(1977) 03 CAL CK 0015

Calcutta High Court

Case No: Civil Revision No''s. 3705-11 of 1975

Officer Commanding, Engineer Stores		APPELLANT
	Vs	
Authority Under Payment of Wages Act		RESPONDENT

Date of Decision: March 11, 1977

Acts Referred:

- Constitution of India, 1950 - Article 227
- Military Engineering Services Regulations, 1936 - Rule 138, 95
- Payment of Wages Act, 1936 - Section 15, 15(1), 15(3), 2, 3

Citation: 81 CWN 612 : (1978) 2 ILR (Cal) 160

Hon'ble Judges: S.K. Datta, J; G.N. Ray, J

Bench: Division Bench

Advocate: Noni Coomar Chakravarti, Rathindra Nath Das and Prasanta Kumar Ghosh, for the Appellant;Amar Prasad Chakravarti and Milan Chandra Bhattacharjee for Opposite party No. 1, for the Respondent

Final Decision: Dismissed

Judgement

S.K. Datta, J.

Government of India in its Ministry of Defence is the owner of an Engineering Store Depot (Machinery), at Kankinara, shortly known as ESD(M). The said depot is registered as a factory under the Factories Act, 1948 and the workers in the said factory are civilian worker in the Defence services and are governed, inter alia, by Military Engineering Services Regulations (hereinafter referred as M.E.S. Regulations). Prior to February 15, 1965, the working hours of the depot was 43 hrs. excluding rest intervals of 2½ hrs. as follows:

Week **days**

According to the Petitioner, on February 3, 1965, the following notification was issued (Annex. ''C'' to the petition):

Part I

Order Issued by

Lt. Col. D.S. Khainah Engrs.

O.C. E.S.D.(M) Kankinara.

Item 7.

11. Working Hours in ESD(M) Kankinara.

Reference Part I Order No. 9 dated 29.1.65. As directed by E-in-C, Army Head-quarters to work 45½ hours in a week excluding intervals for rest on account of lunch-break the working hours will be observed, with effect, from 15 February, 1965, by ESD(M) Kankinara, including ESP(M) Sub-Depot Kanchrapara as under:

Authority: E-in-C, Army HQ Nos. 50416/E 3 D/1 dated 28 Sep. 64 and 50416/E3 D/1 dated 5 Dec. 64.

Sd/-....

Officer Commanding Major.

2. As a result, the working hours of industrial staff and non-industrial staff in the said depot was increased by ½ hr. on weekdays since February 15, 1965, resulting in an increase of working hours by 2½ hrs. a week or 45½ hrs. a week in place of 43 hours a week. It is obvious that on account of this increase no extra wages for overtime was payable under the Factories Act.

3. The case of the workers in the ESD(M) is that they, have been required to give extra service for, ½ hr. on weekdays in excess of normal hours of work. As such, they are entitled to extra wages calculated on the proportionate basis of wages of normal hours of work. The Officer Commanding ESD(M), being the person responsible for payment of such wages, having delayed to make payment, the workers by separate petitions filed in 1965 before the Authority u/s 15 of the Payment of Wages Act, 1956, for the State of West Bengal (hereinafter referred to as

the Authority) claimed wages so delayed, the basis of the claim as set out in the petition in Form A to the Act as a specimen is as follows:

3. (1) The Applicant''s wages have not been paid for the following wage periods.

15-2-65 to 28-2-65 and 1-3-65 to 31-8-65.

Wages for half an hour worked on all week-days present excepting Saturdays and Sundays during the period from 15.2.65 to 31.8.65 have not been paid, i.e. 57 hours wages due.

The Applicant further stated that the monthly rate of wages (e.g. in case Nani Gopal Bhattacharjee) was Rs. 113 and the value of relief was put in Rs. 32-60 plus Rs. 25 as compensation.

4. This application was contested by the Officer Commanding. E.S.D.(M) Kankinarah, the Petitioner before us by filing a written objection. It was stated therein that the working hours prior to February 16, 1965, was 43 hrs. a week. Since the said date, the working hours have been revised by the Ministry of Labour and Employment as indicated in the notice to 45 hrs. excluding recess per week. Further, no question of extra wages for overtime work arose as under the Factories Act no worker was entitled to claim extra wages for any number of working hours within 48 hrs. and regulating the number of hours of work was in the discretion of the Petitioner before us. The Petitioner accordingly denied the liability for the amount claimed or any portion thereof.

5. The Authority heard the above applications as also similar implications together on evidence and allowed the claims by order dated January 6 1968. The Petitioner moved this Court in revision giving rise to C.R. cases Nos. 589-93 of 1968. The impugned order was set aside and cases, were remanded for disposal by the Authority on further evidence in accordance with the directions contained therein. The Authority thereafter on remand heard the application together and decreed the claim in respect of come of the workers and in respect of the rest directed the Petitioner to calculate and deposit the amount as would be found due, awarding compensation of Rs. 25 in all cases. The Petitioner, instead of preferring appeals therefrom, as provided in law, again moved this Court under Article 227 of the Constitution giving rise to the rules mentioned above. There rules have been heard before us together and will be governed by this judgment.

6. The Petitioner in these rules raised, the contention that the Authority had no jurisdiction to determine the claims under the applications as in respect of such claims, the Authority has not been conferred any power to determine the terms and conditions of employment of the claimants. As the questions raised a controversy on the jurisdiction of the Authority and also the ambit of his power and authority under the Act, we proceed to consider the respective contentions of the parties even though the remedy of appeal was not availed of.

7. Relevant provisions of Section 15 of the Act are as follows:

15. (1) The State Government may, by notification in the, Official Gazette, appoint a Presiding Officer of any Labour Court or Industrial Tribunal, constituted under the Industrial Disputes Act, 1947, or under any...to be the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid in that area, including all matters incidental to such claims;

(2) Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person himself, or any legal practitioner...may apply to such authority for a direction under Sub-section (3):

(3) When any application under Sub-section (2) is entertained, the authority shall hear the Applicant and the employer or other person responsible for the payment of wages u/s 3, or give them an opportunity of being heard and after such further inquiry (if any) as may be necessary, may without prejudice to any, other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit not exceeding ten times the amount deducted in the former case and not exceeding twenty-five rupees in the latter and even if the amount deducted or the delayed wages are paid before the disposal of the application, direct the payment of such compensation, as the authority may think fit, not exceeding twenty-five rupees.

Provided that no direction for the payment of compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to

(a) a bona fide error or bona fide dispute as to the amount payable to the employed person, or....

Section 2(VI) defines ''wages'' 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 overtime 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);

8. The above provisions indicate that the Authority has been conferred with the powers to decide all claims arising out of deduction from wages or delay in payment of wages payable under terms of employment, express or implied, including all matters incidental to such claims. This is subject to the condition that no order for payment of compensation, for delayed wages should be made when the authority is satisfied that there is a bona fide error or bona fide dispute as to the amount payable to the employed person in case of delayed wages.

9. We shall now consider the decisions cited at the bar. In A.R. Sarin Vs. B.C. Patil and Another, it was held that the Authority had no jurisdiction to decide whether the services of an employee had been rightly or wrongly terminated or whether the dismissal was lawful and unlawful. The Authority, it was held, had the jurisdiction to decide what the wages of the employees were and whether there had been a delay in payment of those wages or a deduction from those wages and in order to determine the wages it might be necessary to determine what, the terms of the contract were under which the employees, were employed and under which they were claiming wages, as also whether there was any employment at all. In Anthony Sabastin Almeda Vs. R.M. Taylor and Another, the Authority was considering a case where two contracts of employment were relied upon by the employee and the employer in respect of the claim. The Court held that when there is a dispute as to which is the don tract that governs the relationship of the parties with two rival contracts in the field, the Authority had no jurisdiction to decide which of the contracts should regulate the rights of the parties and though the Authority could determine what was the contract it could not determine which was the contract. The Supreme Court in A.V. D''costa Vs. B.C. Patel and Another, held that the Authority had the jurisdiction to find out the terms of the contract so as to determine what the wages of the employed person were but the Authority had no jurisdiction to determine the question of potential wages. If the claim is that the employee would be entitled to higher wages if his claim to higher grade was recognised, that would not be a matter within his jurisdiction. In Viswanath Tukaram Vs. General Manager, Central Railway and Others, the above, principles were reiterated and in was held that the Authority had the jurisdiction it during the relevant-period there was subsisting employment and the worker was entitled to full wages on the terms of employment.

10. The Supreme Court again in Payment of Wages Inspector Vs. Surajmal Mehta and Another, observed:

...the Authority has the jurisdiction to by matters which are incidental to the claim in question. Indeed Section 15 itself provides that the Authority has the power to determine all matters incidental to the claim arising from deductions from or delay in payment of wages. It is also true that while deciding whether a particular master is incidental to claim or not care should be taken neither to unduly expand nor curtail the jurisdiction of the Authority.

... When the definition of wages was expanded to include cases of sums payable under a contract, instrument or a law, it could not have been intended that such a claim for compensation, which is denied on grounds which, inevitably it would have to be inquired into and which might entail prolonged enquiry into question of fact as well as law was on which should be summarily determined by the Authority u/s 15.

11. A Division Bench of this Court in Shri Kamal Prasanna Roy and others Vs. Shri Maurice Hyam, held that though it would be difficult to lay down any hard and fast or general rule which would afford a determining test to demarcate the field of incidental facts, if a question involves prolonged inquiry or complicated questions of law and fact, the Authority should refuse to exercise its jurisdiction.

12. It is thus obvious that the Authority has the jurisdiction to decide if there is a contract of employment between the parties. If the existence of the contract of employment is established or if there is no dispute about the contract of employment, the Authority has to determine the wages payable under the terms of such employment, whether express or implied, if the terms of employment were fulfilled. But if there is a dispute as to which contract governs the relationship of the parties where two rival contracts are set up, the Authority has no jurisdiction to determine which is the contract or agreement between the parties. The Authority has the jurisdiction to decide actual wages and not potential wages claimed by the employees if such claim is recognised by the employer. While the Authority will decide all matters incidental to the claim, when such claim is disputed on grounds which as a matter of course will lead to prolonged inquiry or investigation into complicated questions of facts and law, it would be presumed to be outside the scope of summary jurisdiction which the Act contemplates in respect of the determination of wages.

13. In the case before us, Mr. N.C. Chakravarti, learned Advocate on behalf of the Petitioner, has submitted that there is serious dispute as to the legality of the claim for work of excess hours and the relevant rules governing the employees do not warrant such payment and these disputes will involve complicated question of fact and law involving prolonged inquiry and interpretation of various rules and orders for which the Authority is not the proper forum tot determination of such complicated questions of law and fact. Mr. A.P. Chakravarti, learned Advocate for the employees, contended on the other hand that there is no dispute about the contract of employment. The only point for consideration is that in view of the admitted position that the employees were required to serve excess hours in addition to normal working hours, the only question is whether under the relevant rules and orders they are entitled to the same as claimed. This determination is merely incidental to the claim and involves no complicated questions of facts or law nor any prolonged inquiry. Accordingly, the Authority has the jurisdiction to determine the claim.

14. After hearing the learned Advocates we are of opinion that at this stage it will be improper to hold that the Authority has no jurisdiction to decide the question involved in determining the claim. As we have seen, once the Authority decided the claim in favour of the employees and the Petitioner moved this Court against such determination. this Court set aside the impugned order and sent back the case on remand for determination in the light of the directions contained in the judgment. It was considered by this Court that the Authority had the jurisdiction to determine the claim after deciding matters incidental to it. The parties accordingly produced before the Authority further evidence in support of their respective cases in addition to the evidence already adduced at the earlier hearing. At this stage, it is too late in the day to take preliminary objection as to the jurisdiction unless in course of examination of the legality of the claim we had that the matter should not have been decided by the Authority in the context of judicial decisions we have noted above.

15. At this stage, we also overrule an objection as to limitation taken by Mr. P.K. Ghosh, learned. Advocate for the Petitioner in some rules, which are all heard analogously. It is true that there is no order condoning the delay in tiling the applications for claim, even so the parties fully participated in the proceedings all through without raising any objection as to limitation which thus must be deemed to have been condoned by implication as also held by the Authority and cannot now be permitted to be agitated at this stage.

16. There is no dispute that the employees are civilians in Defence department and their service is governed by relevant regulations, rules and orders. It is also the admitted position that prior to February 15, 1965, the normal working hours exclusive of rest period was 43 hrs. The working hours of Industrial and Non-Industrial staff of ESD(M) Kankinara, according to the Petitioner, was increased by 1/2 hr. on week-days by the appropriate authority. Such increase in working hours is within the authority and power of the Government who can unilaterally alter the terms and conditions of service as held in Roshan Lal Tandon Vs. Union of India (UOI), . For work rendered for the excess hours, it is submitted by Mr. N.C. Chakravarti, the staff concerned is not entitled to any excess wage as the working hours have been increased by amendment of the terms and conditions of service and it is not a case of extra work for extra wage. Such increase undoubtedly is an alteration of the terms and conditions of service in respect of hours and wages for which possibly an industrial dispute could be raised under the Industrial Disputes Act, 1947, but no relief is available under the Payment of Wages Act.

17. According to Mr. A.P. Chakravarti, the workers since their employment in or about 1943 were required to work only 43 hrs. a week which was or became a condition of service. For the extra work beyond 43 hrs. upto 48 hrs. the workers were entitled to the further wages at ordinary rate while for work beyond 48 hrs. they were entitled to double the ordinary rates. Reliance was placed on Ex. 1(10)

which is in following terms:

The period worked in excess of the normal working hours of an establishment (i.e. excess of 43 hours and upto 48 hours) is regarded as overtime and the individual is admitted overtime pay at the ordinary rates. For work done beyond 9 hours a day or 48 hours a week one overtime pay is paid twice the ordinary rate.

....G or I, M or D No. 67322/AG/GRG 4(C)/3575/D (Lab) of 4 Apv. 53 and E-in-C. No. 27018/11/E 1 D(2) dated 4.6.53.

The document, as it was not complete, was not relied on by the Authority after remand, as also Exs. 1(9) and 1(12) as they were merely extracts. The originals thereof, however, were produced being Exs. 1(19), 1(12) and 1(22) which we shall presently consider. We may mention here that Ex. 1 (23) dated April 4, 1953, relates to sanction for overtime work under the Factories Act and has no relevance to the claim under consideration.

18. On the basis of Exs. 1(33) and 1(34) which speak of classification of employees into categories of Industrial and Non-Industrial staff and on the evidence adduced, it has been found by the Authority that the employees are industrial staff as contended which also is not disputed.

19. The Authority thereafter finds that ESD(M) Kankinara is a registered factory officially termed as workshop. In Ex. 1(24) Standing Orders issued by the Engineer-in-Chief in serial No. 168 in heading Organisation it is provided that ESD''s (Machinery) will be organised into (i) Head Quarters, directing tour groups, viz. (ii) receipts; (iii) issues; (iv) stock control; (v) workshops.

20. Serial No. 165 states that ESD''s (Machinery) handles machinery and plains which lenders it a workshop and the Applicants who work there can rightly be termed as industrial staff in workshop the Authority further found on an interpretation of Ex. 1(19), Clause 1(c) and (d) that the workers in the workshop comprise of industrial and non-industrial staff. Vide also Ex. 1/31, Clause 5, We do not had any infirmly in these findings.

21. It is the undisputed position that (for) working hours in excess of 48 hrs. the workers in such depot will be entitled to overtime wages at twice the ordinary rate, notwithstanding any contract between the parties. For working hours less than forty eight hours no overtime or extra wage is payable under the Factories Act. According to the Applicants, for extra work above 43 hrs. a week upto 48 hours, they as industrial and non-industrial staff are entitled to wages at the ordinary rates under the departmental Rules. This claim has now to be examined. ,

22. Exhibit 1/21 is a Government of India letter dated September 1, 1959, addressed to the C.G.D.P. and others. The said letter in relevant excerpts is as follows:

Sub: Overtime pay calculations of overtime pay under Departmental Rules and Factories Act.

I am directed to say that the President is pleased to decide, in relation of the existing orders on the subject, as noted in the margin that in all cases where overtime pay is admissible to civilian personnel both under the provisions of the Factories Act and under the Departmental Rules the overtime pay will be calculated as under:

(a) For works in excess of normal working hours and upto 9 Hours on any day or 48 hours in a week overtime will be paid at the rate prescribed in the Departmental Rules. For calculating overtime pay under this item only basic pay and dearness pay shall be taken into account.

(b) For work done in excess of 9 hours on any day or 48 hours in a week, overtime will be paid at the rate prescribed in the Factories Act.

[Also vide Item 19 (p. 26) C.R.P.O. (Civil Personnel Routine Orders)].

23. Exhibit 1/22 is a corrigendum dated October 21, 1965, to the above circular substituting sub-para, (1) as follows:

(a) For work in excess or normal working hour and upto 9 hours on any day or 48 hours a week overtime will be paid at the rate prescribed in departmental rules. For calculating overtime pay under this item basic pay, dearness allowance, special pay, personal pay pension...will be taken into account.

(b) This amendment will take effect from 3rd July, 1965.

24. It is thus obvious that the Government recognized normal working works even at below 46 hrs. a week or 9 his a day, but such overtime pay for excess hours within the said period is admissible where it is so provided by relevant rules. We have, accordingly, to examine if under any rule such excess or overtime payment for work in excess of normal working hours is payable. For this purpose we shall have to examine the relevant rules and it will not be safe to rely only on oral evidence unsupported by documents, as such evidence by Government officers without supporting documents would not be binding on Government or acceptable to us. There is also no dispute that service conditions of the workers in the workshop in ESD(M) are mainly guided by Civil Service Regulations, Government of India Orders and Notifications, relevant provisions of Classification Control and Appeal Rules, Stan ding Order of E-in-C and O.C., E.S.D.M., Kankinara.

25. It has been stated that the workers formerly were on daily rates when they joined the service in or about 1943. With the introduction of the Civilian in Defence Services (Revision of Pay) Rules, 1947, they were brought on monthly rates. Under rules contained in Ex. 1/20 the basis was laid down for calculation of (i) duty pay for a day as a fraction of monthly pay and also (ii) the hourly rate of overtime pay. The rules do not indicate that the monthly or daily rate of wages for normal hours of

work was based on work rendered on hourly basis which was however the basis of overtime work only.

26. ESD(M) started in 1944 and the normal working hours all through has been 43 hrs. a week. In 1960 (Ex. 1/15) the normal working hours were increased to 48 hrs. on June 3, 1960, but the same was withdrawn on June 28, 1960. (Ex. 1/16) not on the objection that it was unauthorised but because of improvement in the standard and amount of work. The previous working hours was thereby restored, but it has not been contended nor established that for work in excess of normal hours any extra amount was paid. Earlier by orders Ex. 1 /26 and Ex. 1 /27 status quo in respect of E.S.Ds. and in M.E.S. formations were allowed to be continued. We need not refer to earlier circulars which also establish the position that the normal working hours prior to the material date was 43 hours for workers before us.

27. Mr. N.C. Chakravarti referred to Rule 138 M.E.S. Regulations, 1936, (also in Rule 95 of 1936 Rept.) which provides for overtime pay for the workers in M.E.S. workshop, who come within the purview of Factories Act 1948 under the provisions of the Act. This rule does not affect any department rules whereby overtime wages are made payable though such overtime wages are outside the purview of the said Act.

28. In Ex. 1/42 there is a provision that Industrial personnel are employed on basis of no work no pay and accordingly they are paid on basis of working days/hours less paid proportionately against late arrivals/absence of duty. This, in our opinion does not mean or imply that the monthly rate of wages was paid on basis of calculation of hours of work rendered while the prescribed hours of work was admittedly 43 hrs. a week. If there is no work and when nothing is in credit as leave to a workman obviously no wages would be payable while overtime time is calculated on hourly basis as provided in the rules (Ex. 1/20).

29. Exhibit 1(19) relied on by both parties is an office memorandum dated March 10, 1962, containing the decision of the President about the grant of overtime allowance to Civilian in Defence Service estimates to (i) office staff and (ii) those staff whose prescribed hours and nature of work are comparable to office staff. Clause 2 provides that (i) work in offices are to be so organised as to be capable of being done during normal office hours, (ii) overtime work will be resorted to only when the work is of such urgent nature that it cannot be postponed in public interest to next working day. The special attention of the authorities was drawn to the above two conditions. From this clause it is obvious that overtime work is a notable exception to be resorted to in compelling exigency and it cannot certainly be intended to mean overtime work on all week-days continuing over years in respect of all the employees of the establishment.

30. Cause 4 of this memorandum in Sub-clause (f) states that this order will not apply to Government servants governed by the Factories Act. Clause 6 provides

again rates of overtime allowance and for 45 minutes of excess of the prescribed hours of work, the overtime allowance is nil. In explanation it is stated that such 45 minutes must be in continuation of the prescribed hours of work and will not include a case when the Government servant is recalled from residence to perform overtime work. According to Mr. N.C. Chakravarti, the memorandum does not embrace employees like the Applicants, as they are governed by Factories Act, over which there can be no dispute. Secondly, for first 45 minutes of excess work in continuation of the work in working week-days no overtime is payable. Accordingly, the workers have not been able to establish any rules under which overtime for excess 1/2 hour on week-days in continuation of normal working hours is payable to them.

31. According to Mr. A.P. Chakravarti this memorandum applies to industrial and non-industrial staff of workshop as will be evident under Clause 5(c) and (d) of the said order. In respect of industrial staff in workshop under Sub-clause (c) overtime allowance is ensured for works in excess of prescribed hours at the existing rate of overtime allowance. In Sub-rule (d) for non-industrial staff in workshop the existing rate of overtime allowance is to continue if it is covered by a scheme and if not so covered they may be allowed overtime at same rate of work for work in excess of prescribed hours but not in excess of 48 hrs. As to the first 45 minutes for which no overtime is to be paid, it is said that it relates to first 45 minutes in a week, as otherwise it would offend even the Factories Act and could never have been so intended.

32. Indeed we find it difficult to reconcile the different provisions of this memorandum and such could be said in support of the respective cases of the parties. One aspect is obvious enough and that is the provision for overtime in cases of work beyond prescribed hours upto 48 hrs. a week, though it may be subject to limitations vide Ex.1 or Ex. 1/19 and that it applies to industrial and non-industrial civilians staff of workshop in defence service.

33. These exhibits indicate that for work beyond prescribed working hours, a claim for overtime payment upto 48 hrs. a week or 9 hrs. a day is otherwise admissible subject to departmental rules, in particular Ex. 1/19 dated March 10, 1962. But such overtime work must be in excess of prescribed hours [vide Clause 5(c) and (d)] though upto the limit of 48 hrs. a week or 9 hrs. a day. We have seen that the working hours was increased by the notification referred to above, according to the Petitioner. The notification was annexed to the petition of motion as annex. ''C'' and was referred to in para. 6 thereof. In the affidavit-in-opposition affirmed on behalf of the workers there is no denial about the aforesaid notification. This document was not produced before the Authority who also expressed its difficulty as to the procedure whereby the workers were made to work for extra hours. In course of argument, we enquired of Mr. A.P. Chakravarti to produce the order whereby the workers were required to work for excess hours hut none was available. In the

general rules regarding conditions of service of industrial employees of Army installation in Clause 3 there is a provision for publication of working time. It is stated by G.R. Ramkrishnan in this affidavit of January 28, 1972, that in view of the exemption granted under provisions of the Industrial Employment (Standing Orders) Act. 1946, these rules printed in English and regional languages were not necessary to be circulated. This does not mean that the rules lost their force and the annexed letter of HQ No. 51897/AG/Org-4(c) dated June 15, 1956, indicates that these provisions of the rules would only be deemed to superseded by orders if issued from time to time.

Rule 3 is as follows:

3. Publication of working time. The periods and hours of all classes of employees in each shift shall be exhibited in English and in the principal languages of employees employed in the establishment on a notice hoard or notice boards maintained at or near the gate office, except where an exempting order has been made in pursuance of the powers provided for in the Factories Act.

Subject to the provisions of any laws applicable to these employees for the time being in force, employees may be called upon work in excess of normal working hours according to the exigencies of service on grant of overtime pay/time off in lieu as may be admissible in accordance with the orders in force from time to time.

34. The fate of the claim thus depends entirely on the action of the Government as evidenced by the order whereby the workers were required to work for excess hours. The order as per annex. ''C'' is the only document produced before us which we accept as genuine in the circumstances. A perusal thereof indicates that the working hours was thereby increased to 45 hrs. the excess being 1/2 hr. on week-days. The order is under the authority of the F-in-C and its validity cannot be challenged. For if it is challenged at all, the workers would be at once out of Court in so far as the present applications are concerned. For under the Act wages on the basis of contract of employment only can be enforced through the Authority.

35. On interpretation of the aforesaid order, it appears to us that it is an order increasing the prescribed working hours by (sic) hr. on week-days and not one calling upon the worker to work in excess of normal working hours. If that is the position under the departmental rules relied on by the workers, no overtime is payable for such excess working hour, for it is not any excess work beyond prescribed hours. In reaching the above conclusion we do not find any distinction between ''normal working hours'' and ''prescribed working hours'' and both clauses in our opinion are synonymous. We have already seen that the Government is competent even unilaterally to alter the terms and conditions of service of its employees. There appears to be no illegality in the action taken and in the circumstances the claim of the workers cannot be sustained.

36. While we reach this conclusion, we feel that the case of the workers who have been required to work for excess of 1/2 hr. on week-days for all these years for further wages should receive adequate consideration of authorities. For the purpose the workers have to explore other avenues over which we are not competent to make any suggestion. As a Court of law, we find it not possible to sustain the claim of the workers and as we reject their claim with the hope that the case will be considered by the Authority with the sympathy it deserves particularly in the context of the attending circumstances.

37. In the premises, we make the rules absolute and set aside the impugned orders of the Authority under the Payment of Wages Act in connected cases and the connected applications before the Authority are dismissed. There will be no order for costs in the circumstances.

G.N. Ray, J.

38. I agree.