



Samyukta Prabhakar
Associate

GAUHATI HC ON TREATMENT OF SPECIAL ALLOWANCE

A. Introduction

Gauhati High Court (“**HC**”) in the *Numaligarh Refinery Ltd.* case,¹ held that special allowance paid to workmen does not form part of the ‘ordinary rate of wages’ while calculating overtime wages. Special allowance must be paid as a separate allowance.

B. Facts

1. Numaligarh Refinery Limited (“**NRL**”), Numaligarh Refinery Employees Union (“**NREU**”) and the Assistant Labour Commissioner (“**ALC**”) entered into a memorandum of settlement (“**MoS**”) which included that a special allowance of 10% was to be paid to workmen in a “48 hours a week work schedule.”
2. The issue in question was whether special allowance was to be included in determining ‘ordinary rate of wages’ under the Factories Act, 1948 (“**Act**”).²
3. The Minority Employees Union (“**MEU**”), which was not a signatory to the MoS, claimed that special allowance must be included while computing the ordinary rate of wages for determining overtime wages.
4. The Central Government Industrial Tribunal-cum-Labour Court (“**Tribunal**”) held that special allowance must be included in ordinary rate of wages for determining overtime wages on the ground that the Act only excluded bonus and overtime allowance in such calculation.
5. Aggrieved by the Tribunal’s order, NRL appealed before the HC on the ground that Tribunal could not pass an order which was contrary to the MoS signed between the parties.

C. NREU’s Contentions

1. The Act permits inclusion of special allowance within the meaning of ‘ordinary rate of wages’ of a worker.
2. The MoS applies to MEU as well under the provisions of the Industrial Disputes Act, 1947 (“**ID Act**”).³

D. Reasoning & Judgment

The HC:

1. Analyzed the ‘special allowance’ clause and determined that there are two categories of workers:
 - (a) workers who work 48 hours in a week; and
 - (b) workers who work less than 48 hours in a week.

¹ *Numaligarh Refinery Ltd. and Others vs. Workmen Rep. by The General Secretary, Petroleum Refiners Union, Numaligarh Refinery, Golaghat* (08.09.2022 - HC): W.P. (C) No. 517/2018.

² Section 59(2) of the Act.

³ Section 18(3) of the ID Act.

2. Noted that, as per the MoS, category (a) workers are entitled to additional payment of 10% of their basic pay and category (b) workers are entitled only to their basic pay.
3. Relied on the Supreme Court (“SC”) judgment *Bridge & Roof Co. Ltd.*⁴ which held that: “overtime allowance is not earned by all employees of a concern. It is earned in accordance with the terms of the contract and is excluded from basic wages.” A similar view was held by the SC in the *Manipal Academy of Higher Education*⁵ case.
4. Relied on the *Muir Mills Co. Ltd.* case⁶ which held that “basic wage never includes the additional emoluments which some workmen may earn, on the basis of a system of bonuses related to the production. As the bonuses varies from individual to individual according to their efficiency and diligence, the element of variation excludes the additional emoluments from the connotation of basic wages.”
5. Relied on the judgment in *Kibbha Sugar Company*,⁷ where it was held that opportunity for earning overtime wages is available to all. However, some may avail the opportunity and the others may not. In such a situation, overtime wages cannot be included in the calculation of basic wage as it is not earned by the employees.
6. Opined that special allowance amounts to overtime allowance and is payable only to workmen who are working in the 48 hours a week work schedule.
7. Held that “Special Allowance is basically an overtime allowance for workmen, who work the 48 hours schedule and which are not paid to other workmen, working less than 48 hours a week schedule, this Court is of the view that the Special Allowance cannot be a part of the component of “ordinary rate of wages”, as it is a separate allowance, which is not given to all workmen, but only given to a certain category of workmen, having a nexus to the extra work done.”
8. Set aside the Tribunal’s order and allowed the petition.

This *Counselence Connect* contains information in a nutshell on a recent change in law.

This is not legal advice and must not be treated so. For any clarifications, please contact us at: info@counselence.com.

Past issues of *Counselence Connect* are available on the ‘Newsletters’ page of our website (www.counselence.com)

⁴ *Bridge and Roof Co. (India) Ltd. v. Union of India* (11.09.1962 - SC): MANU/SC/0274/1962.

⁵ *Manipal Academy of Higher Education v. Provident Fund Commissioner* (12.03.2008 - SC): MANU/SC/1186/2008.

⁶ *Muir Mills Co. Ltd., Kanpur vs. Its Workmen* (07.04.1960 - SC): MANU/SC/0244/1960.

⁷ *Kibbha Sugar Company Limited through Gen. Mang. vs. Tarai Chini Mill Majdoor Union, Uttarakhand* (06.01.2014 - SC): MANU/SC/0007/2014.