HIGH COURT OF GUJARAT *(D.B.)*

MOHANLAL NARAYANDAS PATEL
V/S
RUSTOM JEHANGIR VAKIL MILLS COMPANY LIMITED

Date of Decision: 11 July 1980

Citation: 1980 LawSuit(Guj) 124

Hon'ble Judges: M P Thakkar, A N Surti

Eq. Citations: 1981 GLR 530

Case Type: Special Civil Application

Case No: 900 of 1978

Subject: Labour and Industrial

Head Note:

Industrial Disputes Act (XIV of 1947) S.33(C)(2) Claim for overtime allowance If a worker is proved to have worked overtime it is not necessary that express instructions must be proved It can be inferred that working overtime was impliedly authorised Merely because someone else would complete the work during regular hours cannot by itself defeat the claim of the workman who has worked overtime.

The claim for overtime allowance cannot be turned down on the ground that no express instructions were given to the workMan concerned. It must be realised that ordinarily no workman would be allowed to remain in the factory premises after the working hours are over. Nor would he be allowed to remain there if he was not working the fact that he was allowed to remain after office hours and allowed to work and the further fact that the official Time-keeper recorded the timings tells its own tale effectively and eloquently. An inference inevitably arises

that there was an implied directive to work overtime and that it was impliedly authori- sed by the management. In any case. it amounted to approval and ratification of the overtime work done by the workman. (Para 2) When admittedly new workload was heaped on his head it is understandable that he could not discharge this additional burden alongwith the normal workload during the regular working hours and was required to work overtime. Merely because someone else in later years could complete the work during regular hours it cannot be said that the workman concerned need not have worked overtime part- icularly when the fact that he had worked overtime and that during that time he had in fact done the work forming a part of his duties and discharged the addit- tonal workload thrown on him is not in dispute. (Para 3) The recovery application is therefore maintainable under sec. 33C (2) of the Industrial Disputes Act.

Acts Referred:
Industrial Disputes Act, 1947 Sec 33C(2)

Final Decision: Petition allowed

Advocates: N J Mehta,K S Nanavati

Judgement Text:-

Thakkar, J

[1] A workman who had admittedly worked overtime approached the Labour Court at Ahmedabad by way of a recovery application upon the employer refusing to grant him overtime allowance as per the relevant rules on two grounds : (1) that though he had actually worked, there was no express order directing him to work overtime, and (2) he could have completed the work during his regular office hours and need not have worked overtime. The Labour Court by the impugned order at Annexure "B" dated January 25, 1978 upheld the contention of the employer and dismissed the recovery application made by the workman concerned. Thereupon the said workman has approached this Court by way of the present petition under Articles 226 & 227 of the Constitution of India and has challenged the impugned order on the ground that it manifests errors apparent on the face of record.

[2] The facts are not in dispute. The workman concerned had worked overtime from

May 1971 till November 1972 as per particulars specified in Annexure "A." For instance, he has worked for 23 hours-10 minutes in May 1971. The record pertaining to the overtime work done by the workman is maintained by an employee of the employer Mills. The genuineness of the record is not disputed. Nor is it disputed that in fact that workman concerned had put in overtime work as particularized in Annexure "A." All that is contended is that there was no express order requiring the workman concerned to work overtime. Learned counsel for the employer is unable to show any provision which requires an employer to give express instructions either in writing or orally for doing the overtime work. The crux of the question is whether he had in fact worked overtime or not. So far as that question is concerned it is not disputed that he had in fact worked overtime. The claim for overtime allowance cannot, under the circumstances, be turned down on the ground that no express instructions were given to the workman concerned. It must be realised that ordinarily no workman would be allowed to remain on the factory premises after the working hours are over. Nor would he be allowed to remain there if he was not working. It is not in dispute that he had actually worked during these hours and had done the work which was assigned to him and which formed a part of his duties. It would be non-pragmatic to take the view that the workman was so enamoured of the work that he was inspired to carry on the work beyond office hours at the cost of his leisure time. Surely he did not keep himself away from his friends, family, and pursuits of his personal taste and pleasure, because the work was so interesting and satisfying that he could not snatch or tear himself away from it. The fact that he was allowed to remain after office hours, and allowed to work, and the further fact that the official Time-keeper recorded the timings tells its own tale effectively and eloquently. An inference inevitably arises that there was an implied directive to work overtime and that it was impliedly authorized by the Management. The first ground on which the claim has been turned down is altogether untenable for the question may well be asked why he was not asked not to work overtime instead of asking the question whether the Management expressly directed him to do overtime work. In any case, it amounted to approval and ratification of the overtime work done by the workman. Thus, the Tribunal has committed an error apparent on the face of the record in upholding this meritless contention.

[3] The second ground which appealed to the Tribunal was that the workman concerned should have done during the working hours the work which he has done during the hours that he worked overtime. He could have and should have done ail the work in his regular hours and need not have worked overtime, says the Management. It was never the case of the employer that during his regular working hours the employee had idled

away his time. In fact it is an admitted position that during the relevant period there was an increase in the workload by reason of the fact that a new system known as the efficiency system for payment of wages was introduced in place of the fixed wage system which prevailed thereto, before. It stands to reason to assume that the need to work overtime arose because of this additional burden thrown on him. When admittedly new workload was heaped on his head, it is understandable that he could not discharge this additional burden along with the normal workload during the regular working hours and was required to work overtime. The only other argument which was urged was that after the termination of the services of the workman concerned, (who was a non-Matriculate) a new employee (a Graduate) had replaced him and that this new employee was able to complete his work without having to work overtime. This argument is fallacious. We are not concerned with the quantum of the work and the extent of the workload after the termination of the services of the workman concerned. There is no data to ascertain the workloads at the different points of time. There is no evidence on the point. Merely because someone else in later years could complete the work during regular hours it cannot be said that the workman concerned need not have worked overtime particularly when the fact that he had worked overtime and that during that time he had in fact done the work forming a part of his duties and discharged the additional workload thrown on him, is not in dispute. The extent of work an employee can do in specified time must depend on the subjective factor relating to his qualifications for the work and his capacity. The workman who was a non-Matriculate was appointed with the full knowledge of his qualifications and capacity. He was never charged with deliberately idling away his time. Nor was any evidence adduced to show that he was doing so. That a Graduate employed to replace him was not required to work overtime is irrelevant. While it cannot be posited that a Graduate can always work more efficiently then one who is a non-matriculate, even so with the qualifications possessed by the new workman it is understandable that he could have completed the work assigned to him during regular hours without having to do overtime. That is altogether irrelevant particularly when as pointed out earlier it is not in dispute (1) that the workman was not idling away his time during his regular hours and (2) that additional burden was thrown on him on account of the introduction of the efficiency system and (3) that he had in fact worked overtime. Add to these three factors the circumstance that even after the workman concerned approached the Labour Court on 18-2-72 asserting his claim for overtime payment.he was permitted to work overtime till November 1972. If the Management did not want him to work overtime, it could have asked him not to work overtime particularly after the workman approached the Labour

Court. All these factors have been overlooked by the Labour Court in rendering the impugned award.

[4] The petition must, therefore, succeed. The impugned order passed by the Labour Court in the Recovery Application in question is reversed and set aside. The Recovery Application made by the workman concerned being Recovery Application No. 573 of 1973 is granted. It may be mentioned that the amount claimable is not in dispute for parties are agreed that if the workman is entitled to succeed, he would be entitled to payment of a sum of Rs. 3643.02 as mentioned in Annexure "A". The respondent Rustom Jehangir Vakil Mills Co. Ltd. is, therefore, directed to pay the aforesaid amount to the petitioner on or before July 28, 1980 with costs throughout. Rule is made absolute to the aforesaid extent.

Petition allowed.