be issued by different Ministries for giving a different meaning than what is evident from the plain language of the 1948 Act. He further submitted that the 1948 Act, being a beneficial legislation, should be given liberal construction in favour of the employees. Judgments referred to by learned counsel for the appellants are distinguishable.

6.3 He also referred to Section 2(vi) of the Payment of Wages Act, 1936, where the definition of the term 'wages' includes all remuneration whether salary or allowances. Reference was also made to the definition of wages as contained in Section 2(rr) of the Industrial Disputes Act, 1947.

6.4 In support of his arguments, reliance was placed upon the judgments of this Court in ***Rajasthan State Industrial Development & Investment Corpn. Versus Subhash Sindhi Coop. Housing Society***,[13] and ***Gujarat Mazdoor Sabha & Anr. Versus State of Gujarat.***[14]

7. Heard the learned counsel for the parties and perused the relevant material on record.

---

[13] 2013 INSC 94; 2013 (5) SCC 427

[14] 2020 INSC 572; 2020 (10) SCC 459

8. In the case in hand, we are concerned with the interpretation of Section 59(2), which forms part of Chapter VI of the 1948 Act, with the title 'Working Hours of Adults'. Sections 64 and 65 thereof talk about power to make exempting rules and orders, respectively. Such powers have been vested with the State Government. Relevant provision of Section 59(2) of the 1948 Act is reproduced herein below:

> "**59. Extra wages for overtime.-**
>
> xxx xxx xxx
>
> (2) For the purpose of sub-section (1), "ordinary rate of wages" means the basic 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."

9. It is pertinent to throw some light on the definition of 'State Government'. Although no definition can be found under the 1948 Act, Clause 60 of Section 3 of General Clauses Act, 1897 defines "State Government" for different time-periods and clarifies that, after the commencement of the Constitution (Seventh Amendment) Act, 1956, State Government means the Governor in a State and the Central Government in a Union Territory, including situations where functions are entrusted under Article 258A of the Constitution.

9.1 Section 64 empowers a State Government to make rules with reference to various issues mentioned therein. Similar is the

position in sub-section 2 thereof. Sub-section 5 makes it clear that any rules made under this Section shall remain in force for not more than 5 years.

9.2 Section 65 deals with power to issue exempting orders. Again, such a power is conferred on the State Government to relax or modify the provisions of Section 61. Sub-section 2 otherwise also empowers the State Government or the Chief Inspector (subject to the control of the State Government) to pass certain exempting orders on the conditions enumerated in Sections 51, 52, 54, and 56 of the 1948 Act.

9.3 Meaning thereby, as far as Chapter VI is concerned, there is no power vested with different Ministries of the Government of India to issue any clarification with reference to Section 59(2) of the 1948 Act, especially with respect to what is to be included or excluded for the purpose of calculation of 'ordinary rate of wages', in order to determine the wages payable for overtime to an employee.

10. Now coming to Chapter XI of the 1948 Act, the same is titled as 'Supplemental', containing general provisions. Section 112 thereof talks about general power to make rules. It empowers the State Government to make rules providing for any matter, which under the

provisions of the Act, is to be or may be considered expedient in order to give effect to the purposes of the 1948 Act.

10.1 Section 113 empowers the Central Government to give directions to the State Governments for carrying out execution of the provisions of the Act.

10.2 The aforesaid sections again do not empower the Central Government to issue any clarification or direction with reference to any provisions of the 1948 Act. None of the sections empowers the central government to even frame rules. The entire power is vested with the State Governments. All that the Central Government can do is, issue directions to the State Governments.

11. The judgment of this Court in ***Bridge and Roofs Co. Ltd.'s case (supra)*** does not support the argument raised by the learned counsel for the appellants as the issue considered therein was, as to whether production bonus is to be included within the term 'basic wages' as defined in Section 2-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. While considering the issue, this Court opined that irrespective of production, an employee was entitled to some wages. The incentive is only if the production exceeds certain parameters. The same cannot be a part of the basic wage. The

definition of 'basic wages', as provided in Section 2-B of the aforesaid Act excluded number of items.

11.1 The judgment of this Court in ***Suresh C. Baskey and Ors.'s case (supra)*** relied upon by the learned counsel for the appellants is distinguishable and is not applicable to the facts of the present case. The issue under consideration in the aforesaid judgment was as to whether the employees who are occupying government accommodation and as such are not being paid HRA, are entitled to compute the 'ordinary rate of wages', by notionally adding the amount of HRA, which they would have got in case government accommodation is not allotted to them. The answer by this Court was in negative. It was opined that legislature in its wisdom included the cash equivalent to the advantage accruing through the concessional sale to the workers of food grains and other articles within the term 'ordinary rate of wages'. The same was not the position with reference to HRA. It was with reference to Section 59(2) of the 1948 Act.

11.2 The judgment of this Court in ***Govind Bapu Salvi and Ors.'s case (supra)*** also does not support the case of the appellant, as the issue under consideration in the aforesaid judgment was as to whether the HRA can be taken into consideration for the purpose of calculation of overtime wages. This Court opined that since the employees therein

were allotted official quarters, HRA will not be included for calculation of wages for overtime, in terms of Section 59(2) of the 1948 Act.

12. Coming to the judgments cited by learned counsel for the respondents, this Court in ***Rajasthan State Industrial Development & Investment Corpn.'s case (supra)***, held that executive instructions which have no statutory force, cannot override the law. Any notice, circular, guidelines, etc., which run contrary to the statutory provisions cannot be enforced.

12.1 In ***Gujarat Mazdoor Sabha & Anr.'s case (supra),*** this Court in part 'F' thereof (Paragraph nos. 31-38), explained the scheme and objectives of the Factories Act, 1948. In part 'G' (Paragraph Nos. 39-43), social and economic value of 'overtime' was dealt with. Relevant portions thereof have been extracted below:

> **"32.** The Factories Act, as it currently stands, was enacted to guarantee occupational health and safety. It ensures the material and physical well-being of workers by fastening responsibilities and liabilities on ''occupiers'' of factories. As a legislative recognition of the inequality in the material bargaining power between workers and their employers, the Act is meant to serve as a bulwark against harsh and oppressive working conditions. The Act, primarily applies to establishments employing more than 10 persons. It has been purposively and expansively applied to workers, who may not strictly fall within the purview of the definition, and yet embody similar roles within the establishments. These permissible interpretations have been aligned with the intention of the legislature which has a vital concern in preventing exploitation of labour.
>
> x x x

35. The notifications make significant departures from the mandate of the Factories Act. They (*i*) increase the daily limit of working hours from 9 hours to 12 hours; (*ii*) increase the weekly work limit from 48 hours to 72 hours, which translates into 12 hour work-days on 6 days of the week; (*iii*) negate the spreadover of time at work including rest hours, which is typically fixed at 10.5 hours; (*iv*) enable an interval of rest every 6 hours, as opposed to 5 hours; and (*iv*) mandate the payment of overtime wages at a rate proportionate to the ordinary rate of wages, instead of overtime wages at the rate of double the ordinary rate of wages as provided under Section 59.

× × ×

36. While enacting the Factories Act, Parliament was cognizant of the occasional surge of the demand for, or requirement of, the manufacture of certain goods which would demand accelerated production. The law-makers were aware of the exigencies of the war effort of the colonial regime in World War II, with its attendant shortages, bottlenecks and, in India, famine as well. Section 64(2) of the Factories Act envisages exemption from certain provisions relating to working hours in Chapter VI, for instances such as urgent repairs, supplying articles of prime necessity or technical work, which necessarily must be carried on continuously. Section 65(2) enables classes of factories to be exempt from similar provisions in order to enable them to cope with an exceptional pressure of work. However, these exemptions are circumscribed by Sections 64(4) and 65(3) respectively, at limits that are significantly less onerous than those prescribed by the notifications in question. Despite these concessions, these provisions do not enable an exemption of Section 59 which prescribes mandatory payment of overtime wages to the workers at double the ordinary rate of their wages.

× × ×

38. We are unable to find force in the arguments of the learned counsel for the respondent. The impugned

notifications do not serve any purpose, apart from reducing the overhead costs of *all* factories in the State, without regard to the nature of their manufactured products. It would be fathomable, and within the realm of reasonable possibility during a pandemic, if the factories producing medical equipment such as life-saving drugs, personal protective equipment or sanitisers, would be exempted by way of Section 65(2), while justly compensating the workers for supplying their valuable labour in a time of urgent need. However, a blanket notification of exemption to all factories, irrespective of the manufactured product, while denying overtime to the workers, is indicative of the intention to capitalise on the pandemic to force an already worn-down class of society, into the chains of servitude."

× × ×

42. The rationale behind fixing of double the rate of wages for overtime in Mamarde [Y.A. Mamarde v. Authority under the Minimum Wages Act, (1972) 2 SCC 108] was separately noted by the Punjab and Haryana High Court, in interpreting overtime for the purpose of the Factories Act, in ITC Ltd. v. Provident Fund Commr. [ITC Ltd. v. Provident Fund Commr., 1986 SCC OnLine P&H 715 : ILR (1988) 1 P&H 73] , where the Court held : (ITC Ltd. case [ITC Ltd. v. Provident Fund Commr., 1986 SCC OnLine P&H 715 : ILR (1988) 1 P&H 73] , SCC OnLine P&H para 27)

× × ×

43. The principle of paying for overtime work at double the rate of wage is a bulwark against the severe inequity that may otherwise pervade a relationship between workers and the management. The Rajasthan High Court in Hindustan Machine Tools Ltd. v. Labour Court [Hindustan Machine Tools Ltd. v. Labour Court, 1993 SCC OnLine Raj 17 : (1994) 1 LLN 256] emphatically noted that the workers cannot contract out of receiving double the rate for overtime as a way of industrial settlement. The Court held : (SCC OnLine Raj paras 6 & 9)

> "6. […] An interpretation which restricts or curtails benefits admissible to workers under the Factories Act has to be avoided. Since the provisions contained in the Factories Act, particularly those contained in Chapter VI, are intended to protect the workmen against exploitation on account of his uneven position qua the employer, employer cannot be permitted directly or indirectly to infringe upon the rights of the workers. Likewise, the employee cannot be permitted to volunte[e]r to work beyond the prescribed hours. If the employer was given permission to contract out of the provisions of the 1948 Act, the whole object with which these provisions have been enacted will be frustrated.
>
> ***
>
> 9. […] The employer has clearly taken advantage of its superior bargaining position vis-à-vis the workmen by making them to work for more than 50 hours of overtime work. It cannot now claim that despite the fact that workmen have rendered service for more than 50 hours of overtime wages should be denied to them because the workmen became a party to the violation of that embargo. Having taken advantage by violating the provisions of law, the employer cannot now plead that the workmen should be denied benefit of their extra work."
>
> (emphasis supplied)

13. It was opined in the aforesaid judgment that the 1948 Act was enacted to guarantee occupational health, safety and physical well-being of the workers. Exemptions as provided under Sections 64 and 65 of the 1948 Act were also discussed. Concessions provided therein were not applicable to Section 59 which prescribes payment of overtime wages. An interpretation which restricts or curtails benefits available to workers under the 1948 Act must be avoided. Chapter VI

of the aforesaid Act intends to protect the workmen against exploitation.

14. Further, there was no answer to the argument raised by the learned counsel for the respondents that the same provision of law is being interpreted differently by the Ministry of Railways, Government of India, where all the allowances are being included within the term, 'ordinary rate of wages' for the purpose of calculation of overtime wages. Relevant extract from the letter dated 20.05.2011 issued by the Ministry of Railway, Government of India, is reproduced herein below:

> "The issue of revising the date of effect of OTA w.e.f. 01.01.2006 instead of 01.09.2008 (as communicated vide para 3 of Board's letter of even number dated 17.02.2010), as demanded vide item no.24/2010 in DC/JCM has been considered by the Board, it has now been decided to revise the date of effect OTA as 01.01.2006. It is however clarified that the basic pay and DA element for the purpose of OTA shall be revised w.e.f 01.01.2006 and other elements consulting emolument for the purpose of OTA viz HRA and Transport Allowance etc. shall be taken into account at revised at revised rates w.e.f 01.09.2008 as per the sixth CPC recommendations."

14.1 Different Ministries of the Government of India cannot assign different meaning to a provision in the Act of Parliament, which otherwise is clearly evident from the plain reading of Section 59 (2) of the 1948 Act.

15. As observed by the High Court, the core of the controversy rested upon the interpretation of Section 59(2) of the Factories Act, 1948, which defined the "ordinary rate of wages" as basic wages plus "such allowances" as the worker for the time being is entitled to. The High Court has rightly opined that it is well-settled principle of statutory construction that the Legislature never wastes its words. Notably, when the statute provides for only two specific exclusions: bonus and wages for overtime work, in the absence of any formal rules governing the exclusion of other entitlements, the Executive cannot, through a mere Office Memorandum, read additional exclusions into the Act that the Legislature did not contemplate. The High Court further noted that the employees had been in receipt of overtime allowances calculated by including HRA, TA, SFA, etc., for a considerable duration. The sudden exclusion of these allowances via the Office Memorandum dated 26.06.2009, lacks legal authority and is contrary to the literal mandate of Section 59 of the 1948 Act.

16. We also came across a judgment of Kerala High Court in ***V.E. Jossie & Ors. Versus The Flag Officers Commanding in Chief Headquarters,***[15] which has taken a view contrary to the view being expressed by us in the present judgment. The Kerala High Court was

[15] 2011 SCC OnLine Ker 4030

considering correctness of an order passed by the Central Administrative Tribunal, Ernakulam Bench which upheld the orders passed by the respondents therein[16] discontinuing overtime allowance on HRA, City Compensatory Allowance, TA, SFA, etc. The High Court has upheld the view expressed by the Tribunal therein while upholding the order passed by the authority. The same being contrary to the view expressed by this Court, we hold that the aforesaid judgment does not lay down the correct law.

17. For the reasons mentioned above, we do not find any case is made out for interference with the impugned judgment of the High Court. The appeals are, accordingly, dismissed.

18. Pending applications, if any, shall also stand disposed of, with no order as to costs.

.....J.
(RAJESH BINDAL)

.....J.
(MANMOHAN)

NEW DELHI;
JANUARY 20, 2026.

[16] The Flag Officers Commanding in Chief Headquarters