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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

V. RAMASUBRAMANIAN; J., PANKAJ MITHAL; J.

April 18, 2023

CIVIL APPEAL NOS. OF 2023 (@ SPECIAL LEAVE PETITION (CIVIL) NOS. 1891-1900 OF 2019)

Security Printing & Minting Corporation of India Ltd. & Ors. Etc. *versus* Vijay D. Kasbe & Ors. Etc.

Service Law - Government servants cannot claim the benefits of Double Overtime Allowance Benefits under the Factories Act, *dehors* the service rules - Unlike those employed in factories and industrial establishments, persons in public service who are holders of civil posts or in the civil services of the Union or the State are required to place themselves at the disposal of the Government all the time - Persons holding civil posts or in the civil services of the State enjoy certain privileges and hence, the claim made by the respondents ought to have been tested by the Tribunal and the High Court, in the proper perspective to see whether it is an attempt to get the best of both the worlds.

Constitution of India, 1950; Article 309 - Appointment either to a civil post or in the civil services of the Union or the State, is one of a status. It is not an employment governed strictly by a contract of service or solely by labour welfare legislations, but by statute or statutory rules issued under Article 309 or its proviso. *(Para 21)*

Service Law - there are three different categories of employment, if not more, in the country. They are, (i) employment which is statutorily protected under labour welfare legislations, so as to prevent exploitation and unfair labour practices; (ii) employment which falls outside the purview of the labour welfare legislations and hence, governed solely by the terms of the contract; and (iii) employment of persons to civil posts or in the civil services of the Union or the State. Any Court or Tribunal adjudicating a dispute relating to conditions of service of an employee, should keep in mind the different parameters applicable to these three different categories of employment. *(Para 23)*

(Arising out of impugned judgment and order dated 28-06-2018 in WP No. 7055/2010, WP No. 7784/2010, WP No. 7157/2010, WP No. 7257/2010, WP No. 7271/2010, WP No. 7480/2010, WP No. 7758/2010, WP No. 8273/2010, WP No. 2603/2007 and WP No. 8287/2010 passed by the High Court of Judicature at Bombay)

For Petitioner(s) Mr. Abhishek Kumar, Adv. Mr. Rahul Shyam Bhandari, AOR

For Respondent(s) Mr. K. Parameshwar, Adv. Mr. Ravindra Keshavrao Adsure, AOR Mr. Yash Prashant Sonavane, Adv. Mr. Rohan Darade, Adv. Mr. Lav Mishra, Adv. Mr. Sandeep Sudhakar Deshmukh, AOR Mr. Nishant Sharma, Adv. Mr. Tushar D. Bhelkar, Adv.

J U D G M E N T

V. RAMSUBRAMANIAN, J.

Leave granted.

2. Challenging a common order passed by the High Court of Judicature at Bombay, in a batch of writ petitions affirming an order of the Central Administrative Tribunal, holding that even those employees working as Supervisors are entitled to

Double Over Time Allowance, the Management of the Security Printing & Minting Corporation of India[1] and others have come up with these appeals.

3. We have heard Shri Dhruv Mehta, learned senior counsel appearing for the appellants and Shri R.K. Adsure, Shri K. Parameswar and Shri S.S. Deshmukh, learned counsel appearing for the respondents.

4. The case on hand has a checkered history with fortunes fluctuating from one side to the other. To the extent necessary, we shall now trace the history as follows:-

(i) Till the year 2005, the Ministry of Finance, Government of India had nine production units namely, four India Government Mints, two Currency Note Presses, two Security Printing Presses and one Security Paper Mill under its control. In the year 2006, a wholly owned Company under the name and style of 'Security Printing & Minting Corporation of India Ltd.' was incorporated on 13.1.2006, for the purpose of taking over the management, control, maintenance and operations of those nine production units which were functioning under the Currency and Coinage Division of the Department of Economic Affairs, Ministry of Finance, Government of India. The transfer actually took place with effect from 10.2.2006.

(ii) The transfer of management automatically led to the transfer of the workforce and along with the assets and liabilities of the nine production units, the Corporation also inherited some litigation, including the one on hand.

(iii) Way back in the year 1988, an order dated 21.12.1988 was issued by the Special Officer (Currency & Coinage), Department of Economic Affairs, Ministry of Finance, Government of India, directing that the shop-floor and the ministerial staff, falling under the category of non-gazetted supervisory staff of the Presses and Security Paper Mill would be compensated for extended hours of work at certain rates. The order indicated that the category of staff mentioned therein would be entitled to a special allowance to be paid in lieu of overtime allowance, at the rate of Rs.600/- per month for working of 9 hours and at the rates of Rs.1,000/- per month and Rs.1,400/- per month for working of 10 hours and 11 hours respectively.

(iv) By a subsequent order issued by the Government of India on 11.4.2000, it was clarified that the staff whose basic pay exceeded the ceiling limit of Rs.2,200/- per month in the pre-revised scales of pay, will not be entitled to any overtime allowance.

(v) In the year 1988, a group of eight persons working as Supervisors, Works Engineer, Section Officer, etc., in the Currency Note Press, Nashik, filed a writ petition on the file of the High Court of Judicature at Bombay in Writ Petition No.3150 of 1988, claiming overtime allowance. The writ petition was transferred to Central Administrative Tribunal in the year 1995. It was tagged along with a few original applications directly filed before the Tribunal and by a common order dated 25.7.1997, the Central Administrative Tribunal dismissed all the applications, on the ground that it had no jurisdiction to deal with a claim relating to overtime allowance arising under the Factories Act, 1948[2].

(vi) Challenging the said order of the Tribunal dated 25.7.1997, a few writ petitions came to be filed on the file of the High Court of Judicature at Bombay. During the pendency of the writ petitions, one more group of supervisory employees (A.K. Biswas

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[1] For short, *"Corporation"*
[2] For short, *"1948 Act"*

and 20 others) filed an application in O.A. No.26 of 2000 on the file of the Central Administrative Tribunal claiming the same reliefs. This application was also dismissed by the Tribunal by an order dated 19.1.2001 following the order passed on 25.7.1997 in the other cases.

(vii) Therefore, A.K. Biswas and 20 others filed a writ petition on the file of the High Court. By an order dated 27.1.2005, the High Court remanded the matter (A.K. Biswas and others) back to the Tribunal for a fresh consideration. After remand, the Tribunal allowed the application filed by A.K. Biswas and others by an order dated 4.4.2005. But this order was set aside by the High Court in a writ petition filed by the Union of India, on the ground that an amendment to Section 70 of the Bombay Shops and Establishments Act was not considered by the Tribunal. This order of the High Court remanding the matter back to the Tribunal for a second time was dated 31.1.2006.

(viii) Following the second order of remand passed by the High Court on 31.1.2006 in the case filed by A.K. Biswas and others, the writ petitions already pending and arising out of earliest writ petition of the year 1988 were also allowed and the matter remanded back to the Tribunal for a fresh consideration.

(ix) Unfortunately, after the remand, the Tribunal first took up for consideration O.A. No.26 of 2000 filed by A.K. Biswas and others and dismissed the same by an order dated 15.9.2006.

(x) After nearly four years of disposal of the application filed by A.K. Biswas and others, the Tribunal took up all other applications, pending from 1995 onwards (and one of which related to the writ petition of the year 1988 and which got transferred to the Tribunal in the year 1995). By a common order dated 9.6.2010, the Central Administrative Tribunal held that the applicants therein were entitled to Double Over Time Allowance in terms of Section 59(1) of the 1948 Act. After holding so, the Tribunal confined the relief, only to a period of two years prior to the filing of the respective original applications, insofar as arrears were concerned.

(xi) Aggrieved by the dismissal of their application in O.A. No.26 of 2000 by the Tribunal by an order dated 15.9.2006, A.K. Biswas and others filed a writ petition in Writ Petition No.2603 of 2007 on the file of the High Court.

(xii) In the meantime, the Corporation had come into existence and, hence, the Union of India as well as the Corporation, along with the India Security Press and Currency Note Press filed a batch of writ petitions challenging the second order of the Central Administrative Tribunal dated 9.6.2010.

(xiii) In other words, the rejection by the Tribunal of the claim of one set of employees (A.K.Biswas and others) was the subject matter of one writ petition and the grant of relief by the Tribunal in favour of the other group of employees was the subject matter of a separate batch of writ petitions.

(xiv) By a common order dated 28.6.2018, the High Court of Judicature at Bombay dismissed all the writ petitions filed by the Union of India and the Corporation. Coming to the writ petition filed by A.K. Biswas and others, the High Court found that the employees were similarly placed and that they were entitled to the same benefits as given to the other employees. However, the High Court found that some of the employees had already compromised the matter with the Management and that therefore the relief should be confined only to those employees who had not

compromised. Accordingly, the High Court allowed the writ petition filed by A.K. Biswas and others, granting relief only to those employees who had not compromised the matter with the management.

(xv) It is against the said common order passed by the High Court on 28.6.2018 that the Corporation has come up with the above appeals.

5. From the narration of facts provided above, it will be clear that the only question which falls for our consideration is: as to whether persons employed as Supervisors are entitled or not, to Double Over Time Allowance in terms of Section 59(1) of the 1948 Act?

6. For coming to the conclusion that the employees are entitled to Double Over Time Allowance, the Tribunal started with two presumptions, namely ***(i)*** that the India Security Press, Currency Note Press and India Government Mint would fall within the definition of the expression *"factory"* as defined in Section 2(m) of the 1948 Act; and ***(ii)*** that the employees would fall within the definition of the expression *"worker"* as defined in Section 2(l) of the 1948 Act. As a sequitur, the Tribunal held that these Supervisors, will, in the normal course, be entitled to extra wages for overtime in terms of Section 59(1) of the 1948 Act.

7. But it was argued on behalf of the Union of India that under Section 64(1) of the 1948 Act, the State Government was entitled to make Rules exempting the application of the provisions of Chapter VI of the Act to certain categories of workers. In exercise of the power conferred by Section 64(1), the State of Maharashtra had issued a set of Rules known as Maharashtra Factories Rules, 1963[3], Rule 100 of which exempted Supervisors from the application of the provisions of Chapter VI, provided they were not required to perform manual labour or clerical work as a regular part of their duties. In the light of such a stand taken by the Union of India, the Tribunal, in the batch of applications decided on 9.6.2010, framed the following question as arising for consideration:-

"Whether in the facts and in the circumstances of the cases the applicants in these OAs are entitled to double OTA under Section 59(1) of the Factories Act, even after considering the provisions of Section 64(1) of the Factories Act, 1948 read with the provisions of Rule 100 of Maharashtra Factories Rule, 1963?"

8. After framing the issue as aforesaid, the Tribunal recorded a finding that the applicants before the Tribunal were doing clerical work as a part of their regular duties and that therefore they were excluded from the application of Rule 100 of the 1963 Rules, in view of the proviso contained therein. In view of the said finding, the Tribunal held that the applicants before the Tribunal were entitled to Double Over Time Allowance.

9. In contrast, the very same Tribunal found in its order dated 15.9.2006 in the original application filed by A.K. Biswas and others that the applicants before the Tribunal were not performing any manual labour or clerical work as a regular part of their duties and that therefore by virtue of Rule 100 of the 1963 Rules, they stood excluded from the benefit conferred by Section 59(1) of the 1948 Act.

10. Thus, the Central Administrative Tribunal reached diametrically opposite findings of fact, in two different sets of cases filed by employees who were identically

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[3] For short, *"1963 Rules"*

placed and discharging identical duties and responsibilities. The reason why we record this fact is that in normal circumstances, the High Court exercising supervisory jurisdiction under Article 226/227 and this Court exercising jurisdiction under Article 136, will not be inclined to interfere with the findings of fact recorded by a Tribunal. But in this case, there are two diametrically opposite set of findings, both of which cannot co-exist.

11. Keeping the above aspect in mind, let us now proceed to consider the rival contentions.

12. Shri Dhruv Mehta, learned senior counsel appearing for the appellants contended, ***(i)*** that a perusal of the list of duties assigned to the respondents, as reflected by the ACRs clearly show that the respondents were performing supervisory duties, exercising control over 50 to 100 workers; ***(ii)*** that as per the law laid down by this Court in ***Burmah Shell Oil Storage and Distribution Company of India Ltd. vs. The Burma Shell Management Staff Association & Ors.***[4], a person whose predominant nature of work is supervisory, will not be qualified as a workman merely because he also carries on clerical/mechanical work incidental to his supervisory work; ***(iii)*** that the Tribunal as well as the High Court failed to appreciate the scope of Rule 100 of the 1963 Rules in the proper perspective; and ***(iv)*** that the Supervisors enjoying higher scales of pay than workers, cannot claim the benefit of overtime allowance as extended to workers.

13. In response, it is contended by Shri K. Parameswar, learned counsel appearing for the respondents, ***(i)*** that the decision in ***Burmah Shell Oil Storage and Distribution Company of India Ltd.*** (supra) cannot have any application to the case on hand, since the definition of the expression *"workman"* under the Industrial Disputes Act, 1947[5] is quite different from the definition of the same expression under the 1948 Act; ***(ii)*** that therefore the dominant nature test propounded in ***Burmah Shell Oil Storage and Distribution Company of India Ltd.*** is not applicable here; ***(iii)*** that the Tribunal and the High Court have found on evidence that the respondents are performing manual labour or clerical work as a regular part of their duties and, hence, Rule 100 of the 1963 Rules has no application; and ***(iv)*** that the findings of fact recorded by a quasi-judicial tribunal cannot be interfered with lightly.

14. Shri S.S. Deshmukh, learned counsel appearing for some of the respondents contended, ***(i)*** that the *proviso* to Section 64(1) of the 1948 Act carves out an exception, in the case of persons drawing rate of wages not exceeding the limit specified in Section 1(6) of the Payment of Wages Act, 1936[6], insofar as the claim for extra wages for overtime work is concerned; ***(ii)*** that therefore Rule 100 of the 1963 Rules has no application to the case of the respondents in view of the said proviso to Section 64(1); and ***(iii)*** that the Central Administrative Tribunal itself had passed orders in several applications, in favour of employees identically placed and working as Supervisors, the details of which are provided in paragraph 5 of the counter affidavit filed by A.K. Biswas in the above appeals and that therefore the orders of the Tribunal and the High Court do not call for any interference.

15. We have carefully considered the rival contentions.

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[4] 1970 (3) SCC 378

[5] *"1947 Act"*

[6] *"1936 Act"*

16. At the outset, it should be noted that the claim of the respondents for payment of Double Over Time Allowance arose entirely during the period from 1988 to 2005. Since the 'Corporation' was incorporated only on 13.1.2006 and all the nine production units coming under the control of the Currency and Coinage Division of the Department of Economic Affairs, Ministry of Finance, Government of India were transferred to the Corporation only with effect from 10.2.2006, the claim of the respondents obviously arose at the time when they were Central Government servants. In other words, their claim should be considered to have arisen only in relation to *"service matters"* of persons appointed to *"a service in connection with the affairs of the Union"* or in relation to *"holders of civil post."*

17. The definition of the expression *"service matters"*, is provided in Section 3(q) of the Administrative Tribunals Act, 1985[7] and it reads as follows:-

"**3. Definitions**.—In this Act, unless the context otherwise requires,—

xxx xxx xxx

(q) "service matters", in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation or society owned or controlled by the Government, as respects—

(i) remuneration (including allowances), pension and other retirement benefits;

(ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;

(iii) leave of any kind;

(iv) disciplinary matters; or

(v) any other matter whatsoever;"

18. It is seen from sub-clause (i) of clause (q) of Section 3 extracted above that any issue relating to remuneration including allowances, is a service matter. The respondents herein, at least during the period from 1988 till the year 2006, were either holders of civil posts under the Union or appointed to the civil services of the Union.

19. This is why the respondents approached the Central Administrative Tribunal, for the adjudication of their service matter. The respondents did not go either before the Labour Court constituted under the 1947 Act or before the Authorities empowered under other labour welfare legislations, despite Section 28 of the 1985 Act not excluding the jurisdiction of the Industrial Tribunal or the Labour Court. Keeping this in mind, let us now address a more fundamental question.

20. Primarily, the terms and conditions of service of persons in the civil services of the Union or the State and persons holding civil posts under the Union or the State, are regulated either by the Acts of the appropriate Legislature passed in terms of Article 309 or by the Rules framed in exercise of the power conferred by the *proviso* to Article 309 of the Constitution. Therefore, whenever a dispute relating to a service matter, which includes a claim for allowances, is raised before the Administrative Tribunal, the primary duty of the Tribunal is to see what is provided by the relevant Act

[7] *"1985 Act"*

issued under the main part of Article 309 or the Rules issued under the Proviso to Article 309.

21. It must be kept in mind that appointment either to a civil post or in the civil services of the Union or the State, is one of a status. It is not an employment governed strictly by a contract of service or solely by labour welfare legislations, but by statute or statutory rules issued under Article 309 or its *proviso.*

22. In fact, the history of civil service in India is more than a century old and there were Rules in force, such as the Fundamental Rules and the Supplementary Rules (FRSR) issued way back in the year 1922, with effect from 1.1.1922. Article 313 of the Constitution declares that until other provision is made under the Constitution, all the laws in force immediately before the commencement of the Constitution and applicable to any public service or post, shall continue in force. This is why the Fundamental Rules of the year 1922 continue to apply even now, to the holders of civil posts and those in the civil services of the Union or the State.

23. It must also be borne in mind that there are three different categories of employment, if not more, in the country. They are, ***(i)*** employment which is statutorily protected under labour welfare legislations, so as to prevent exploitation and unfair labour practices; ***(ii)*** employment which falls outside the purview of the labour welfare legislations and hence, governed solely by the terms of the contract; and ***(iii)*** employment of persons to civil posts or in the civil services of the Union or the State. Any Court or Tribunal adjudicating a dispute relating to conditions of service of an employee, should keep in mind the different parameters applicable to these three different categories of employment.

24. Unlike those employed in factories and industrial establishments, persons in public service who are holders of civil posts or in the civil services of the Union or the State are required to place themselves at the disposal of the Government all the time. Rule 11 of the Fundamental Rules reads as under:-

"Unless in any case it be otherwise distinctly provided, the whole time of a Government servant is at the disposal of the Government which pays him, and he may be employed in any manner required by proper authority, without claim for additional remuneration, whether the services required of him are such as would ordinarily be remunerated from general revenues, from a local fund or from the funds of a Body incorporated or not, which is wholly or substantially owned or controlled by the Government."

25. In the light of the above Rule, there was actually no scope for the respondents to seek payment of Double Over Time Allowance. It is needless to say that no benefit can be claimed by anyone *dehors* the statutory rules. Unfortunately, the Central Administrative Tribunal completely lost sight of those Rules, and the distinction between employment in a factory and employment in Government service, despite the Union of India raising this as a specific issue in paragraph 12 of the counter filed in O.A. No.428 of 2005 before the Central Administrative Tribunal.

26. The claim of the respondents before the Tribunal was not based on any statutory rule but based entirely upon Section 59(1) of the 1948 Act.

27. Persons who are not holders of civil posts nor in the civil services of the State but who are governed only by the 1948 Act, may be made to work for six days in a week with certain limitations as to weekly hours under Section 51, weekly holidays under Section 52, daily hours under Section 54, etc. Workers covered by Factories

Act do not enjoy the benefit of automatic wage revision through periodic Pay Commissions like those in Government service. Persons holding civil posts or in the civil services of the State enjoy certain privileges and hence, the claim made by the respondents ought to have been tested by the Tribunal and the High Court, in the proper perspective to see whether it is an attempt to get the best of both the worlds.

28. Admittedly, the State Government is conferred with the power under Section 64(1) to make exempting Rules. In exercise of the power so conferred, the State of Maharashtra has framed Rule 100, which reads as follows:-

"Rule - 100:

PERSONS DEFINED TO HOLD POSITION OF SUPERVISION OR EMPLOYED IN A CONFIDENTIAL POSITION.

(1) In a factory the following persons shall be deemed to hold position 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 namely:

(i) The Manager, Deputy Manager, Assistant Manager, Production Manager, Works Manager and the General Manager;

(ii) Departmental Head, Assistant Departmental Head, Departmental in-charge or Assistant Departmental in-charge;

(iii) Chief Engineer, Deputy Chief Engineer and Assistant Engineer;

(iv) Chief Chemist, Laboratory incharge;

(v) Personnel Manager, Personnel Officer;

(vi) Labour Officer, Assistant Labour Officer;

(vii) Welfare Officer, Additional Welfare Officer or Assistant Welfare Officer;

(viii) Safety Officer;

(ix) Security Officer;

(x) Foreman, Chargeman, Overseer and Supervisor;

(xi) Jobber in Textile Factories;

(xii) Head Store Keeper and Assistant Store Keeper;

(xiii) Boiler Sarang or such Boiler Attendants who are in-charge of a battery of boilers and are only required to do supervisory work;

(xiv) Any other person who in the opinion of the Chief Inspector, holds a position of supervision or Management and is so declared in writing by him."

29. Apparently, the post of Supervisor is included in Rule 100, as a post exempted from the application of the provisions of Chapter VI.

30. But the claim of the respondents is that the *proviso* embedded in Rule 100(1) makes the exemption inapplicable to those who are required to perform manual labour or clerical work as a regular part of their duties.

31. On a question of fact as to whether the respondents are required to perform manual labour or clerical work as a regular part of their duties, the Tribunal has reached diametrically opposite conclusions, one in the case of A.K. Biswas and others and the other in the case of remaining set of employees.

32. The chart of duties indicated in the ACRs does not show that the respondents are required to perform manual labour or clerical work as a regular part of their duties.

33. The High Court fell into an error in holding that the performance of certain functions, such as setting right malfunctioning of feeder, side-lay, double-sheet detector, photocell, etc., to ensure uninterrupted running of the machinery, are manual functions. But we do not think so.

34. In any case, the respondents, who are holders of civil posts or in the civil services of the State till the year 2006, could not have claimed the benefits of the provisions of Chapter VI of the 1948 Act, *dehors* the service rules.

35. Though the decision in ***Burmah Shell Oil Storage and Distribution Company of India Ltd.*** is heavily relied upon by Shri Dhruv Mehta, learned senior counsel appearing for the appellants, we do not think that the same has any application to the case on hand. This is for the reason that the definition of *"workman"* in Section 2(s) of the 1947 Act specifically excludes persons employed in a supervisory capacity. But such an exclusion is not there in the definition of the very same word *"worker"* in Section 2(l) of the 1948 Act.

36. The distinction can be well understood if these definitions are presented in a tabular form side by side:-

Definition of *"workman"* in Section 2(s) of the Industrial Disputes Act, 1947	Definition of *"worker"* in Section 2(l) of the Factories Act, 1948
2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,— xxx xxx xxx (s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person— (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or (ii) who is employed in the police service or as an officer or other employee of a prison; or (iii) who is employed mainly in a managerial or administrative capacity; or	2. Interpretation.—In this Act, unless there is anything repugnant in the subject or context,— xxx xxx xxx (l) "worker" means a person employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in 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 but does not include any member of the armed forces of the Union;

who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.	

37. Sub-clause (iv) of clause (s) of Section 2 of the Industrial Disputes Act, 1947, is conspicuously absent in the corresponding provision in the 1948 Act. Therefore, we would not place our conclusion on the basis of the decision in ***Burmah Shell Oil Storage and Distribution Company of India Ltd.***

38. Similarly, the argument of Shri S.S. Deshmukh, learned counsel appearing for the respondents based upon the *proviso* to Section 64(1) of the 1948 Act read with Section 1(6) of the 1936 Act, cannot distract our attention. In any case, Section 1(6) of the 1936 Act as it stood before the Amendment Act 41 of 2005 which came into effect on 9.11.2005 reads as follows:-

"**1. Short title, extent, commencement and application.**—

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(6) Nothing in this Act shall apply to wages payable in respect of a wage-period which over such wage-period, average one thousand six hundred rupees a month or more."

39. But in the case on hand, the distinction made by the Government of India in their Office Order dated 21.12.1988 related to persons drawing a basic pay of more than Rs.2,200/-. Therefore, the provisions of the Payment of Wages Act, were not applicable to the respondents herein and as a sequitur, the Proviso to Section 64(1) of the 1948 Act cannot be pressed into service.

40. Thus, we find ***(i)*** that the Tribunal as well as the High Court did not consider the distinction between persons in Government service and those in private service and the effect of the statutory rules upon the conditions of service of the respondents, including their liability to work for extra hours; ***(ii)*** that the Tribunal reached diametrically opposite findings of fact in respect of persons holding similar supervisory posts; and ***(iii)*** that therefore, the orders of the Tribunal and the High Court are unsustainable.

41. In view of the above, all the appeals are allowed and the impugned order of the High Court is set aside. However, we find that some of the employees have retired, some have passed away and in respect of some who have passed away, the appeals have been abated. Therefore, even while allowing the appeals and setting aside the impugned order of the High Court, we direct the appellants not to effect any recovery from those to whom payments have already been made. No order as to costs.

Pending application(s), if any, stands disposed of accordingly.