

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

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OA.NO. 761/93

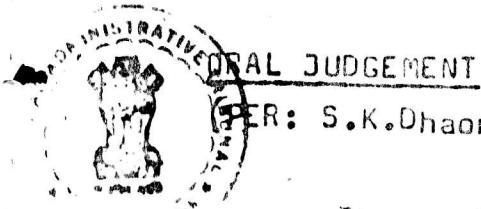
Shri Ashok Pandharinath Padwal & Ors. ... Applicant
v/s.
Union of India & Anr. ... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice S.K.Dhaon
Hon'ble Member (A) Ms. Usha Savara

Appearance

Shri G.K.Masand
Advocate
for the Applicant

Shri V.G.Rego
Advocate
for the Respondents



Dated: 6.1.1993

The applicants are employed as Supervisors in Class-II, Non-Gazetted Cadre in Currency Note Press at Nasik Road in the revised pay scale of Rs.2000-60-2300-EB-75-3200-100-3500. There grievance is that they are not being paid extra wages for overtime even though the other Supervisors in Class II, Non-Gazetted Cadre who are in the same pay scale but whose basic pay does not exceed Rs.2200/- are being paid the said wages. Hence this application. A reply has been filed on behalf of the respondents. Rejoinder affidavit also has been filed. Counsel for the parties have been heard.

2. Section 2 (1) of the Factories Act, 1948 (herein after referred to as Act) defines a "Worker" to mean, inter-alia, a person employed directly in any manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process. Section 59 (1) provides,

inter-alia, that where a worker works in a factory 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 at the rate of twice his ordinary rate of wages. The definition of "Worker" as contained in the Act clearly covers the applicants. Therefore, they are entitled to the benefit as given in Section 59 (1). Section 64, however, enjoins that the State Government may make rules defining the persons who hold positions of supervision or management or are employed in ^a confidential position in a factory and, if this is done, the provisions of Chapter 6 of the Act under which Section 59 (1) falls shall not be applied to any person so defined. Reliance is placed by the learned counsel for the respondents upon Rule 100 which had purportedly been made in pursuance of Section 64 by the State of Maharashtra. Rule 100 provides, inter-alia, that in a factory certain categories of persons shall be deemed to hold positions of supervision or management within the meaning of sub-section (1) of Section 64, provided they are not required to perform manual labour or clerical work as a regular part of their duties. In item (x) a Supervisor is included. Therefore, in order to get advantage of Section 64 (1) read with Rule 100, the respondents have to demonstrate that the applicants are not required to perform manual labour or clerical work as regular part of their duties.

3. In paragraph VI.10 of the application ^{it} is categorically stated by the applicants that they, while designated as Supervisors, are basically performing duties involving physical manual and they are not performing any duty which could even remotely be described as that of Supervisory nature. A reply has been filed and in paragraph

15 of the same, it is stated :

"With reference to para VI-10, the correctness of the contentions from this para is hereby denied. I say and submit that the applicants are not basically required to do the work of physical, manual or clerical nature in a predominant fashion. It is also submitted that a casual, physical or manual nature of work is not at all a guiding factor to determine whether they are workers or not. -----"

In paragraph 11 of the rejoinder affidavit filed on behalf of the applicants details have been given to demonstrate that the applicants are really performing the work of manual nature.



Reliance is also placed by the learned counsel for the respondents on paragraph 8/ of the reply. In it, the alleged duties as prescribed in the manual of Currency Note Press are referred to and Annexure-'D'. Turning to Annexure-'D' we find that certain duties are defined or enumerated. The thrust is that the operative section is in the overall charge of a Senior Supervisor who co-ordinates the work of the various sub-sections under him and who works in close liaison with the Control Inspector. Then it is mentioned that Supervisors in the Offset Sections are incharge of 5 or more machines. They are responsible for the production on the machines under their charge and also for the discipline and conduct of the workmen attached to their machines. Even if the details as given in Annexure-'D' are accepted to be correct, a close reading of the same reveals that they are really concerned with the manufacturing process. They also do not indicate positively that the Supervisors are not performing any manual work. However, in paragraph 6 of the rejoinder affidavit filed on behalf of the applicants, the contents of Annexure-'D' have not been accepted to be correct.

It is asserted therein that, to the best of the knowledge of the applicants, no Manual whatsoever has been published in the Currency Note Press pinpointing any duties of various categories of the staff. It is asserted :

"Respondents are hereby called upon to produce any manual issued by the Currency Note Press till date. I submit that the Applicants are factually performing duties that have been listed in Exhibit 'A'. I further submit that Annexure-'D' to the Respondents' reply describing the same as duties of the Supervisor are not at all relevant in the present day. These duties were prescribed prior to 1975 set up when the post of Senior Supervisor was in vogue. With the reorganisation of the press in the year 1975, the organisational set up has undergone radical changes."

It is interesting to note that inspite of the challenge given in paragraph 6, the respondents have not produced before us the alleged manual.

5. Having considered the matter carefully, we are convinced that the material on record conclusion is inescapable that the applicants even though they are Supervisors are also performing manual work. It, therefore, follows that the respondents are not entitled to the benefit of Rule 100 of the Maharashtra Factory Rules, 1963.

6. There is yet another approach to this problem. It is admitted to the respondents that those Supervisors who are getting a basic salary upto Rs.2200/- are more or less performing the same type of duties as the applicants ^{on} _{the} ^{are} _{or} ^{those} _{are} being paid extra wages for overtime. ^{inadvertently} We are not prepared to accept the position that inspite of Rule 100 and inspite of the fact that the aforesaid Supervisors who are drawing pay upto Rs.2200/- and who are not performing manual work are being ^{inadvertently} paid overtime wages in accordance with Section 59 (1). It appears to us that

(2)

respondents on their own have carved out a distinction between those Supervisors who are receiving a basic pay upto Rs.2200/- and those receiving an amount higher than the said amount so as to create two different classes with a view to deny the advantage of overtime wages to the other class. Such a segregation is not countenanced by Section 59 (1) and Section 64 read with Rule 100 of the Maharashtra Factory Rules. The respondents, therefore, are denying the benefit of Section 59 (1) to the applicants on purely extraneous consideration.

2. The application succeeds and is allowed. The respondents are directed to pay to the applicants overtime wages in accordance with Section 59 (1) of the Act and place them at par with such Supervisors who were being paid overtime wages on the footing that their basic pay does not exceed a sum of Rs.2200/. The respondents shall commence the payment within a period of one month from the date of the receipt of a certified copy of this order and thereafter pay to the applicant regularly, if and when the occasion arises.

8. The applicants have also made a prayer that they may be awarded the arrears of the overtime wages. We may note that this application was presented before this Tribunal in the year 1988. Therefore, the applicants under the law could claim the arrears of wages for a period beginning from October, 1985 to 1988. If any arrears were payable to the applicants within a period of three years immediately before the date of the presentation of this application before this Tribunal, the same shall be computed in accordance with law by the respondents and paid to each of the applicants. The arrears shall be paid within a period of four months.

9. There shall be no order as to costs.

Certified True Copy
Date: 1.1.1989

Mr. S. B.
Section Officer
Central Bench, Tribunal,
Bench B.