IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P.No.7844 OF 2016

Between:

M.A.Wahid & others

... Petitioners

And

The Union of India & others

... Respondents

JUDGMENT PRONOUNCED ON: 03.06.2024

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. **Whether Reporters of Local newspapers may be allowed to see the Judgment?** : **Yes**

2. **Whether the copies of judgment may be marked to Law Reporters/Journals?** : **Yes**

3. **Whether Their Lordships wish to see the fair copy of the Judgment?** : **Yes**

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MRS JUSTICE SUREPALLI NANDA

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> Head Note:

! Counsel for the Petitioner : Sri G.Shiva

^ Counsel for Respondents :Asst.Solicitor General of India for R1
Smt.Tara Sharma for R2 and R3

? Cases Referred:

HON'BLE MRS. JUSTICE SUREPALLI NANDA

WRIT PETITION No.7844 OF 2016

ORDER:

Heard Sri G. Siva, learned Senior Designate Counsel appearing on behalf of Petitioners, learned Assistant Solicitor General of India appearing on behalf of respondent No.1 and learned Counsel Smt. Tara Sharma, appearing on behalf of Respondent Nos.2 and 3.

2. Petitioners approached the Court seeking the prayer as under:

"...to issue an appropriate writ order or direction more particularly one in the nature of writ of Certiorari

(a) Calling for all the relevant and connected records relating to the order in award dated 24.09.2015 in I.D. 7 of 2011 on the file of the Learned Central Government Industrial Tribunal, Hyderabad communicated by the Memorandum dated 25.1.2016 by quash or set aside the same holding it as legally unsustainable and suffering from error of jurisdiction.

(b) Consequently declare the action of the Respondent factory in denying the overtime allowance to which the

petitioners are entitled to under section 59 of the Factories Act and in its lieu paying a Special Allowance (Fixed amount) as arbitrary, illegal, unjust, violative of the provisions of the Factories Act and violative of Articles 14 and 16 of the Constitution of India.

(c) Further direct the Respondents to compute and release the arrears of amounts payable towards overtime as per the entitlement of the petitioners under the provisions of section 59 of the Factories Act together with interest at the rate 9 per annum with quarterly rests payable from the date on which the amounts became due and payable till the actual date of payment

and pass such other and further order or orders....."

3. PERUSED THE RECORD.

A) The relevant portion of the Award dated 28.12.1998 passed in I.D.No.35 of 1998, by the Industrial Tribunal-II, Hyderabad, filed by Sri. M.A. Wahid, Moolchand Sharma and others Grade-C Employees, Security Printing Press, Hyderabad against the Deputy General Manager (HOD), Security Printing Press, Mint Compound, Hyderabad in particular, reads as under:

" The main relief in this case is based on two provisions of the Factories Act i.e., that the claimants are workers as per

the definition under Section 2(l) and the rate of overtime as provided under Section of 59 of Factories Act. The evidence of the petitioners r/w the evidence of management witnesses and the object for which the Factories Act was brought into existence clearly show that the claimants are not workmen as defined in Industrial Disputes Act as by virtue of the definition worker or by virtue of the duties assigned to the worker in Factories Act are taken into account. Even presuming for a moment that they fall under the definition of workman in Industrial Disputes Act, they are hit under the embargo of their salary. Even if they are officers, if they are drawing loss than Rs.1600/- P.M. salary they can be workmen. But even if they are not officers, though they admitted that their designation is officer, if they are drawing more than Rs.1600/- P.M., coupled with their supervisory functions over a lot of people subordinate from Masdoor to foreman, they cannot be workmen. The Industrial disputes Act is silent about the overtime. The second schedule mentions customary benefits. The claim of overtime is not a customary benefit. The ambit of the Factories Act clearly deals with lesser mortals and the petitioners are too big to fit into the shoes of the definition of worker. Thus, they are not entitled to challenge the restriction.

This leaves the only question that other branches of the same organisations were being paid overtime. The learned counsel for the respondent rightly argued that the judgment of CAT, Bombay in O.A. 761/88 deals with the question of non-payment of any overtime the moment the

supervisors crossed the basic pay of Rs.2200/- and draws the attention of this Tribunal, that the bench ordered the restriction of payment of O.T of Rs.2200/- basic pay which according to the learned counsel was upheld by the Supreme Court in S.L.P. In respect of the judgment of the High Court of M.P., dated 08.01.1991 and the order of the Central Government. I.O. of Jabalpur pertained to question of double payment of overtime at double the rate instead of single rate. But these are not the decisions pertaining to the ceiling. The other decision is from I.T., from Labour Court, Jabalpur pertained to the payment of night duty allowance to those persons crossing pay limit of Rs.751/- and not claim the like of which is raised in this case.

As these petitioners were held not falling under the category of workmen, the question of expousel need not be adjudciated.

In the result, I hold that the petitioners are not falling under Industrial Disputes Act or under the Factories Act and therefore they cannot challenge the acts of the management by way of I.O and the petitioners are not entitled for any relief accordingly, the reference is answered.

4. <u>The relevant portion of order of this Court dated 21.04.2023 passed in W.P.No.18351 of 1999 in particular reads as follows</u> :

"Considering the submissions made on either side and also on a perusal of the record the main question which falls for

consideration is as to whether the petitioners are the workmen entitled to overtime benefits as claimed and also on par with the other similarly placed employees under the orders from the concerned tribunal and the courts.

There is no dispute that the petitioners are working in various posts as mentioned above and admittedly they are concerned with the running of the printing press. On a reading of the evidence of WW1, WW 2 and WW 3 and as pointed by the respondent No.1, the tribunal, it clearly shows that the petitioners are all working as Supervisors and their duties are akin to the same. Further even as per the definition as contemplated under section 2(s) of the Industrial Disputes Act, a person is not a workman who is getting wages exceeding Rs.1600/- per month and working in a Supervisory Capacity. On a reading thereof, no doubt it is clear that the persons though working in a supervisory category, if exercises mere managerial functions and draws wages less than Rs. 1600/- per month, is excluded from the said definition.

However, in this case as per the wage slips filed it shows that the petitioners are being paid more than Rs.1600/- per month. Even as per the definition of Section 2(l) of the Factories Act, there is necessarily an element of work involving the manufacturing process or cleaning any part of the machinery or premises etc., However, the evidence as spoken to on behalf of the petitioners discloses that they are all to assist the Deputy Technical in charge and there is hierarchy in the placement and the nature of duties as spoken would clearly show that the petitioners

nowhere fall within the said categories. The tribunal below on a consideration of the entire evidence and appreciation thereof has ultimately given a finding of fact that the petitioners do not come anywhere near to the definition of workmen either under the provisions of the Industrial Disputes Act or that of the Factories Act and the said provisions are supported by good reasons and as the same being a finding of fact, it is very difficult for this court to come to a different conclusion in exercise of powers under Article 226 of the Constitution of India. Neither the reasons supporting the said finding or the ultimate finding do not suffer from any lack of evidence or basis therein and therefore it cannot also be said that there is any perversity behind the same.

Having regard to the other aspects on which the petitioners sought to place reliance i.e., the similarly placed employees were being given allowance as per the orders in O.A.761 of 1988 on the file of the Central Administrative Tribunal Bombay and the same being upheld by the Hon'ble Supreme Court by dismissing the Special Leave Petition and reliance was also placed on a Judgment of the High Court of Madhya Pradesh dt.8.1.1991 granting such benefits to similarly situated persons, though the tribunal below had drawn a distinction between petitioners' case vis-a vis those involved in the cases of Bombay and the Madhya Pradesh, however, the basic fact remains that the matter is being taken-up by the Tribunal on a reference under provisions of the Industrial Disputes Act which can only be involved by the workers

and not otherwise. Once it is to be held that the petitioners are not workers, all the questions incidental or otherwise can possibly be gone into by the Tribunal and award any relief.

Even the ground of discrimination under Article 14 of the Constitution of India would not be applicable to the petitioners before such Tribunal wherein it is held that the petitioners are not workmen in respect of whom the dispute was sought to be referred. It is only where the workers on such reference being not established its case on merits could possibly be allowed on similar benefit being given, but not otherwise.

In view of the aforesaid reasons, I do not find any merits in this Writ Petition and the Writ Petition is accordingly dismissed."

5. <u>Counter affidavit filed by Respondent Nos.2 and 3, in particular, pagragraph Nos. 4, 5, 7, 8 and 12 are extracted hereunder</u> :

4. Before adverting to various averments made in the Writ Petition, it is submitted that the Government of India, Ministry of Labour, vide its order No. L-16011/01/2011-IR (DU), dated 6-2-2012 referred the following dispute for adjudication to the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad:

<u>THE SCHEDULE</u>

"Whether the action of the management of the Security Printing Press, Hyderabad in denying the overtime

allowance under Section 59 of the Factories Act to the workers defined under Section 2 (1) of the Press and in lieu giving the Special Allowance to them is justified? What relief these workmen are entitled to?"

On receipt of the reference, the Industrial Tribunal registered the reference as I.D. No. 7 of 2011. The Writ Petitioners and 5 others have filed claim statement contending that they are entitled to overtime allowance as per Section 59 of the Factories Act. The Respondents filed a Written Statement stating that claim of the Petitioners is not maintainable in law or on the facts of the case. The reference made by the Central Government dated 6-2-2012 does not refer to the beneficiaries. The Petitioners, who are working in the category of the Supervisors and officials in Group-C are not entitled to over time allowance for working over and above the normal working hours. They are being paid the Special allowance depending on their monthly emoluments. It was also specifically pleaded that the very same Petitioners have raised an Industrial Dispute on earlier occasion and the same was numbered as I.D. No. 35 of 1998 on the file of Industrial Tribunal-II, Hyderabad. The Industrial Tribunal-II by its award dated 28-12-1998 held that the Petitioners therein are not entitled to raise the dispute under Industrial Disputes Act or under the Factories Act and therefore they cannot claim for overtime allowance under section 59 of the Factories Act and consequently held that the Petitioners are not entitled to any relief. The

said award of the Industrial Tribunal- II, Hyderabad, was challenged in W.P. No. 18351 of 1999 before this Hon'ble Court. This Hon'ble Court by its order dated 21-4-2003 upheld the award and held that the Petitioners are not workmen as defined under the Industrial Disputes Act and Factories Act and therefore, they are not entitled to any relief and dismissed the Writ Petition. The W.A. No. 152 of 2004 filed by the Petitioners came up for hearing on 11-11-2009. During the course of hearing, the Writ Petitioners/Appellants have sought liberty to withdraw the Writ Appeal as well as Writ Petition to approach the appropriate authority under the Factories Act. Accordingly, the permission was accorded. However, the award of the Industrial Tribunal-II, Hyderabad in I.D.No.35/1998 remained unaffected and attained finality. The Petitioners in the present Writ Petition, except the Petitioner No. 11, 13 & 14 are the Petitioners in W.P. No. 18351 of 1999 and W.A. No. 152 of 2004. Therefore, they have no locus-standi to agitate the very same issue which has attained finality.

5. It is submitted that before the Industrial Tribunal on behalf of the Claimants the 1st Petitioner herein was examined in part and thereafter his evidence was eschewed. Ex. W-1 to W-193 was filed on behalf of the claimants and Ex.M-1 to M-6 was filed on behalf of the Respondents. The documentary evidence produced on behalf of the Respondents would clearly demonstrate that the Petitioners do not fall under the definition of workmen as defined under Section 2 (s) of the Industrial Disputes

Act, 1947 or under Section 2 (e) of the Factories Act. Therefore, they are not entitled to any relief.

7. It is submitted that the Central Government Industrial Tribunal Hyderabad after considering the contentions of both sides and written submissions submitted on behalf of the parties passed a well considered award dated 24-9-2015 holding that the Petitioners being in the cadres of Assistant Technical officer, Technical Officer, Assistant Works Engineer, Deputy Inspector Central and Inspector Control, Store Keeper, Sanitary Supervisor under their specified band with Grade Pay in VI CPC Rs.9300-34860 with Grade Pay of Rs.4200/- (Grade Pay of Rs.4600/- for Deputy Technical Officer) and Deputy Store Keeper and Pharmacist in the pay band of Rs.5200-20200 with Grade Pay of Rs.2800/- fall in the category of Supervisors and the nature of job attached to their posts in the manufacturing process of factory of the Respondents do not qualify them as workers as they are hit by provisions of Section 64 (1) of the Factories Act. They also do not fall under the definition of workmen as defined under Section 2 (s) of the Industrial Disputes Act, 1947. Hence, there is no Industrial Dispute as defined under Section 2 (k) of Industrial Disputes Act, 1947 and the claim for over time allowance does not come under the category of Industrial Dispute treating it as a difference between the employer and employee in connection with their employment. The action of the management in denying the over time under Section 59 of the Factories Act to the Petitioners in lieu of giving Special allowance is justified and held that the Petitioners

herein are not entitled to any relief. The award of the Central Government Industrial Tribunal dated 24-9-2015 published vide Notification dated 16-12-2015 is perfectly legal and justified and the interference under Article 226 is not warranted.

8. It is submitted that the Writ of Certiorari as sought for by the Petitioners is not maintainable. The Industrial Tribunal on appreciation of the rival contentions and taking into fact that earlier a similar Industrial Dispute was raised in I.D. No. 35 of 1998 for similar and identical relief which was held against the Writ Petitioners herein, who are parties to the said proceedings, are hit by res-judicata and held that claimants are not entitled to any relief as sought for.

12. It is submitted that the Writ Petition is hit by res-judicata in as much as the earlier award of the Industrial Tribunal-II, Hyderabad, in I.D. No. 35 of 1998 has attained finality, which was filed by the very same Petitioners herein. Thus, the award dated 28-12-1998 in I.D. No. 35 of 1998 is binding on the Petitioners herein and they are estopped from raising the similar dispute in the guise of raising the dispute under Section 2 (1) of the Factories Act.

6. <u>The case of the Petitioners in brief as per the averments made by the Petitioners in the affidavit filed in support of the present writ petition</u> :

a) The Petitioners herein had raised a dispute relating to denial of Overtime Allowance (hereinafter referred to as “OTA”) and payment for special allowance (which is a fixed amount). Inspite of the overtime work discharged by the Petitioners, as per the provisions of Section 59 of the Factories Act, payment of OTA and in its lieu, special allowance was denied to the petitioners. Thus, matter was referred to the Conciliation machinery contemplated under the Industrial Disputes Act, 1947 where, The Regional Labour Commissioner (Central) had attempted conciliation process.

b) However, the 3rd respondent through written submission, contented that the Petitioners are not eligible to seek overtime allowance, as the petitioners do not fall within the jurisdiction of the Authorities under the Industrial Disputes Act or Factories Act since the petitioners are Supervisors and not Workmen. Also, the group of workmen had been categorized as Industrial Staff involved in manufacturing process and the petitioners have crossed the ceiling limit of 6800/- as Basic Pay and thus, the petitioners are entitled only for a special allowance as per the instructions of the Ministry of Finance. Thereafter, the conciliation proceedings had been reported to end in failure.

c) It is the case of the petitioner that, upon submitting the Conciliation Report to the Central Government, the Government felt the necessity to refer the said dispute to the Tribunal for adjudication vide the order in Reference No. L-16011/01/2011-IR(DU), dated 06.02.2012.

Subsequently, award was passed holding that the Petitioners are not entitled to the relief prayed for. As the 3rd respondent is a Factory, the 3rd respondent had to operate in accordance with the provisions of the Factories Act and as such all the benefits that are liable to be extended by a factory to each workman were extended.

d) It is the case of the petitioner that, the Government highhandedly and contrary to the express provisions of the Factories Act, issued a memorandum stating that the Petitioners, on reaching a particular stage in the pay scale attached to the post held by the petitioners, would cease to get the benefit of Section 59 of the Factories Act and based on the said Memorandum of the Government, individual orders were issued by the Factory that the petitioners would not get any overtime allowance at double the normal rate but instead, the benefit would be restricted to a Special Allowance and the same was issued purportedly in terms of the Ministry of Finance order dated 21.12.1968.

e) Subsequently, the Central Government has referred the dispute on 01.04.1998 to the Tribunal, when the Petitioners sought for invocation of the provisions of Section 10 of the Industrial Disputes Act for adjudication of the dispute on merits, however, based on the erroneous conclusion so arrived at, the Industrial Tribunal dismissed I.D No.35 of 1998 by an order dated 28.12.1998. Aggrieved by the same, Writ Petition No. 18351 of 1999 was filed and order, dated 21.04.2003 was passed

upholding the award passed by the Industrial Tribunal and subsequently, Writ Appeal No. 152 of 2004 was filed against the order in Writ Petition 18351 of 1999, where permission was granted to approach the appropriate authority under the Factories Act. Thus, the Writ appeal and the Writ Petition were dismissed as withdrawn.

f) It is the case of the petitioner that without even appreciating the controversy in question and the reference made for adjudication and by totally ignoring the contentions and the judgments relied upon by the Claimants, the award dated 24.09.2015 was passed in I.D No 7 of 2011,holding that the action of the management of the Factory in denying the Overtime Allowance under Section 59 of the Factories Act to the alleged workers as defined under Section 2(e) of the Act in lieu of giving Special Allowance to them is justified and concluded that the alleged workmen are not entitled to any relief. Aggrieved by the said award dated 24.09.2015, the present Writ Petition is filed.

7. <u>The learned Senior Counsel appearing on behalf of the Petitioners mainly puts-forth the following submissions</u> :

A) The award is contrary to law, weight of evidence and probabilities of the case and as such is legally untenable.

B) It is evident from the award that the Tribunal has not appreciated the very basis on which the appropriate government has made a reference under Section 10 of the Industrial Disputes Act, 1947. It is necessary to state that a mere reading of the reference would be sufficient to state

that there was no dispute as to whether the Petitioners/Claimants were workmen. The only question that was referred was as to whether the action of the Management of the Factory in denying the Over time Allowance to the ***workers defined under Section 2 (1) of the*** Press and in lieu giving Special Allowance to them is justified. Thus, the Tribunal returning a finding that the **alleged workmen are not entitled to the Overtime Allowance** is legally untenable. Thus the Tribunal has not even understood the reference that can be the conclusion that this Hon'ble Court may have to draw. In view of this, the award is liable to be set at naught.

C) Further, the issue that was not a subject matter of reference could not have been validly gone into by the Tribunal. By going into such a question, the Tribunal has gone beyond the Reference and this would vitiate the award. As stated supra, the appropriate government has referred under Section 10 as to whether the denial of overtime allowance to **workmen under Section 2 (e) of the Factories Act** was valid. In those circumstances, the Tribunal could never have gone into and returned a finding that the Petitioners were ***alleged workmen***. This is sufficient ground to set aside the award impugned herein by the Petitioners.

D) Besides the above ground, a reading of the award would indicate that the Tribunal has not properly appreciated either the facts or the law governing the field. This statement is made with utmost responsibility.

Respondent Factory has placed reliance on Section 64 of the Factories Act to justify the action of denying the claim. The Petitioners opposed the said contention on the ground that there has been no declaration or definition by the appropriate government as contemplated therein in respect of the posts to which the benefits could be validly denied. Without considering this submission of the Petitioners, the Tribunal accepted the said contention. If only the facts of the present case have been taken note of, it should have insisted on production of the definition or declaration of the persons/posts which would empower the Respondent Factory to deny the benefits of Section 59 of the Factories Act to the Petitioners herein. Thus, the award suffers from non- application of mind and this is a sufficient ground for judicially reviewing the award of the Tribunal and setting aside the same.

E) The statement ***it appears to be undisputed that though the Petitioners have not disclosed their status, it amounts to admission that they virtually employees of the Respondent*** does not seem to be conveying any meaning. The undisputed fact was that the Petitioners were workers in the Respondent Factory. The appropriate government i.e. the Central Government in the present case accepted the same and therefore the Tribunal lost sight of the basic principle that admitted facts need not be proved. The very fact that the appropriate government has concluded that the Petitioners were workers as defined under Section 2(e) of the Factories Act, neither the Respondent Factory nor the Tribunal can doubt

or sit in judgment over the fact that the Petitioners are workers as defined under Section 2 (e) as the same, even if raised by the Respondents is liable to be rejected. The Tribunal erred in not doing so and therefore the award is liable to be interfered by this Hon'ble Court.

F) The Respondents have marked the general duties, responsibilities and incumbents assigned to each cadre (Annexure A) in support of the contention that the Petitioners are supervisors. Without prejudice to the primary contention that it was not within the jurisdiction of the Tribunal to go beyond the reference and any debate on the issue as to whether the Petitioners are workmen would be going beyond the reference and this would be impermissible, it has been specifically pointed out that the duties assigned cannot be considered supervisory and at any rate, it does not answer logic that a person would be a workman and entitled to OTA though holding the duties and responsibilities in Annexure A till a point and become disentitled to the same after he reaches a particular point in the running pay scale. The Tribunal unfortunately has not appreciated this argument on behalf of the Petitioners though it was illustratively pointed out in the written arguments filed on the petitioners behalf. Therefore, the award of the Tribunal cannot stand the scrutiny of this Hon'ble Court and deserves only to be set aside.

G) The Tribunal has erred in not understanding the illustrative statement made in the written arguments to point out the absurdity of the contention of the Respondent

Factory that the persons holding the post and discharging the duties as detailed in the Annexure A would be a worker for some time and turn supervisor a little later without there being any change in the duties and responsibilities discharged by them. To elaborate the point, it would be necessary to state that the post of the Foreman is the feeder category for the post of Assistant Technical Officer. Hypothetically, to drive home the point, the pay scale attached to the post of the former is 5,000 - 8,000.

H) The Tribunal states that the Petitioners ***may not be called as workmen as defined under Section 2 (s) as there is no industrial dispute as defined under Sec. 2(k) of the Industrial Disputes Act, 1947, <u>because the instant case related to the claim for overtime allowance does not come under category of industrial dispute mainly related to even any difference between the employer and the employees over the point of their employment</u>***. This statement with due respect does not appear to convey any meaning. This statement is the conclusion on the Point No. I and it does not need anything more to demonstrate that there has been no application of mind let alone a serious one at that. Non-application of mind on the part of a quasi judicial authority would vitiate the order passed by the authority and therefore, the award is liable to be set aside and a direction is to be given to the 3rd Respondent Factory to release the benefits due and payable to the petitioners.

I) The finding on Point No. II also is very strange and could not have been passed unless the facts and law governing the reference has been lost sight of. It is nobody's case that the petitioners were not workmen at least going by the admitted position that the Petitioners have been paid overtime till they reached a particular stage in the pay scale. The petitioners were also paid overtime allowance and this would lead to the only conclusion that the Petitioners have worked beyond the prescribed working hours liable to be followed by the Factory. In this factual and admitted position, the statement that none of the Petitioners or workers in that sense disclosed their real status under the Respondent management nor they specified their own extra working period for extra overtime, nor ***any cause of the reference*** would speak of the casual manner in which the issue referred has been adjudicated.

J) The above statement made by the Tribunal would amount to sitting in appeal over the reference. It is not out of place to state that the Respondent Factory has not called in question and at any rate, the Tribunal cannot exercise jurisdiction which is not vested in it to test the necessity or otherwise of the reference. The appropriate government having come to a conclusion that there was a dispute between the employer and the employee which answers the description of an industrial dispute, the Tribunal which derives its jurisdiction from the reference cannot indulge in going beyond the award and the language employed in the award would make any

reasonable man think that it is testing the reference instead of adjudicating the dispute and this is legally out of bounds for the Tribunal.

K) The Petitioners have placed reliance on the orders rendered by the Tribunals including the Central Administrative Tribunal some of which have been affirmed by the High Courts and even the apex court. The Tribunal ought to have at least noted them and recorded them and attempted to distinguish them in case they are distinguishable either on facts or in law. Unfortunately, the Tribunal has not even mentioned the orders and judgments relied upon by the Petitioners. The obvious conclusion that can be drawn is that the Tribunal has not found any legally tenable ground on which those judgments could have been distinguished. Thus, the award impugned herein could not have been passed if only the judgments and orders relied upon are followed. This malady is liable to be corrected by this Hon'ble Court.

L) The Tribunal having failed to take the admitted position into account; it having acted beyond the jurisdiction vested in it; conclusions arrived at which cannot but be called perverse; ignoring even to refer to the judgments relied upon would establish that the Petitioners have made out a prima facie case for interference of the award impugned herein. The fact that the Petitioners have been denied the benefit to which the petitioners are entitled to the balance of convenience lies very heavily in favour of the Petitioners

at any rate warranting an early hearing of the Writ Petition.

8. The impugned Award dated 24.09.2015 passed in I.D.No.7 of 2012 by the Central Government Industrial Tribunal cum Labour Court at Hyderabad, in particular Paragraph Nos. 19, 20 and 21 are extracted hereunder :

19. In view of the arguments as advanced by both the parties and on perusal of the materials brought on the record, I find that the Petitioners have represented themselves as workers in the case in order to claim for the Overtime allowance. It is an acknowledged fact that Sec.64(1) of the Factories Act, 1948 empowers the State to make exempting rules as such:

"The State Government may make rules defining the person who hold positions of supervisions...and the provisions of this chapter, other than them the provisions of clause (b) of sub-section (1) of Sec.66 and of the proviso to that sub-section shall not apply to any person so defined (or declared):

[Provided that any person so defined or declared shall, where the ordinary rate of wages of such person (does not exceed the wage limit specified in sub-section (6) of Section 1 of the Payment of Wages Act, 1936 (4 of 1935), as amended from time to time), be entitled to extra wages in respect of overtime work under Section 59] as substituted by the Factories (Amendment) Act, 1987 w.e.f.

1987 for "does not exceed rupees seven hundred and fifty per month."

The proviso clearly but negatively implies that where the ordinary rate of wages of such person exceeds the wage limit as specified in sub-section (6) of Section 1 of the Payment of Wages Act, 1936, the person so defined or declared shall not be entitled to extra wages in respect of overtime work under Section 59 of the Act. The definition of the word 'Wages' is quite comprehensive and it takes within its ambit, the allowances as well [1993 (3) ALT 55 (NRC)].

20. In the instant case, it appears to be undisputed that though the Petitioners have not disclosed their status, it amounts to their admission that they are virtually employees of the Respondent. All the Petitioners as employees of the Respondents being under the cadres of the Asst. Technical Officer, Technical Officer, Asstt. Works Engineer, Dy. Inspector Central and Inspector Control, Store Keeper and Sanitary Supervisor, Canteen, under their specified Band with G.P. in the 6th CPC-Rs.9300-34860 with G.P. of Rs.4200/- except the G.P. of Rs.4600/- for(b) Dy. Technical Officer, just as the rest employees come under the cadres of Dy. Stores Keeper and Pharmacist under their Pay Band of Rs.5200-20200 with G.P. of Rs.2800/-. The employees under the said cadres are attached to the shop floor of the Management as per their general duties, responsibilities and incumbents assigned to each of the cadres (Annexure A). They are

called as Supervisor (Group C and non-gazetted establishment). The very nature of their duties assigned to each of the said cadres as per the Annexure A indicates them their no categorization as workmen by virtue of discharging the duties of their higher liabilities. At present, the Petitioners are the employees of the Respondent Factory who have, after coming under the aforesaid cadres (Annexure A), got their status as Supervisor (Group C and non-gazetted Establishment), and the nature of their job attached to their post even incidentally to the manufacturing process of the factory of the SPP Respondent does not qualify them as workers, as it is hit by the proviso to the Sec.64(1) of the Factories Act, 1948. The Petitioners may not be called as workmen as defined under Sec.2(s) of the Industrial Disputes Act, 1947, as there is no industrial dispute as defined under Sec.2(k) of the Industrial Disputes Act, 1947, because the instant case related to the claim for the overtime allowance does not come under category of the industrial dispute mainly related to even any difference between the employer and the employees over the point of their employment.

21. **Point No.II**: Whether the Petitioner workers are entitled to any relief:

At this point, it is observed that the Petitioners have represented themselves as workers in the sense and meaning of the term "workers" as defined u/s 2(l) of the Factories Act, 1948. The term of the word 'worker' at its plain reading denotes its meaning in context of

manufacturing process, cleaning, any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with the manufacturing process or the subject of the manufacturing process. It is reasonable to note that none of the Petitioners or workers in that sense discloses their real status under the Respondent Management nor they specified their own extra working period for extra overtime, nor any cause of the reference. In such circumstances, it stands clear that the case of the Petitioners is too vague and unreasonable. Hence, the Petitioners are not entitled to any relief.

DISCUSSION AND CONCLUSION:

9. A bare perusal of the record indicates that the Government of India, Ministry of Labour, vide its order dated 06.02.2012 referred the dispute for adjudication to the Central Government Industrial Tribunal, Labour Court, Hyderabad which is as under :

Whether the action of the management of the Security Printing Press, Hyderabad in denying the overtime allowance under Section 59 of the Factories Act to the workers defined under Section 2(e) of the Factories Act of the Press and in lieu giving special allowance to them is justified.

What relief these workmen are entitled to?

On receipt of the said reference, the Industrial Tribunal registered the reference as ID No.7 of 2011 and the writ petitioners and 5 others had filed claim statement contending that they are entitled to overtime allowance as per Section 59 of Factories Act. The Respondents filed a written statement contending that the case of the petitioners is not maintainable in law or on the facts of the case.

10. <u>The record further indicates as under :</u>

i. The specific plea in the written statement filed by Respondent Nos.2 and 3 before the Industrial Tribunal-II, is that the writ petitioners and the claimants before the Industrial Tribunal are in the category of Supervisors in Group-C and therefore they are not entitled to overtime allowance as specified under Section 59 of the Factories Act, therefore their claim for overtime allowance without any ceiling restriction is not maintainable.

ii. The Respondent Nos.2 and 3 contended before the Industrial Tribunal-II, that the petitioners do not fall under the definition of Workmen as defined under Section 2(s) of the Industrial Disputes Act, 1947 or Section 2(e) of the Factories Act and that the very same petitioners had raised an Industrial Dispute on an earlier occasion and the same was numbered as I.D.No.35 of 1998 on the file of Industrial Tribunal-II, Hyderabad, and the Industrial Tribunal – II, by its Award dated 28.12.1998 held that the Petitioners therein are not entitled to raise the dispute under the Industrial Disputes Act or under the Factories Act and therefore they cannot claim for overtime allowance under Section 59 of the Factories Act and consequently held that the petitioners are not entitled to any relief.

iii. The said Award of Industrial Tribunal-II, Hyderabad, was challenged in W.P.No.18351 of 1999 and this Court vide its order dated 21.04.2003 referred to and extracted above dismissed the said writ petition very clearly observing that the Petitioners are not Workmen as defined under the Industrial Disputes Act and Factories Act, and W.A.No.152 of

2004 filed had been dismissed as withdrawn vide order dated 11.11.2009. Therefore they had no locus standi to agitate the very same issue which had attained finality.

iv. The Industrial Tribunal in its Award dated 24.09.2015 in I.D.No.7 of 2012 filed by the Petitioner herein and 32 others against the 3rd Respondent herein very clearly held that the Petitioners are not entitled for any relief and observed at paragraph Nos. 19, 20, and 21 (referred to and extracted above) of the said Award that Petitioners are virtually the employees of the Respondent factory and got their status as supervisor and the Petitioners may not be called as workman as defined under Section 2(s) of the Industrial Disputes Act, 1947 as there is no Industrial Dispute as defined under Section 2(k) of the Industrial Disputes Act, 1947, since the claim in the present case was for overtime allowance and further very clearly observed that the case of the Petitioners is too vague and unreasonable and hence the Petitioners are not entitled to any relief.

11. This Court opines that the Industrial Tribunal considered all the material evidence on record and after examining the same denied relief to the Petitioners with a detailed speaking reasoned order and the same does not warrant any interference by this Court.

12. <u>Taking into consideration</u> :

i. The aforesaid facts and circumstances of the case.

ii. Duly considering the order dated 28.12.1998 passed in I.D.No.35 of 1998 by Industrial Tribunal-II, Hyderabad at Hyderabad,

iii. Taking into consideration the order of this Court dated 21.04.2003 passed in W.P.No.18351 of 1999 and order dated 11.11.2009 passed in W.A.No.152 of 2004,

iv. Taking into consideration that the Award impugned is a detailed speaking reasoned order dated 24.09.2015 in I.D.No.7 of 2012,

v. Taking into consideration the Award of Industrial Tribunal-II, Hyderabad in I.D.No.35 of 1998 attained finality

and duly taking into consideration the fact as borne on record that except Petitioner Nos.11, 13 and 14 the rest of the Petitioners herein are Petitioners in W.P.No.18351 of 1999 and Appellants in W.A.No.152 of 2004 which had been dismissed,

vi. This Court opines that the Petitioners are not entitled for the relief as prayed for in the present writ petition.

Accordingly, the present Writ Petition is dismissed. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

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MRS JUSTICE SUREPALLI NANDA

Date: 03.06.2024

Note: L.R.Copy to be marked
(B/o) *Yvkr*