

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 4724 of 2022

Calcutta Mint Workers Union & Ors.

Vs.

National Industrial Tribunal, Kolkata & Ors.

For the Petitioners : Mr. Sardar Amjad Ali, Id. Sr. Adv.,
Mr. Puranjan Pal.

**For the Respondent/
Union of India** : Ms. Sabita Roy.

For the Respondent No. 16 : Ms. Sreetama Biswas.

Hearing concluded on : 26.02.2025

Judgment on : 20.03.2025

Shampa Dutt (Paul), J.:

1. The present writ application has been preferred praying for direction upon the respondents to recall the impugned award dated 30.07.2020 made by the National Industrial Tribunal (N.I.T.), Calcutta in connection with reference N.T. Case No. 03 of 2005.
2. The petitioners' case in short is that proposing to change, and/or extend the weekly working hours from 37 ½ hours to 44 hours a

notice u/s. 9A of the Industrial Disputes Act, 1947 was issued by the management on 16th January, 1988 purportedly based on the recommendation of the 4th Pay Commission.

The purported notice dated 16th January, 1988 u/s. 9A of the Industrial Disputes Act, 1947 proposing to enhance the working hours pursuant to the recommendation of the 4th Pay Commission was not accepted by any of the 3 units. A joint Action Committee was formed to resist the move by peaceful trade union methods by forming a Joint Action Committee.

3. The 5th Pay Commission in its recommendation recorded at paragraph 66.34 of the report as follows:-

*“66.34- In the light of the foregoing detailed discussion, we do not find any preponderant reasons for maintaining the status quo in regard to working hours only in the three Mints at Calcutta, Hyderabad and Mumbai. This would also be discriminatory and contrary to the basic principle of ‘equal pay for equal work’. It is our considered view that the 44-hour week should be strictly enforced in these three Mints. **The substantial improvements in the scales of pay and other benefits that we have recommended would be applicable in the case of the Mint employees only if the working hours are increased to 44 hours per week.**”*

- 4.** As per the direction of CAT, Calcutta in M.A. 74 of 2001 and O.A. 115 of 2001, the said issue of 19% compensation for difference of working hours between 37 and ½ hrs. and 44 hrs per week was forwarded to the Ministry which was then decided by the Finance Secretary, Government of India with the following observations:-

“On consideration of all the papers and information available on this subject including the order of Department of Expenditure. I am of the view that there is

no justification for grant of any compensation on account of increase in working hrs. in the Govt. of India Mint from 37 ½ hours per week of 44 hours per week. Further for the period from 1.1.96 to 26.5.1998 when the Mints did not work for 44 hours per week, the pay should be proportionately depressed.”

5. The issue of 19% compensation was referred to various Regional Labour Commissioners which were seriously contested by the Mint Authorities.
6. Since various Regional Labour Commissioners filed their respective failure reports to the government and the decision of the conciliation officers for referring the disputes was accepted by the Unions as well as the management, ultimately by a notification dated 6.6.2005 the Central Govt. constituted a National Tribunal and referred the dispute as National Tribunal case No. 03 of 2005 vide Government of India, Ministry of Labour dated 6.6.2005.

7. The ‘reference’ before the National Tribunal was:-

“Whether the action of the management of India Government Mint in not granting of 19% compensation for the increased working hours from 37 ½ hours per week to 44 hours per week (as per recommendation of the 5th Pay Commission) is just and legal? If not, to what relief the workmen are entitled?”

8. Vide an award dated 30.7.2020 the National Industrial Tribunal, Kolkata held as follows:-

“Thus, it is concluded that the workmen of India Government Mint represented by the unions are not entitled for 19% compensation on account of increase in working hours from 37 ½ to 44 hours per week and the decision of the management of India Government Mint in not getting 19% compensation for the increased working hours from 37 ½ hours to 44 hours per week (as per recommendation of the 5th Pay Commission) is

just and legal. The workmen are not entitled to any relief.”

9. Hence the writ application challenging the said award.
10. Affidavits are on record and the written notes have been filed by the parties on behalf of the petitioner.
11. Prior to the ‘reference’ made to the National Tribunal in N.T. Case No. 03 of 2005 a writ before the Calcutta High Court was held to be not maintainable in ***Union of India (Uoi) & Ors. vs Calcutta Mint Employees Union & Ors., on 6th October, 2004, 2005 (3) CHN 376, in Re:- CAN 6788 of 2004.***
12. Paragraphs no. 1, 2, 3, 4, 5, 26 of the said judgment are relevant:-

“1. This appeal has since been preferred against an order dated 8th June, 2004 passed in WP No. 1017 (W) of 2004 (AST 389 of 2004) by the learned Single Judge. The subject-matter of challenge in the writ petition relates to a proposal recorded in the meeting held on 23rd February, 2004 objected to by the writ petitioner, allegedly in violation of the agreement evidenced in the meeting dated 15th April, 1998 and 5th May, 1998, at page 23A, where 44 hours per week as normal working hours was approved with effect from 1st January, 1998 and overtime for increasing production was extended upto 54 hours a week. This was, however, made subject to the review and revision after consultations with the unions and associations and based on the demand supply gap then prevailing. The minutes dated 5th May, 1998 records that the 54 hours per week was sought to be implemented with effect from 1st June, 1998 subject to making consumables available for smooth working. The question of the recommendation of the 5th Pay Commission was proposed to be thrashed out through representation to be made by the employees concerned to the Government. It is contended that such representation was made but the Government did not agree.

Facts :

2. On earlier occasion the working hours was increased from 37 1/2 hours per week to 44 hours per week in respect of which a notice under Section 9A of the Industrial Disputes Act, 1947 was issued on 16th January, 1988. However, no such notice with regard to the implementation of the minutes dated 15th April, 1998 and 5th May, 1998 has been shown to us. However, in his usual fairness Mr. Mitra admitted that the normal working hours is 44 hours and that there is a dispute with regard to 19% compensation for enhancement of the normal working hours from 37 1/2 hours to 44 hours per week which is yet to be thrashed out. He also admitted that single pay was allowed upto 48 hours above 44 hours per week and that above 48 hours upto 54 hours per week was on double pay.

3. However, within the scope of this writ petition, we cannot look into that aspect of the dispute between the parties. It is only the proposal pursuant to the meeting held on 23rd February, 2004 allegedly enhancing normal working hours from 44 hours to 48 hours, which is under challenge. This minute is at page 143 of the stay application. Therefrom it appears that it was proposed to reduce the present working hours from 54 hours a week to 48 hours a week with effect from 1st April, 2004. Mr. Mitra points out that though the language has been used in the said proposal conversely but in effect it cannot be reduction of working hours to 48 hours a week when admittedly normal working hours was 44 hours a week. This minute also records that the demand for 19% compensation for difference of working hours between 37 1/2 and 44 hours a week was turned down by the Ministry of Finance through its letter dated 9th May, 2001 conveyed to the union. It also records that these 48 hours a week has been fixed due to reduction of requirements pointed out by the Reserve Bank of India for 2004-05.

4. This proposal was challenged before the Bombay High Court in a writ petition being W.P. (L) No. 2261 of 2004 wherein an ad interim order was granted in terms of prayer (d) i.e., restraining the respondents from implementing/ executing the notice dated 15th March, 2004 issued by the General Manager till 19% compensation for the increased working hours between 37 / and 44 hours a week is made available. This 15th

March notice was issued on the basis of the proposal dated 23rd February, 2004.

5. On a similar challenge being made before the Andhra Pradesh High Court in W.P. No. 6117 of 2004, by an order dated 27 August, 2004, the Andhra Pradesh High Court was pleased to dispose of the writ petition directing maintenance of status quo as obtaining on the date of the order since the petitioners therein were willing to work without double payment in order to enable the union to pursue its remedy before the Forum under the Industrial Disputes Act, 1947 (1947 Act), namely Conciliation Officer, where a proceeding was pending with direction to Conciliation Officer to dispose of the same expeditiously. It may be noted that this order of status quo was passed following the decision of this High Court (Calcutta) in W.P. No. 10172 (W) of 2004 out of which the present appeal arises.*

26. However, in similar terms in respect of 48 hours a week with single pay above 44 hours be continued or maintained subject to the decision of the appropriate Forum or otherwise, as the case may be. In case the appellant requires any of the members of the writ petitioners union to work beyond or exceeding 48 hours a week, in that event, it will follow the system, which was prevalent before 23rd February, 2004; but, however, the appellant shall, at its discretion, not be bound to require any member of the writ petitioners union to work in excess or beyond 48 hours a week."

13. In Para 25, the Court held as follows:-

"25. In the circumstances, this application and the appeal are being treated as on day's list by consent of the parties, since the respective Counsel for the parties have addressed the Court on the merit of the appeal as well. After having considered the rival contentions as discussed above, we dispose of the application and the appeal holding that the writ petition cannot be entertained in this Court in writ jurisdiction in view of Section 28 of the 1985 Act on the ground that the writ petitioners do come within the scope and ambit of Section 14(l)(b)(ii) of that Act. The writ petitioners shall, however, be free to approach the Forum under the appropriate Industrial/Labour Legislations or under the 1985 Act, as they may be advised, for suitable relief."

14. It appears that the 5th Pay Commission recommended:-

“66.34 In the light of the foregoing detailed discussion, we do not find any preponderant reasons for maintaining the status quo in regard to working hours only in the three Mints at Calcutta, Hyderabad and Mumbai. This would also be discriminatory and contrary to the basic principle of 'equal pay for equal work'. It is our considered view that the 44-hour week should be strictly enforced in these three Mints. The substantial improvements in the scales of pay and other benefits that we have recommended would be applicable in the case of the Mint employees only if the working hours are increased to 44 hours per week.”

15. The Finance Secretary, Govt. of India decided that:-

"On consideration of all the papers and information available on this subject including the order of Department of Expenditure. I am of the view that there is no justification for grant of any compensation on account of increase in working hrs. in the Govt. of India Mint from 37 ½ hours per week of 44 hours per week. Further for the period from 1.1.96 to 26.5.1998 when the Mints did not work for 44 hours per week, the pay should be proportionately depressed".

16. The question that was referred before the National Tribunal was:-

"Whether the action of the management of India Government Mint in not granting of 19% compensation for the increased working hours from 37 ½ hours per week to 44 hours per week (as per recommendation of the 5th Pay Commission) is just and legal? If not, to what relief the workmen are entitled?"

17. The tribunal's award was on the following findings:-

"It is concluded that the workmen of India Government Mint represented by the Union are not entitled for 19% compensation on account of increase in working hours from 37½ hours to 44 hours per week and the decision of the management of India Government Mint in not granting 19% compensation for the increased working hours from 37 ½ hours to

44 hours per week (as per recommendation of the 5th Pay Commission) is just and legal. The workmen are not entitled to any relief."

18. It appears that a notice under Section 9A of the Industrial Disputes Act, 1974 was issued on 16th January, 1988. ***(Union of India (Uoi) & Ors. vs Calcutta Mint Employees Union & Ors., (Supra))***

19. In Para 3 of ***Union of India (Uoi) & Ors. vs Calcutta Mint Employees Union & Ors. (Supra)***, the Court noted:-

*"3. However, within the scope of this writ petition, we cannot look into that aspect of the dispute between the parties. **It is only the proposal pursuant to the meeting held on 23rd February, 2004 allegedly enhancing normal working hours from 44 hours to 48 hours, which is under challenge.** This minute is at page 143 of the stay application. Therefrom it appears that it was proposed to reduce the present working hours from 54 hours a week to 48 hours a week with effect from 1st April, 2004. Mr. Mitra points out that though the language has been used in the said proposal conversely but in effect it cannot be reduction of working hours to 48 hours a week **when admittedly normal working hours was 44 hours a week.** This minute also records that the demand for 19% compensation for difference of working hours between 37 1/2 and 44 hours a week was turned down by the Ministry of Finance through its letter dated 9th May, 2001 conveyed to the union. **It also records that these 48 hours a week has been fixed due to reduction of requirements pointed out by the Reserve Bank of India for 2004-05.**"*

20. Here the normal working hours was taken as 44 hrs a week sought to be enhanced from 44 to 48 hrs.

21. The refusal to grant 19% compensation for increase in working hours from 37 ½ to 44 hrs was the 'reference' before the tribunal.

- 22. In *Haryana State Minor Irrigation Tubewells Corporation & Ors. vs G.S. Uppal & Ors.*, (2008) 7 SCC 375, decided on 16 April, 2008, the Supreme Court held:-**

“16. There is no dispute nor can there be any to the principle as settled in the above-cited decisions of this Court that fixation of pay and determination of parity in duties is the function of the Executive and the scope of judicial review of administrative decision in this regard is very limited. However, it is also equally well-settled that the courts should interfere with the administrative decisions pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors. [see K.T. Veerappa & Ors. v. State of Karnataka & Ors. (2006) 9 SCC 406].”

- 23. The standard working hours in India**, as governed by the Factories Act, 1948 and the Shops and Establishment Acts (SEA), is **not more than 9 hours per day or 48 hours per week**. This includes a mandatory one-hour rest or meal break. If an employee exceeds the normal working hours, they are entitled to overtime pay.

- 24. Potential scenarios where a Pay Commission might discuss working hours:**

Specific situations:

In a specific industry or role where long hours are considered necessary due to operational demands, **a pay commission might suggest adjustments to working hours alongside compensation adjustments.**

Performance-based incentives:

A commission could propose linking **additional compensation to exceeding standard working hours in certain situations**, but this would typically be tied to clear performance metrics.

- 25. In the present case** the pay commissions recommendation of enhancing the working hours from 37 ½ hrs to 44 hrs is not unreasonable, unjust or prejudicial (*Haryana State Minor Irrigation Tubewells Corporation & Ors. vs G.S. Uppal & Ors., (Supra)*), considering that hours have been extended from 44 hrs to 48 hrs @ 9 hrs per day. The pay, perks and allowances have also been adjusted/enhanced to compensate. It's then for the respective government to act as deemed fit and proper on the said recommendation, **which in this case has been done.**
- 26.** Thus the findings of the tribunal being in accordance with law requires no interference by this Court.
- 27. WPA 4724 of 2022 is dismissed.**
- 28.** All connected application, if any, stands disposed of.
- 29.** Interim order, if any, stands vacated.
- 30.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)