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LAXMAN BABAJI v. AKHARAM SAHEBRAM

Shah J.

the award made under the Bombay Agricultural Debtors Relief Act adjusting the debts due by the defendant No. 4 to two other creditors.

[The rest of the judgment is not material to this report.]

Suit remanded.

G. N. V.

APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Dixit.

1956 *June 19*

PANAMBUR VISHNUMURTI NARAYAN UPADHYAYA, (PETITIONER) *v.* C. P. FERNANDES AND ANOTHER, (RESPONDENTS).*

The Bombay Shops and Establishments Act, 1948 (Bom. Act LXXIX of 1948)—S. 14 (4) Schedule II—item 8—Section 63—Whether "limit of hours of work" has the same meaning in s. 14 and s. 63—Whether claim for overtime wages under s. 63 tenable when s. 14 does not apply ?

Where s. 14 of the Bombay Shops and Establishments Act, 1948 applies an employer is prohibited from requiring any employee to work more than 48 hours a week even on payment of overtime wages because such requirement would be illegal. But where the prohibition is removed, there is an obligation to pay overtime wages under s. 63. The question of overtime wages arises only when there is no prohibition against requiring a worker to work overtime.

The limit of hours of work for the purpose of s. 14 is entirely different from the limit of work laid down by the Legislature for the purpose of s. 63. While the limit laid down in s. 14 is in order to prohibit the employer from requiring the employee to work beyond the limit, the limit of work laid down for the purpose of s. 63 is only for the purpose of computing overtime wages.

Facts material to this report are fully set out in the Judgment.

Application under art. 227 of the Constitution of India praying that the decision of the Authority under the Payment of Wages Act, Bombay Area, be set aside.

D. S. Nargolkar for the Petitioner.

No appearance for the Opponents.

Chagla C. J.—The petitioner is the General Secretary of the Hotel Mazdoor Sabha, and one of the members of this Union applied to the Payment of Wages Authority for payment of overtime wages against the second opponent in respect of certain wage periods, and the case of this employee was that he had worked more than 48 hours every week and therefore had become entitled to receive wages at one and a half times the rate for such overtime every week, and in the application it was clearly stated that the claim was made under s. 63 of the Bombay Shops and Establishments Act, 1948. This claim of the employee was rejected by the Authority and in the

*Special Civil Application No. 2724 of 1955.

judgment reference has been made to s. 59 of the Factories Act and s. 70 of the Shops and Establishments Act. It is clear from the application made by the employee that neither of these two sections had any relevance and Mr. Nargolkar has stated before us that through some mistake or oversight the arguments advanced in some other case have been incorporated in the judgment relating to this particular period. Ordinarily we should have sent the matter back to the Authority to consider the claim of the employee under s. 63, but Mr. Nargolkar has drawn our attention to a judgment delivered by the Authority on September 30, 1955 in another application No. 7311 of 1955 where the question of s. 63 was considered and the Authority has come to a particular conclusion, and Mr. Nargolkar wants us to hold that the view taken by the learned Authority with regard to the proper construction of s. 63 is erroneous and that we should hold that it is erroneous, so that the matter may not have to come back before us.

Section 63 (*1*) of the Bombay Shops and Establishments Act provides that where an employee in any establishment other than a residential hotel, restaurant or eating house, is required to work in excess of the limit of hours of work, he shall be entitled, in respect of the overtime work, to wages at the rate of one and a half times his ordinary rate of wages. Sub-section (*2*) deals with an employee in a residential hotel, restaurant or eating house. There is an Explanation to this section which provides:

> "For the purposes of this section the expression 'limit of hours of work' shall mean—
>
> (*a*) in the case of employees in shops and commercial establishments, nine hours in any day and forty-eight hours in any week....."

In this particular case the Opponent No. 2 is a bakery and therefore the limit of hours of work under s. 63 would be 48 hours a week, and if the employee, who was a delivery man and whose work was to deliver bread and loaves prepared by the bakery to its customers, worked more than 48 hours a week, he would be entitled to overtime wages under the provisions of s. 63 (*1*). Schedule II of the Act, which is enacted under s. 4, exempts certain establishments from certain provisions of the Act, and the establishments and the provisions of the Act from which they are exempted are set out in this Schedule and under item No. 8 the establishments are: "Employees exclusively employed in any establishment in the collection, delivery or conveyance of goods outside the premises of any establishment", and undoubtedly the case of the employee before us falls under this item—, and the provisions of the Act which do not apply to this establishment are ss. 10, 11, 13 to 18, 21 and 24. Section 14 which is a relevant section provides:

> "(1) Subject to the provisions of this Act, no employee shall be required or allowed to work in any shop or commercial establishment for more than nine hours in any day and forty-eight hours in any week."

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Then there are certain exceptions to this rule laid down in sub-ss. (2) (3) with which we are not concerned. It will be noticed that s. 14 contains a prohibition against the employment of any employee beyond a certain number of hours in a week and it is true that by reason of Schedule II, item 8, this prohibition does not apply to a person whose work is confined to delivering goods and therefore it may be said that there was no prohibition against Opponent No. 2 employing the employee for more than 48 hours every week. But although the prohibition from being required to work for more than 48 hours is removed, s. 63 still applies to the case of the employee. Item No. 8 in Schedule II does not provide that s. 63 will not apply to the case of employees exclusively employed in the collection, delivery or conveyance of goods outside the premises of any establishment. Therefore, if s. 63 has application, then if the employee works for more than 48 hours a week he is entitled to the overtime provided in s. 63. Therefore, reading s. 14 and s. 63, the position is this. If s. 14 has application then an employer cannot require any employee to work more than 48 hours a week even on payment of overtime wages because such requirement would be illegal. But where the prohibition is removed there is an obligation to pay overtime wages under s. 63. The question of overtime wages would only arise when there is no prohibition against requiring a worker to work overtime, and therefore inasmuch as s. 63 applies to the case of a bakery and applies to the case of the employee with whom we are dealing in this application, there does not seem to be any answer that the employer can give to his employee with regard to the payment of overtime wages when the employer has required the employee to work more than 48 hours a week.

The reasoning of the Authority in the judgment in application No. 7311 of 1955 is that:

> "according to the Explanation to s. 63 the limit of hours of work shall mean, in the case of employees in shops and commercial establishments, nine hours in any day and forty-eight hours in any week. Delivery men are exempt from the provisions of s. 14, that is to say, there is no limit of hours of work for such class of employees, and if there is no limit of hours of work for such class of employees, it cannot be said that such employees are required to work in excess of the limit of hours of work."

With respect, the fallacy underlying this argument is that the limit of hours of work laid down in s. 63 is for the purpose of that section, without any reference to s. 14, and the limit of hours are laid down in order to determine what is the overtime and what wages are to be paid to the employee. It is erroneous to assume that because an establishment is exempted from the provisions of s. 14 and because there is no limit of work laid down with regard to that establishment under s. 14, therefore there is no limit of hours of work applying to that establishment as far as s. 63 is concerned. The limit of work for the purpose

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of s. 14 is entirely different from the limit of work laid down by the Legislature for the purpose of s. 63. Whereas the limit of work for the purpose of s. 14 is laid down in order to prohibit the employer from requiring an employee to make him work beyond the limit, the limit of work laid down for the purpose of s. 63 is purely for the purpose of computing overtime wages, and the error into which the Authority has fallen is to have taken the view that because there was no limit of work with regard to a particular establishment under s. 14, therefore there would be no limit of work under s. 63 and the establishment could make an employee work for any length of time without paying him overtime wages. In our opinion, therefore, if the employee in this case establishes that he has worked overtime in any particular week, he would be entitled to overtime wages as provided by s. 63. Whether in fact he has so worked has not yet been decided by the Authority.

Therefore, we will send this matter back to the Authority with the direction that if the employee establishes the fact of working overtime then his claim should be allowed as provided by s. 63 of the Act. The petitioner to have the costs of the petition against the Opponent No. 2.

Order accordingly.

H. R. G.

APPELLATE CIVIL

Before Mr. Justice Shah and Mr. Justice Vyas.

PITAMBAR DHONDU PATIL, PETITIONER *v.* BHAGCHAND RATANCHAND GUJARATHI AND OTHERS, OPPONENTS.*

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The Bombay Tenancy and Agricultural Lands Act, (Bom. Act LXVII of 1948) s. 74—Whether Collector can summarily reject an appeal without hearing the appellant.

The jurisdiction conferred upon the Collector as the Appellate Authority under the Bombay Tenancy and Agricultural Lands Act is one to adjudicate finally upon disputes, which are essentially of a civil nature; even if on considerations of expediency the Legislature has entrusted that jurisdiction to the Collector, the nature of the proceedings in which the dispute is litigated are not so fundamentally altered that even the bare right of a litigant to be heard in support of his appeal before it is disposed off, should be regarded as excluded. If the right of appeal is to be real and effective, the Collector must follow the ordinary rule of procedure followed by Civil Courts, viz. that a party given the right to make an application or appeal to a Court must be given an opportunity to support it by oral argument.

SPECIAL Civil Application against the decision of the Bombay Revenue Tribunal.

Facts are set out in the Judgment.

*Special Civil Application No. 163 of 1956.