Hindustan Aeronautics Limited, Bangalore Vs Workmen of Hindustan Aeronautics Limited (Head Office), Bangalore and Another

Court: Karnataka High Court

Date of Decision: Aug. 21, 1990

Acts Referred: Industrial Disputes Act, 1947 â€" Section 9A

Citation: (1991) 4 KarLJ 456

Hon'ble Judges: S. Rajendra Babu, J

Judgement

@JUDGMENTTAG-ORDER

1. The petitioner in this petition is a company wholly owned by the Government of India run under the Ministry of Defence engaged in the

manufacture of aircrafts. The Head Office of the company controlling and administering all the divisions is situate at Bangalore.

2. The petitioner by notice dated 9-12-1970 notified to its employees, as provided under Section 9-A of the Industrial Disputes Act, 1947 (in

short "the Act") of changes relating to conditions of service which it wanted to bring about in respect of its employees represented by the 1st

respondent herein, leading to the raising of an industrial dispute by the latter, which was referred for adjudication to the 2nd respondent-Industrial

Tribunal, Bangalore (in short "Tribunal"). The Tribunal adjudicated upon the dispute and held that the proposed changes are not justified and shall

not be introduced among workmen in the Head Office of the petitioner. The matters referred for adjudication of the Tribunal are as follows:

Are the management of Hindustan Aeronautics Limited (Office of the Chairman), Bangalore justified in proposing to introduce the changes

mentioned in the Annexure:

ANNEXURE

1. Instead of paying extra wages for over-time to only employees in Group-D and below at the ordinary wage rate with provisions for setting off

overtime against late coming or early going as at present, extra wage for over-time work done will be paid at double the normal wage rate to all

employees in Grade "E" and below in accordance with Personnel Circular No. 176, dated 30th November, 1970, which will be extended to the

Head Office.

2. All employees will be required to punch the timings of their arrival and departure, once time clocks are installed.

3. Deduction will be made at the normal wage rates in the wage for late coming/early going subject to the condition that no deduction will be made

for ten minutes on any single day and 30 minutes during a month.

4. At present the administrative offices of all Public Sector Undertakings in Bangalore as well as the Administrative Offices of the Divisions of

H.A.L. except the Head Office have the same number of holidays as the factories. In order to bring in uniformity, the number of holidays per

calendar year observed in the Head Office will be reduced from 16 days to 12 days including the three national holidays, viz. Republic Day,

Independence Day and Mahatma Gandhi''s birth day. There are no restricted holidays.

5. At present the administrative offices of all Public Sector Undertakings in Bangalore as well as the Administrative Offices of the Divisions of

H.A.L. except the Head Office have the same number of working hours as the factories. In order to bring in uniformity, the working hours for all

employees in the Head Office will be 8 hours per day on all working days. The normal working hours will be as below:

9-00 a.m. to 1-00 p.m.

1-30 p.m. to 5-30 p.m.

The existing shift hours of employees such as Drivers, Messengers, Sweepers, etc., will be modified suitably.

3. The Tribunal held that the changes proposed as above are not justified and shall not be introduced against the workmen in the Head Office.

Aggrieved by this award the petitioner has come up to this court by presenting this petition.

4. The petitioner contended that, the changes that were sought to be introduced as above are made in order to bring about uniformity in the

conditions of service of the employees in the divisions and at the Head Office in addition to the factor of bringing in improvement in the

administration to enable better production; the petitioner in exercise of its managerial powers effected these changes and no exception could be

taken to the same; the workmen covered by the labour enactments have a distinct and separate status; the nature of relationship between the

employer and the workmen as in the present case is one of status and not contract and hence could effect changes in service conditions unilaterally,

of course, in compliance with Section 9-A of the Act. In substance it is contended on behalf of the petitioner that fixing hours of work or holidays

and marking the attendance either by punching system or otherwise as also effecting deductions for late arrival or early departure would all be

covered by managerial functions and the same can be uniformly altered subject to compliance with the conditions prescribed in Section 9-A of the

Act and similar conditions in comparable industries could also be taken note of.

5. The 1st respondent submitted that Section 9-A of the Act does not empower the management to alter the conditions of service as it is only a

procedural provision without creating any extra or new right in favour of the employer. According to the 1st respondent, in the present case when

the workmen had raised certain demands by issue of a notice as a counter-blast to the same this notice under Section 9-A of the Act has been

issued modifying the hours of work and holidays and certain other privileges enjoyed by the workmen.

This alteration, according to respondent 1, is a stratagem adopted by the petitioner. In answer to the question of bringing about uniformity it is

contended on behalf of the 1st respondent that there is no uniformity in the various divisions of the petitioner-company to bring about such changes

in the Head Office; even otherwise merely for the sake of bringing about uniformity between different divisions and the Head Office these changes

cannot be effected as the workmen in the Head Office have duties which are distinct and separate from all those who are working in the divisions;

and there is absolutely no justification to change the conditions of service regarding hours of work, holidays, deduction in wages, punching of cards

or in relation to over-time procedures.

6. The question that arises for consideration in this case is whether the petitioner-management is justified in altering the hours of work and the

pattern for payment of over-time wages as also reduction in the number of holidays.

7. Under Section 9-A of the Act, an employer who proposes to effect any change in the conditions of service applicable to his workmen in respect

of matters specified in IV Schedule shall have to do so on due notice and after a period of 21 days elapse. The object of this section appears to be

to give an opportunity to the workmen to consider the effect of the proposed changes and if necessary to represent their point of view on the

proposal. In case such an approach fails it is certainly open to the workmen to raise a dispute that the changes effected are not in the interest of the

industry. However, the learned counsel for the petitioner contended that the workmen in establishments such as the petitioner which is a "State" for

the purpose of Part III of the Constitution would stand entirely on a different footing and more particularly when the workmen have attained a

status and their relationship with the employer is not merely a matter of contract even though at the inception of the engagement of a workman

there is an offer and acceptance resulting in a contract but it has subsequently travelled from a point of contract to that of a status and relied upon a

decision in Roshanlal Tandon v Union of India, AIR 1967 SC 1889. Proceeding on similar lines the learned counsel submitted that when once it is

accepted that the relationship between the workmen and the management is one of status and not one of contract it is certainly open to the

management to alter the conditions of service as can be done in the case of Government servants. This argument, in my opinion, though astute is

devoid of merit inasmuch as a comparison between Government servants and workmen who were covered by the Act cannot at all be drawn as

these two category of persons do not stand on the same footing. While Article 309 of the Constitution and certain other provisions govern the

conditions of service of Government servants, which has a statutory status, the workmen are not governed by any such rules or laws but by the

conditions of service imposed by the management which the adjudicating bodies have found to be reasonable. Further, Government servants are

not covered by the provisions of the Act which provides for adjudication of all matters relating to conditions of service. If a condition of service is

found to be unreasonable or arbitrary it is certainly open to the Tribunal to substitute the same by what it considers to be reasonable in the

circumstances and that would govern the management and the workmen. Hence, the contention raised on behalf of the petitioner that the petitioner

can unilaterally alter the conditions of service of workmen as the State can in the case of civil servants has got to be rejected.

It is necessary to make a general survey of the nature of demand and law arising on precedents in relation to the hours of work before embarking

upon a discussion of the rival contentions urged in support of their cases by the management and the workmen in this case.

8. It may be observed here that the traditional approach of trade unions has been to reduce the existing hours in the standard working days and

working week without loss in wages. Elaborate provisions regarding the rest periods spread over total number of hours per week, over-time and

the manner of intimation of these hours and holidays have been made by various statutes, such as, Factories Act, Shops & Commercial

Establishments Act and the Indian Mines Act. Normally, weekly hours under the existing labour enactments do not exceed 48 hour, however, in

practice the hours of work in establishments working in three shifts daily amount to 45 hours per week, each shift being of general 8 hours duration

including the half-hour rest interval. Trade unions are striving hard to suggest a 48 hours week with a five-day week and 8 hours per day and for

commercial offices still shorter hours are demanded. None of the statutes enjoin that working hours could be changed only by agreement and it is

the function of the management of an establishment to adjust or vary their hours within the limits prescribed by law. All that is required for a

management to do in such cases is to alter the working hours with necessary intimation in conformity with the standing orders and other provisions

of law applicable thereto.

9. In the case of May & Baker (India) Ltd. v Their Workmen, (1961) 2 LLJ 94, the working hours of the company were from 9 a.m. to 5 p.m.

with three rest intervals; one hour for lunch, 15 minutes each for morning and afternoon tea. The Tribunal altered these hours to 9-30 a.m. to 5

p.m. with one hour interval for lunch. It also directed that instead of two intervals of 15 minutes each for tea, which was supplied by the company

to the workmen, it should see that tea is supplied to the workmen at their tables. Though apparently it looked as if there is no reduction in the

working hours the Supreme Court observed that the working hours had been reduced by half an hour each day. Obviously the workmen will take

their time for tea because they cannot work and take tea at the same time and therefore held that reduction in the working hours was unjustified.

In Workmen of BOAC v BOAC, (1962)1 LLJ 257, the weekly hours of work had been divided between the employees into two categories: for

office staff it was 36 hours per week, while for operational staff it was 39 to 42 hours per week. The Tribunal on a dispute relating to wages for

over-time considering the nature of special work at the airport, directed that the company was entitled to fix 48 hours per week as normal duty

hours and the payment for over-time work was ordered to be made on the basis of work done beyond the normal duty hours of 48 hours in a

week. In appeal, in view of the special incidents of an airline industry, the problem of regulating the hours of work which are quite different from

that obtained in other establishments the Supreme Court held that the direction of the Tribunal taking 48 hours as the basis for payment of over-

time work to the office staff was not justified and modified it to the effect that the office staff should be paid for over-time work at the rates

calculated on the basis of 36 hours a week. But the direction of the Tribunal in regard to the operational staff whose work was directly connected

with the arrival and departure of aircrafts was held to be reasonable. Thus, a distinction was maintained in the matter of working hours between the

administrative and operational staff.

In Karamchand Thaper & Bros. Ltd. v Their Workmen, (1964) 1 LLJ 429, an award was made that the subordinate staff should attend the office

half an hour before the normal time to be regulated by a system of rotation subject to over-time wages to be paid at the rates fixed by the award

therein which stood the scrutiny of the Supreme Court. The apex court in that case held that for a proper working of the office it was necessary

that sweepers and peons should start their work sometime before other employees come and should stay on for sometime after the other

employees depart as, according to the Supreme Court, having regard to the duties of the peons and sweepers it was not practical to observe the

same hours for them as for other employees.

In Remington Rand of India Ltd. v Their Workmen, (1967) 2 LLJ 866, while its employees in Kerala worked for 9 a.m. to 1 p.m. and 2 p.m. to

5-30 p.m. on all days in a week, except on a Saturday when they did not work in the afternoon after lunch hour, in the State of Tamil Nadu the

working hours for days in a week were from 9 a.m. to 1 p.m. and 1-45 p.m to 5-30 p.m. Thus there was a difference in the hours of work

between Tamil Nadu employees and Kerala employees. By a circular the company fixed the working hours from 9-30 a.m. for clerks and 9 a.m.

for mechanics and peons. In that case the Tribunal gave a direction when it was brought to its notice that the circular was not given effect to, to

give effect to the circular and that the clerical staff should work from 9-30 a.m. to 1-00 p.m. and 2 p.m. to 5-30 p.m. on all days and from 9-30

a.m. to 1 p.m. on Saturdays when work was confined to morning session. This view was affirmed by the Supreme Court.

In Oil and Natural Gas Commission v The Workmen, (1973)1 LLJ 18 the Supreme Court had to grapple with a different kind of problem. The

Commission had its central workshop at Baroda. When the workshop was under construction there was insufficient accommodation and the office

and administrative staff used to work in a shed at a distance of about 2 kms. from the workshop. The working hours of the administrative staff

were at that time from 10 a.m. to 5 p.m. with an interval of half an hour. These timings prevailed from December 1964 to June 1965 when on the

completion of the construction at the site of the workshop the administrative staff was also shifted and consequently the hours of work of

administrative staff was fixed from 8 a.m. to 5 p.m. with an interval of one hour. The workmen claimed that the working hours of administrative

staff should continue to be 61/2 hours per day and were aggrieved by the fixation of 8 hours per day and it was contended that the same was

violative of Section 9-A of the Act. It was also contended that fixation of 8 hours per day was not justified from the point of view of convenience

and was also not uniform with the conditions of timings prevailing with other administrative offices of the Commission. The Tribunal held that

Section 9-A of the Act was not applicable to the case. It further upheld the contention of the workmen that there was no justification for alteration

of hours of work. But the Supreme Court took the view that the Tribunal was not justified in interfering with the employers" decision in fixing hours

of work on the basis that the view of the Tribunal that reduction in hours of work from 8 to 61/2 hours would not adversely affect the work of

office was not only not supported by any evidence on record but also contrary to it.

10. Thus, a survey of various decisions of the Supreme Court would reveal that the growth of industry in the present century has focused attention

on the need for statutory intervention for protecting the wage earners against excessive hours of work and the issue of limitation of hours of work is

undoubtedly related to production and health of workers. Hours of work are regulated by law but issues about the same could also become

subject-matter of industrial dispute. To the point of hours of work are related other problems also, such as, over-time, allowance for over-time,

reduction and increase of hours of work, minimum wage, etc. The legislature provides for the minimum norms but beyond those norms it is open to

the parties by collective bargaining or adjudication, to get the desirable social standards accepted and these standards have got to reconcile and

equate the conflicting claims of industry which calls for higher and greater productivity and labour which clamours for more leisure and rest on the

one hand and increased remuneration on the other. In the matter of resolving a dispute relating to hours of work several questions arise for

determination and some of them may be enumerated as:

(1) total number of hours for which an employee is to work daily or per week;

(2) interval between work periods, rest interval and maximum spread over during a working day;

(3) whether any classification is desirable according to work operations;

(4) what should be the timings of arrival and departure;

(5) how late attendance should be regulated; and (6) whether any grace time should be allowed and what penalties should be prescribed for

breach of rules.

The American Federation of Labour"s Committee as far back as 1926, stated thus:

.....Modern methods of production, the high tension of machine operation, the specialization which forces thousands to perform the same

meaningless operation thousands per day has placed a strain upon the workers" nervous system which is more enervating, more conducive to

physical and mental fatigue than many more hours of labour would be where the work called for the constant use of the workers" creative power.

Modern methods of production more and more tend to make a machine of man. For this reason, in addition to many others, it is essential that not

only should the daily hours of labour be reduced but in addition, the number of days per week should be shortened. For social reasons as well as

those of an economic character, the American Federation of Labour is justified in declaring for a shorter work week as energetically as it did in the

past for the establishment of eight hour a day....."(emphasis supplied)

(See American Federation of Labour Proceedings, 1926, Collective Bargaining Principles & Practice - by C. Wilson Randle)

In the same Proceedings moral, humanitarian and citizenship grounds were also urged to support shorter working hours. It is said that shorter

working hours would make a worker a different person, a person of greater physical endurance, greater vitality, higher ideals and consequently a

person who is not satisfied with the old standards of long hours of work. It is also said that a workman is also a citizen and in a democracy it is

necessary that he should participate, should have political awareness and that long hours prevented the worker from developing into a fully

rounded and participating citizen. It is also said that reduction in the overall number of hours of work tends to increase the rate of production, other

conditions remaining the same and it is no longer necessary with the modern advancement that men should work as many hours as formerly so that

all might live in comfort and abundance. It is also said that shorter hours stimulate technological advancement and increased leisure would be

valuable for a workman who will then pursue more refined pleasures and cultural activities when the rewards of leisure become more important

than fruits of additional labour. All this may look too idealistic to be really effective and therefore there has been a search for optimum hours of

work on a scientific basis. In practice the factors that affect the length of the hours of work in a day or week would depend upon:

(1) the nature of the industry or occupations involved;

(2) habit or custom;

(3) public opinion;

(4) legislation; and (5) the relative bargaining strength of parties.

The motivation for reduction of hours cannot usually be attributed to any single factor of these. The determinants therefore for shorter or longer

hours are complex and difficult of specific identification.

11. In Associated Cement Staff Union v Associated Cement Company, AIR 1964 SC 914, the Supreme Court analysed some of these factors

and held that hours of work had to be fixed in consideration of many factors, including the question of fatigue on the health of the workmen, the

effect on their efficiency, the physical discomfort that may result from long and continuous strain, the need of leisure in the workmen"s lives, the

hours of work prevailing for similar activities in the same region and also in similar concerns and other relevant factors.

In fixing the proper wage scale the question of work-load will have to be given due weight and so the matter of working hours cannot be left out of

consideration. Many other factors including the need of the workmen, the financial resources of the employer, the rates of wages prevailing in other

industries in the region will have all to be considered in deciding the wage scale. It would be against the interests of workmen, the employers and

the country as a whole to bring into force wage rates moving on a sliding scale according to the hours of work and therefore in the said case the

Tribunal having fixed the wages on the basis of existing working hours of 341/4 hours a week could increase the hours of work to 36 on relevant

considerations without changing the wage rates was upheld.

12. One of the important factors to be taken note of in these matters is uniformity in matters of working hours, weekly offs, holidays, leave and

over-time is not always feasible but it would be correct to say that most groups of employees wish to have all the more favourable conditions of

employment for other groups while retaining any special favourable conditions they themselves may be enjoying. In such a situation undiscriminating

pursuit of uniformity may lead obviously to undesirable results. In the Associated Cement Company case, AIR 1964 SC 914, certain observations

made by the Supreme Court may be noticed. The Supreme Court observed that the growing realisation of need for better distribution of national

wealth has also given an understanding of the need for increase in production as an essential pre-requisite of which greater efforts on the part of

labour force are necessary. That itself is sufficient reason against accepting the argument against any change in working hours is found justified on

relevant considerations. In a proper case the management may have to pay compensation in the form of increments for increased hours of work as

has been done in some cases. Attendance to duties regularly and punctually is part of a workman''s implied duties and particularly when work

periods are fixed the employees must attend punctually to work. Workmen attending late are liable to be shut out and treated as absent and

habitual late attendance is an act of misconduct and the workmen are likely to be punished for that and wages are liable to be deducted for late

attendance. Provisions were also made in the Payment of Wages Act.

13. Over-time and hours of work are closely related and once the hours of work are fixed by law, award or settlement, extraction of work beyond

those hours would be over-time. It would therefore be necessary to look to the provisions of law regarding over-time which is not only the

minimum but which also serves as a useful guide for industrial adjudication. Under the Factories Act, Section 59 provides that where a worker

works in a factory for more than 9 hours in a day and more than 48 hours in a week, he would be entitled to wages at the rate of twice his ordinary

rates of wages. There are similar provisions in the Shops & Commercial Establishments Act also. For the purposes of computation of wages for

over-time work the limited hours of work is understood as nine hours in a day and 48 hours in a week and therefore in this background the norm

adopted by the petitioner in this case will have to be tested on that basis.

14. In this background I proceed to consider the various contentions raised on behalf of the parties.

14.1. The workmen, the 1st party before the Tribunal, stated that the dispute covers about 120 workmen and employees including staff who

number about 170 who were in the Head Office of H.A.L. which is a separate and independent section of the establishment. It is averred that the

Head Office was first set up in New Delhi in the year 1964 and later on shifted to Bombay in the latter part of that year and in the year 1966 the

Head Office came to be established in Bangalore and all the employees working in the Head Office stood transferred to its Head Office at

Bangalore. The workmen in the Head Office were getting higher emoluments compared to other employees in the establishment and were enjoying

better privileges. But they had their own grievances and in order to espouse the same formed an association on 6-6-1970 as they were not part of

Hindustan Aeronautics Employees'' Association. The said association was registered as a trade union and on 30th November, 1970 the executive

committee of the association decided to raise a charter of demands and on 3-12-1970 the same was sent to the petitioner which, inter alia,

contained the issue relating to production and hours of work. It is contended that as a counter-blast to this demand the management issued a notice

of change in hours of work by its notice dated 9-12-1970 which in fact increased the working hours. Thereafter, the association took up the matter

with the Conciliation Officer by its letter dated 14-12-1970 and the Conciliation Officer fixed up conciliation and issued notice to the management.

Later on, however, the Conciliation Officer reported failure on 25-3-1971. Thereafter, the dispute was referred to adjudication by the Government

by its order dated 18-6-1971. It is contended that the Administrative Officer had no authority to take steps to alter the conditions of service such

as working hours, etc. The provisions contained in the Mysore Shops & Commercial Establishments Act, 1961 and the Mysore Industrial

Establishments (National & Festival Holidays) Act, 1963, do not sanction the changes as are sought to be made out by the petitioner. The usual

working hours in the case of clerical staff had been 9 a.m. to 4-30 p.m. with half an hour break on week days and 9 a.m. to 1 p.m. on Saturdays.

In the case of subordinate staff it is from 8-30 a.m. to 5 p.m. on week days and 8-30 a.m. to 1-30 p.m. on Saturdays and there was no

justification for any change as was sought to be made out in the notice dated 9-12-1970. Further, the petitioner is also not justified in seeking to

alter payment at double the ordinary rate only after 9 hours of work in a day or after 48 hours of work in a week and there was no obligation cast

on the workmen to do over-time. According to the 1st respondent, if the employer wants the services of the workmen after normal or usual hours

of work, it stands to reason that such workmen should be paid at the rate higher than usual wages.

14.2 The 1st respondent also took a very serious objection to the introduction of punching system and gave reasons as to why it should not be

introduced. It also objected to the marking of attendance by punching system. Their objection is not so much as to the alteration of their conditions

of service but it is not a fool-proof system and has got inherent defects and therefore cannot keep a proper track of arrival and departure of the

workmen and such a system is not prevalent in any similarly placed establishment in and around Bangalore. According to it, such a system is likely

to lead to further complications in the matter. It also graphically described the various draw-backs in such a system. It was also pointed out that

even in H.A.L., Bangalore Division which constitutes nearly two-thirds of the whole of employment force in the organisation all are not required to

do punching while all male employees in Group-D are required to punch as also certain categories of female employees. Thus, there is no

uniformity in the system and this is one other additional ground why such a system should not be introduced. The notice of change in regard to

deduction in wages were also objected to. A detailed reference has already been made in regard to the objections raised by the workmen as to

increase in hours of work and reduction in holidays. Their case is that lesser working hours and more holidays in commercial establishments is

almost unanimously accepted throughout the world. Even the workmen in the manufacturing units are demanding lesser working hours and more

holidays.

15. The petitioner in reply stated that the Head Office was shifted to Bangalore in the year 1966; that certain allowances which were being paid to

the employees at Bombay were continued as a temporary measure; that the Head Office staff cannot claim any superior terms in regard to the

hours of work and other conditions of service in comparison with those employees working in the divisions; that the changes actually came into

effect from 26-4-1971 while the notice of change was given on 9-12-1970 which, according to the petitioner, was due to the pendency of the

conciliation proceedings, etc. Petitioner joined issue with the 1st respondent on the question that the Administrative Officer did not have the

requisite authority to take steps in regard to the notice of change. Petitioner''s case is that the Administrative Officer merely communicated the

decision of the higher officers. It also contended that neither the Mysore Shops & Commercial Establishments Act nor the Industrial Establishments

(National & Festival Holidays) Act comes in the way of alteration of or change in the working hours or the number of holidays. When the

petitioner-company came into existence in 1964 and was stationed sometime in Delhi and thereafter in Bombay the timings fixed for working in the

Head Office Division only as a temporary measure and therefore when it was found that it was necessary to have larger number of hours of work

with lesser holidays the same was introduced in the Head Office as well. The petitioner putforth several grounds necessitating the alterations and

one of them being to bring about uniformity in various divisions. It also contended that the changes brought about were similar to the ones

prevailing in H.M.T., B.E.L., I.T.I, and B.E.M.L., which are similar concerns. It is contended that prior to the change in the conditions of service

the Head Office staff was paid at the same rate as was being paid to the employees of the same category in Bangalore Division, that is, after 39

hours of work per week. No double rate was being paid. Now, by the present change-over after 48 hours of work double over-time is paid and it

is not opposed to any of the statutes governing such an arrangement. It is submitted that the system of punching is more accurate a method of

recording arrival and departure of workmen and in petitioner''s view there was ample justification for the introduction of this system as there was

also good attendance bonus and over-time wages at double rates. In the wake of these incentives the company had to record accurately the arrival

and departure of workmen which was ensured by the punching system. The comparison with the liaison offices staff was unjustifiable inasmuch as

those offices contain not more than ten staff members. Its case in regard to deduction of wages is that while the criterion adopted under the

Payment of Wages Act and the Industrial Disputes Act, if an employee does not get wages for the period during which he does not work has no

relevance because of late coming or early going, it stands to reason that he does not get allowances as well. When the allowances are included for

the purpose of computation of wages the same basis should be adopted in the matter of deduction of wages as well. The criteria for the purpose of

rent recoveries, festival advances and fixation of H.R.A. and D.A. have application for the purpose of payment of wages for work and over-time.

The basis adopted for the purpose of computation of over-time should be the basis for the purpose of deduction for undertime. Thereafter, it

explained its case in regard to the increased hours of work and reduction of holidays about which reference has already been made. The workmen

by their reply accepted that the standing orders governing the service conditions of the employees in the divisions do not apply to them. They

contended that a comparison should be made between the petitioner-company and other public sector undertakings working in Bangalore and

their administrative offices in Bangalore division. They contended that employees in the Head Office division stand altogether differently and they

are an exclusive set who could not be compared with those employees working in divisions and could not be assigned the same timings of work or

holidays, weekly offs, H.R.A., C.C.A., and other fringe benefits and discrimination in those matters is still maintained.

16. The Tribunal in view of the above contentions of the parties, raised the following issues:

1. Whether the Head Office of Hindustan Aeronautics Ltd. is a separate and independent section of the establishment?

2. Whether the Head Office staff were getting higher emoluments compared to other employees in the establishment?

3. Whether the Administrative Officer has no authority to take steps in regard to the notice of change dated 9th December, 1970 including issue of

the same?

4. Whether the Mysore Shops & Commercial Establishments Act, 1961, and the Mysore Industrial Establishments (National & Festival Holidays)

Act, 1963 do not sanction the changes proposed by the II Party in its notice dated 9th December, 1970?

5. Whether the notice of change dated 9th December, 1970 bring about the changes in the conditions of service adverse to the interest of the

employees? If so, whether the employer cannot do so by a notice under Section 9-A of the Industrial Disputes Act, 1947?

6. Whether deduction in wages should be limited to the basic wages alone as pleaded by the I Party?

7. Whether the companies mentioned in para 7(d) of the statement of claim filed by the I Party do not have uniform working hours or holidays for

the staff of their administrative offices and the employees in the respective factories? If so, whether they are comparable units with the II Party

Company?

8. Whether the changes sought for in the notice of change dated 9th December, 1970 would seriously affect the efficiency, morale and job

satisfaction of the concerned employees?

9. Whether distinction is not made in regard to the hours of work applicable to the Head Office and those applicable to the employees in the

factories sub-division of H.M.T., B.E.L., I.T.I, and B.E.M.L.

10. What should be the basic hour of work for payment of over-time wages?

11. Whether the proposed reduction of weekly holidays in the notice of change dated 9th December, 1970 violates the provisions of the Mysore

Shops & Commercial Establishments Act, 1961 and the Mysore Industrial Establishment (National & Festival Holidays) Act, 1963?

12. Whether the conduct of the II Party in bringing into effect the provisions of the change of notice is in violation of Section 33(1) of the Industrial

Disputes Act?

13. To what reliefs the parties are entitled?

The Tribunal answered the various above issues in favour of the workmen.

17. On the first issue whether the Head Office of the petitioner-company is a separate and independent unit of the petitioner-establishment the

Tribunal held that the petitioner was treating the Head Office as an independent section of the establishment. From the narration of facts it is clear

that originally the Head Office was situated in Delhi which was shifted to Bombay and still later to Bangalore and therefore it appears that the

finding of the Tribunal that the petitioner-company had treated the administrative office as a separate unit though it is contended that some of its

employees could be transferred to divisions as well, but yet maintained its distinct status cannot be taken exception of and the finding in this regard

has got to be upheld. (emphasis supplied)

17.1 On Issue No. 3 the Tribunal held that the Chairman himself could not have effected any change without approval of the Board of Directors

and he could not have delegated the power of even proposing the change by a notice under Section 9-A of the Act. It is contended that the notice

of change issued under Section 9-A of the Act is signed by the Administrative Officer who does not have the necessary authority to bring about the

change in question. The petitioner contended before the Tribunal that the changes proposed were not such changes which were required to be

approved by the Board of Directors and Ex. M-14 is the notification issued bringing about the changes was in fact signed by the Chairman himself.

But the notice was issued under Section 9-A was signed by the Administrative Officer and this was issued after obtaining the approval of the

competent authority, namely, the Chairman. The Tribunal on this aspect of the matter, took the view that neither the Administrative Officer nor the

Chairman was examined to show that approval was in fact given and none of the documents produced by the management show that such an

approval was given. It was also held that the Chairman derived his power to introduce the change under the Articles of Association produced at

Ex. M-12 and that the powers of Board of Directors were delegated to the Chairman under Ex. M-13 and it is slated even under Ex. M-13 that

any alteration in the rules and regulations involving substantial change in the service conditions would require the approval of Board of Directors

and therefore the Chairman could not have approved such change without delegation of such power of proposing change of notice under Section

9-A of the Act. In this view it held that the Administrative Officer did not have the necessary authority to bring about the changes in question.

MW-2 Dakshina Murthy stated in his evidence that Ex. W-3 the notice of change was issued by the Administrative Officer after obtaining the

approval of the competent authority, namely, the Chairman and he produced Ex. M-12, the Articles of Association in order to show that he could

bring into effect such changes. This part of the evidence went unchallenged. There is no cross-examination at all as to the fact whether the

Administrative Officer had obtained the approval of the Chairman in bringing into effect the changes proposed in Ex. W-3. Therefore, the

conclusion drawn by the Tribunal that neither the chairman nor the Administrative Officer had not been examined to show that approval was given

is wholly unwarranted in the absence of challenge to the statement made by the said Dakshina Murthy. Under Article 98 of the Articles of

Association the general power of company was vested with the directors and under Article 120-A thereof the Board had also power to entrust

and confer upon the Chairman powers exercisable under the Articles of Association. Ex. M-13 itself authorises the Chairman to give effect to the

alteration in the conditions of service. Therefore, the finding recorded by the Tribunal on Issue No. 3 that the Chairman did not have such powers

cannot be upheld at all and has got to be reversed.

17.2. On Issue No. 2 the Tribunal held that in view of the fact that working hours are less and holidays are more in the Head Office, it enjoyed

better facilities than in the divisions and that factor must be considered as a case of higher emoluments compared to the other employees in the

establishment. According to the Tribunal, the working hours being less and holidays being more such employees were enjoying better facilities

other than the remaining staff working in the factory unit and must be held to have other emoluments compared to other units. In this view it

answered the issue in favour of the workmen.

17.3. On Issues Nos. 4 and 11, referring to the Karnataka Shops & Commercial Establishments Act, 1961 and the Karnataka Industrial

Establishments (National & Festival Holidays) Act, 1963, the Tribunal held that the management cannot bring about any change or reduction in the

holidays by introduction of change in the guise of uniformity without offering any monetary benefits as compensation for the loss of holidays

sustained by them. According to the Tribunal, ever since the establishment of the Head Office at Bangalore the working hours per week were

considered to be 39 hours only and that privilege cannot be changed even if the employees of the Head Office are liable to be transferred to other

divisions where working hours are more. The finding recorded by the Tribunal under Issue No. 4 does not take the matter any further. Neither the

Karnataka Shops & Commercial Establishments Act nor the Industrial Establishment (National and Festival Holidays) Act covers the matter in

question. They prescribe only the minimum norms adopted for working hours or for holidays. The view of the Tribunal that the hours of work and

holidays are more advantageous to the workmen than what is stated in the statute and therefore without offering any monetary benefit for

compensation for loss of holidays or increase in working hours would be contrary to the Act It is clear from the material placed on record that the

administrative offices started functioning only from the year 1964 at Delhi, thereafter in Bombay and was in fact shifted to Bangalore only in the

year 1966 and the changes are proposed in 1970. In a short span of four to six years it cannot be said that the workmen would have acquired a

right as such and that they were enjoying less working hours and more holidays and cannot be altered so as to bring about uniformity. Under

Section 9-A of the Act it is open to the management to give effect to changes in working conditions by adopting the procedure contained therein

and it is also equally open to the workmen to contest the same which could be a subject-matter of industrial adjudication unless it be that there is a

settlement already or an award. Thus the finding that the management has no powers under Section 9-A of the Act to bring about uniformity in

timings of work nor reduction in holidays is untenable as such alteration is subject to challenge before the Tribunal. In such circumstances what is to

be seen is whether there was justification for such alteration and whether the same was reasonable and subject to what conditions such alterations

could be effected. On this aspect of the matter, the Tribunal has wholly missed the point and has gone at a tangent and has not at all understood the

controversy of the case. Its conclusion therefore will have to be examined with reference to other aspects of the matter and not in isolation as has

been done by it In examining whether there is any justification for increasing the working hours or reduction in holidays and the limitations upon the

same, the aspect of payment of increased wages should also be considered.

17.4. On Issue No. 5 the Tribunal held that the management is in effect introducing a reduction in the wages paid to the employees working in the

Head Office for the work done by them and if it had to introduce such a change in the guise of uniformity it cannot be done unilaterally without a

settlement or an adjudication, as the case may be, thereto. There are some common aspects arising for consideration in relation to Issue Nos. 2, 5,

8 and 9. The finding of the Tribunal in that regard is that the notice of change under Section 9-A brings about change of conditions of service

adverse to the interest of the workmen. The view of the Tribunal is that the working hours of the Head Office is 39 hours with Saturday being a

half working day and is registered under the Shops & Commercial Establishments Act and the drivers work for 48 hours a week and the Head

Office was enjoying holidays for 18 days and it is now reduced to 12 days from 16 days including three national holidays and that the working

hours at the Head Office is now 8 hours per day on all working days other than Saturdays and on Saturdays it is 5 hours and thus the increase in

working hours and decrease in holidays without offering monetary benefit as compensation would adversely affect their interest. Evidence tendered

in this regard before the Tribunal is not at all with reference to any comparable industry in nature, size or magnitude of activities. Moreover, the

Tribunal itself found that there were different patterns in different industries working in and around Bangalore in relation to working hours and

holidays. The administrative office of the unit or the Head Office as it is called now, was established in Bangalore only in the year 1966 and in the

year 1970 the changes were proposed which is not such a long period of working over which the workmen could have acquired a right either in

regard to holidays or working hours and the change in regard to working hours or holidays is not motivated but only to bring about uniformity in

working pattern between the Head Office and the factory units and it is not established that the working at the Head Office is too onerous to have

less working hours and more holidays. The Tribunal on Issue No. 8 held that the petitioner cannot increase the number of working hours of the

workmen without offering any compensation to them and answered this issue also against the petitioner, comparing the working conditions with

certain public sector industries such as B.E.M.L, H.M.T, I.T.I, etc., where distinction in working hours is maintained between the staff of the Head

Office and the staff working in the units.

17.5. In computing the wage what is to be taken note of is the number of hours of work, holidays and over-time. Unless it can definitely be said

that changes in hours of work, holidays and over-time have a bearing on the wage structure as such it cannot be said that the same would affect

conditions of service. Workmen working in the Head Office are liable to be transferred to other units. Whether it is in fact done so or not is

immaterial for what we are concerned with is a right to particular wages, holidays and working hours. Inasmuch as a workman could be transferred

from Head Office to other factory units it cannot be stated that mere difference in pattern of working hours or holidays would affect the wage

structure as such. Otherwise, a transfer of a workman from Head Office of a factory to its units will adversely affect his conditions of service but in

the appointment order itself such a condition for transfer having been imposed and hence the mere circumstance of working in the Head Office

would not entitle him to a better advantage. Hence, the view taken by the Tribunal in the absence of monetary compensation changes in increasing

working hours and reduction of holidays would affect conditions of service is not correct and hence the findings recorded on Issue Nos. 2, 5, 8

and 9 will have to be reversed.

17.6. Now I will take up for consideration Issue Nos. 7 and 9 together. On the former issue the Tribunal held that there being different working

hours for the Head Office staff and other units and such practice is available in respect of other industrial concerns and there is no uniform working

hours or holidays for the staff in the administrative offices and factories which are comparable with the petitioner and therefore answered the same

against the petitioner. On the latter issue it held that question of bringing about uniformity in the petitioner''s Head Office did not arise. On Issue

No. 7 on the question as to the working hours or holidays in certain concerns in respect of which evidence was adduced by respondent No. 1 and

under Issue No. 9 in respect of representatives of B.E.M.L, H.M.T and I.T.I working in their factories are considered for the purpose of finding

out as to the comparable nature of working hours and holidays. The Tribunal concluded that even if the evidence in the case adduced by both the

parties is to be considered it could safely be concluded that there are different working hours for the Head Office staff and other units for each

company in respect of which evidence was adduced. But it did not give a further finding whether they are comparable units at all or not. It did not

analyse the evidence tendered before it It made a comparison with the liaison offices in Bangalore like the Indian Oil Corporation and the Fertilizer

Corporation of India Ltd., but did not consider the overall pattern of working in any of these companies either in their factories or in the

administrative office or units. It can be seen that while in the Indian Oil Corporation at the administrative office 61/2 hours of work is on an average

done, totalling to about 39 hours per week, in the depot 511/2 hours of work is done and in the Fertilizer Corporation of India 39 hours of work is

done at the administrative office while in the factory 48 hours of work is done. But in the case of H.M.T., the material placed before the Tribunal is

that it works for 461/2 hours so far as the Head Office is concerned and in factories it varies from 431/2 hours to 471/2hours depending upon

different shifts. In B.E.M.L., the Head Office works for 441/2 hours per week and in the factory it is 48 hours of work. In I.T.I. the Head Office

functions for 45 hours, so also its factory unit. In B.E.L. while the Head Office works for 411/2 hours, the factory works for 461/2 hours.

Therefore the finding that there is a uniform pattern in this regard with different working hours so far as the Head Office is concerned cannot be

accepted much less when there is no finding that the factories or companies in respect of which the evidence is adduced and the petitioner are

comparable units. Hence, the evidence adduced before the Tribunal was only with reference to the working hours and not with reference to the

wage structure at all. As stated earlier in consideration of the matter whether reduction or increase in relation to working hours and holidays

without reference to the wage structure would be an exercise in futility because they are interlinked matters. Hence, the view taken by the Tribunal

in this regard cannot be of much materiality and the findings recorded thereon in my view are non sequitur.

17.7. Now, I will deal with the basic rate of wages as dealt under Issue No. 6 as to the deduction in wages. The finding of the Tribunal on this

issue is that if the workmen were enjoying the benefit of deduction of the basic wages alone for late coming or early leaving the office, the

management cannot introduce a change by a notice under Section 9-A of the Act as that would amount to reduction in wages. The petitioner

proposed to introduce deductions for late coming and early going from normal wage rates. This was contested by the 1st respondent that the

deduction should be on the basic wages without including the D.A. or other allowances that are enjoyed by the workmen. It was submitted that the

word "wages" as defined in the Act would include all remuneration payable to workmen including D.A., H.R.A., Travel Concession and such

other allowances. When all such emoluments form part of the wages the petitioner contended that the deduction should not be restricted only to

basic wages. The deduction is only by way of disincentive for late coming or early going and if any workman desires to get his full wages he has to

work according to the time schedule. But if the workmen in the Head Office of the petitioner were enjoying the benefit of deduction in the basic

wages alone, the management cannot introduce a change in it by a notice under Section 9-A of the Act as the same would amount in reduction in

wages and therefore the Tribunal answered this issue holding that the deduction in wages is to be limited to the basic wages and the management is

not entitled to change the benefit enjoyed by the workmen so far. The rival parties reiterated their contentions advanced before the Tribunal, before

me as well.

Further, it was submitted before me on behalf of the petitioner that the matter reached this court in Writ Petition No. 12709/1980, disposed of on

2nd September, 1980 wherein the question posed before the court was as to whether the petitioner was justified in proposing deduction of D.A.

along with basic wages from the earnings of the employees for late attendance and early departure or for absence from the work spot without

permission. The learned Single Judge who dealt with that matter held after referring to standing order 11(b) and the Payment of Wages Act that

whatever principles are applicable in the matter of computation of wages for the purposes of Payment of Wages Act will have to be adopted even

in the matter of deduction for wages but when the matter was carried in writ appeal this court while disposing of Writ Appeal No. 2153/1980 on

27th July, 1988 held that for a long time the practice in the factory units having been understood that the expression ''earnings'' used in the standing

order to mean only basic wage, excluding D.A., and for the first time it should not be altered without altering the standing order and allowed the

appeal and set aside the Judgment of the learned Single Judge in that regard. It is now brought to my notice that the matter has been carried in

further appeal to the Supreme Court by way of a special leave petition which is stated to have been admitted and interim order granted staying the

operation of the order made in the writ appeal. It is submitted that whatever view I may take in this regard will be dependent on the view to be

taken by the Supreme Court ultimately.

When a proposal has been made under Section 9-A of the Act and that proposal is subject-matter of an industrial adjudication could it be said that

the standing orders would override or control the interpretation to be placed on the expression ''wages''? Under a settlement or as a result of

industrial adjudication if computation of wages is made it is permissible for the parties to agree or for the Industrial Tribunal to alter the conditions

of service or even alter any term of contract When that is the scope of industrial adjudication could it be said that whatever may have been

expressed in the writ petition or the writ appeal would affect the proper view to be taken in this case. The scope of consideration in writ

jurisdiction of this court will be only to interpret the conditions of service as it stood. When a proposal is made for alteration in conditions of service

and that proposal falls within the scope of Section 9-A of the Act and could be a subject-matter of adjudication before an Industrial Tribunal, I do

not think the provisions of the standing order could control the jurisdiction of the Industrial Tribunal to alter the same if justified otherwise.

In the various enactments "wages" have been defined. In the Act under Section 2(rr) "wages" are defined as follows:

2(rr). ""wages"" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or

implied, were fulfilled, be payable to a workman in respect of his employment, or of work done in such employment, and includes- (i) such

allowances (including dearness allowance) as the workman is for the time being entitled to;

(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any

concessional supply of foodgrains or other articles;

(iii) any travelling concession;

(iv) any commission payable on the promotion of sales or business or both;

but does not include- (a) any bonus;

(b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the

time being in force;

(c) any gratuity payable on the termination of his service.

Under Section 2(vi) of the Payment of Wages Act, 1936 the term "wages" is defined as follows:

2(vi). ""wages"" means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so

expressed which would, if the terms of employment, express or implied were fulfilled, be payable to a person employed in respect of his

employment, or of work done in such employment and includes- (a) any remuneration payable under any award or settlement between the parties

or order of a court;

(b) any remuneration to which the person employed is entitled in respect of over-time work or holidays or any leave period;

(c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);

(d) any sum which by reason of the termination of employment of the person employed is payable under any law, contractor instrument which

provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be

made;

(e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force;

but does not include- (1) any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable

under the terms of employment or which is not payable under any award or settlement between the parties or order of a court;

(2) the value of any house accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from

the computation of wages by a general or special order of the State Government;

(3) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;

(4) any travelling allowance or the value of any travelling concession;

(5) any sum paid to the employed person to defray special expenses entailed to him by the nature of his employment; or (6) any gratuity payable

on the termination of employment in cases other than those specified in sub-clause (d).

Under Section 2(22) of the Employees'' State Insurance Act, 1948, ''wages'' is defined as follows:

2(22). ""wages"" means all remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied,

were fulfilled and includes (any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or lay-off

and) other additional remuneration, if any paid at intervals not exceeding two months but does not include- (a) any contribution paid by the

employer to any pension fund or provident fund, or under this Act;

(b) any travelling allowance or the value of any travelling concession;

(c) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or (d) any gratuity payable

on discharge.

The term ''wages'' as used in the Act, the Payment of Wages Act and the Employees'' State Insurance Act, would indicate that the definition of

wages is exhaustive and it states what is included and what is not included in the definitions. The ingredients of these definitions of ''wages'' include

all remuneration paid or payable in cash provided that the terms of employment express or implied are fulfilled and the term ''wages'' would include

any payment made to an employee in respect of authorised leave, lock-out, strike and lay-off but does not include:

(i) contribution made by the employer to any pension fund or provident fund or under the E.S.I. Act;

(ii) any travelling allowance or value in travelling concession;

(iii) any sum paid to the employee to defray as expenses as entitled to pursuant to his employment; or (iv) any gratuity payable on discharge.

For the purpose of calculating over-time wages payable wages are understood in this sense as aforesaid. Then, when the workmen absent

themselves from work for periods could it be said that the disincentive could be different from what could be the basis for over-time. The basis of

disincentive could not be different from the one on what could be the basis for incentive, such as, over-time. What the standing order 11(1)(b)

provides is only a limitation of time upon calculation in the matter of noting for late coming and early departure but does not give a basis for

computation of wages at all. If wages have been paid at a particular rate that will form basis for calculating at uniform 15 minutes. I do not

understand how that could afford a basis for saying that earning could be calculated only on the basis of basic earnings and not with reference to

the wages as defined under the various enactments. Further, under the Payment of Wages Act the permissible deductions are noted under Section

7 of that Act and the deductions are made on the basis of what could be the wages and the extent of permissible deduction. While the Division

Bench of this court dealing with the writ appeal did not look at the concept of wages as a whole but depended upon merely on a term in the

standing orders which fixed time or the rate at which the wages will have to be adopted and as held earlier could not afford the basis at all.

If this could be the basis the standing order under 11(1)(b) cannot come in the way of altering the mode of calculation for deduction of wages for

late, coming and early departure the Tribunal could exercise its jurisdiction and hold that justice demands the same basis as per over-time should

be adopted for cases of work undertime that is what is the basis for incentive shall be the basis for disincentive. If the Tribunal could do that this

court also in exercise of powers under Article 226 of the Constitution can do it in View of the decision of the Supreme Court in Gujarat Steel

Tubes Ltd. v Its Mazdoor Sabha, AIR 1980 SC 1896 and notwithstanding the standing order 11(1)(b) it is permissible for the Tribunal to uphold

the change proposed by the petitioner as to the mode of calculation of basic rate of wages for the purpose of late attendance and early departure in

terms set forth in Ex. W. 3. Hence I uphold the contention advanced on behalf of the petitioner and set aside the finding recorded by the Tribunal

on this issue.

17.8. Now I will take up Issue No. 10. On this the Tribunal''s view is that the change in the procedure regarding over-time was wrong and that

when the workmen want status quo to be maintained as regards working hours the petitioner cannot alter the over-time payment rate and the basic

hours of work should remain the same as it were earlier to the notice Ex. W. 3. The contention advanced on behalf of the workmen is that the

petitioner is not justified in seeking to alter payment at double the normal rates only after nine hours of work in a day or 48 hours of work in a

week and there is no obligation cast on the workmen to do over-time and if the employer wants the services of the workmen after normal or usual

work, it stands to reason that such workmen should be paid at the rate higher than the normal or usual wages. The petitioner contended that the

staff in the Head Office was paid at the same rate as was being paid to the employees of the same category in Bangalore division in regard to over-

time, that is, after 39 hours of work per week but no double rate was being paid. Now, by the present change over, after 48 hours of work double

over-time is paid and it is not opposed to any of the statutes governing such an arrangement. This factor is brought about in the change proposed at

serial numbers 1 to 3 of the change proposed under Section 9-A of the Act.

17.9. On this aspect of the matter the Tribunal noticed that the previous basis for over-time work was that after normal hours of work though the

rate was a single rate, the present change is to introduce over-time benefits to the employees up to "E" grade at double the rate of wages if they

work for more than 48 hours per week. According to the workmen, if the change in working hours sought to be introduced is not acceptable to

them, the management cannot seek any change in the payment of over-time wages and over-time has to be accounted beyond the normal office

hours of 39 hours per week. The Tribunal recorded that it is not proper for them to contend that the present practice of such over-time should be

at double rate should be continued and when they want the status quo to be maintained as to working hours, it cannot say that the over-time

payment rate should be changed. Hence, it held that the basic hour of work for over-time wages cannot be changed than what was existing

previously, even if it is to offer double the wages for over-time if the same is not acceptable to the workmen. Inasmuch as I have already held that

the workmen are not entitled to any claim over the length of working hours in the Head Office now, working hours having been increased to 45

hours and over-time is to be only after an excess of 48 hours per week stands to reason. This kind of arrangement falls within the parameters of

the enactments such as Factories Act, the Shops & Commercial Establishments Act and therefore I do not think that 1st respondent can make

much of the same. Hence, the finding recorded by the Tribunal that the basic hour of work should remain the same as it was earlier to issue of Ex.

W. 3, that is, notice under Section 9-A of the Act, cannot stand to reason. That provides only a mode of calculation. In fact, on an overall view the

workmen would be at a greater advantage rather than at a disadvantage in the new system of dispensation. Further, this also brings a uniformity

between the workmen working as office staff and the factory units. Hence, the finding recorded on Issue No. 10 will have to be set aside.

17.10. Only one aspect of the matter remains to be considered and that is with regard to the finding recorded by the Tribunal that the conduct of

the petitioner in bringing into effect the provisions of change of notice is in violation of the provisions of Section 33(1) of the Act. On that point the

Tribunal states that it was not necessary to consider the correctness or otherwise of the contention of the management insofar as Ex. M-14 was

concerned. But in regard to issue of Ex. W-3, it holds that the petitioner was wrong in having introduced that change as from 1st January, 1971 as

the same is in violation of Section 33 of the Act. In the course of my discussion earlier I have stated that the changes as aforesaid were brought

about after the chairman as competent authority has approved it and his order was at Ex. M-14 and the Administrative Officer merely gave effect

to it under Ex. W-3. When the Tribunal did not consider it necessary to examine the contentions in regard to violation of Section 33 of the Act in

the matter of issue of Ex. M-14 I fail to understand as to how follow-up action be taken by issue of Ex. W-3 would attract Section 33 of the Act.

In that view of the matter, the reasoning adopted by the Tribunal is wholly fallacious and hence I conclude that on this issue also the Tribunal has

erred and needs to be corrected.

18. After answering the issues in the manner referred to above in the course of this order, the Tribunal took up the different points of reference and

answered the same in conformity with its findings on various issues stated earlier. On the question of punch noting the timings of their arrival and

departure from the Head Office, the Tribunal took the view that such practice should not be introduced for the following reasons, namely:

(i) Such practice is not prevailing in any other industry in the Head Office;

(ii) That employees in the Head Office are few in number in comparison with those in the factories; and (iii) That there is no reason to introduce the

time clock to mark their attendance when there is no complaint or disadvantage of continuing the present system of marking the attendance.

According to the workmen, punching does not in any way help in introducing any system of marking attendance which is efficient and fool-proof.

They pointed out that there are various inherent defects and cannot keep a proper track of arrival and departure of the workmen. According to

them, such a system is likely to lead to a further complication and there is no uniformity in regard to punching in the Head Offices of various

factories and even in the factory units of the petitioner the whole employment force is not required to punch. Thus, there is no uniformity in that

regard even in the units of the petitioner. On behalf of the petitioner it was submitted that the system of punching is a more accurate method of

recording of arrival and departure of the workmen and there was justification for introduction of this system. When several incentives are

introduced by the company it had to record accurately the arrival and departure of the workmen which is ensured by punching system. Neither the

pleadings nor the evidence adduced before the Tribunal much less the arguments advanced before it point out with accuracy or relevance as to the

manner in which their conditions of service is affected except to say that such a system is not fool-proof or there are defects in it. In what manner

attendance will have to be marked cannot be a matter in which the workmen can dictate terms to the management. It should be left to the

management to maintain appropriate records of arrival and departure in an office or factory and for that purpose if the management thinks that

punching is a proper system the workmen should not object to the same. Nor does the Tribunal in the course of its discussion on this aspect of the

matter anywhere in the order points out as to how the working conditions of service of the workmen would be affected by reason of the

introduction of punching system in marking attendance or to note the late arrival or early departure. Therefore, I am of the view that the finding

recorded by the Tribunal in this regard will have to be set aside.

19. Thus, my conclusions on all the issues in this regard would be one of total reversal of the findings recorded by the Tribunal. So, the points of

reference are answered accordingly. Therefore, the changes proposed are justified and the workmen are not entitled to any relief in this regard.

Thus, this writ petition is allowed and the award shall stand quashed in terms stated above. Rule made absolute.