



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/LETTERS PATENT APPEAL NO. 534 of 2023
In
R/SPECIAL CIVIL APPLICATION NO. 4693 of 2018
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2023
In
R/LETTERS PATENT APPEAL NO. 534 of 2023**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA Sd/-

and

HONOURABLE MS. JUSTICE GITA GOPI Sd/-

| | | |
|---|---|-----|
| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? | No |
| 2 | To be referred to the Reporter or not ? | Yes |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? | No |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? | No |

SURAT MUNICIPAL CORPORATION

Versus

THE SECRETARY, SUDHRAI MAJDOOR UNION (LAL VATVA)

Appearance:

MR KAMAL TRIVEDI, SENIOR ADVOCATE with MR KAUSHAL D

PANDYA(2905) for the Appellant(s) No. 1

MR P C CHAUDHARI(5770) for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE A.S. SUPEHIA

and

HONOURABLE MS. JUSTICE GITA GOPI

Date : 10/10/2024

ORAL JUDGMENT

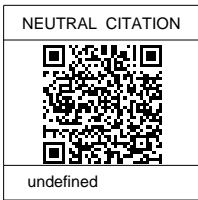
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)



1. **ADMIT.** Learned Advocate Mr. P.C. Chaudhary waives service of notice of admission on behalf of the respondents.
2. The present Appeal is directed against the judgment and order dated 01.07.2022 passed by the learned Single Judge in the captioned writ petition filed by the appellant – Surat Municipal Corporation rejecting the writ petition assailing the judgment and order dated 09.11.2017 passed by the Industrial Tribunal, Surat in Reference (IT) No.75 of 2003.

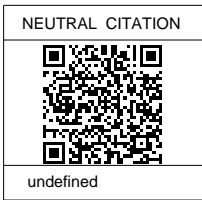
BRIEF FACTS:

3. The respondent–Sudhrai Majdoor Union (Lal Vatva) raised a demand to commence 8-8-8 hour shift in the Fire Brigade Department and to be paid overtime wages for 4 hours by claiming that its members-the employees worked for 12 hours from 14.04.2001. The members of the respondent Union are working in the Fire Brigade Department in the appellant-Corporation on the post of Security Guard, Security Officer, Jamadar, Driver, Fireman etc. The Fire Brigade Department is considered as an emergency department and hence, the employees working in the said Department are duty bound to render their services for 24 hours in different shifts.
4. It is the case of the appellant that for the first time, the Union raised the demand for fixing 8 hours shift instead of 24 hours, and also for payment of longer duty allowance of Rs. 60/- for the employees and Rs.120/- for the officers as



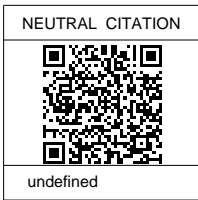
they had to remain on 24 hours duty. The same culminated into Reference (IT) No.98 of 1989. A settlement was arrived at between the Union and the Corporation on 24.10.1989, and Corporation agreed to pay the special pay. The settlement refers that both the demands are consolidated and special pay of Rs.400/-, Rs.350/- and Rs.325/- in case of different categories of employees/officers working for 24 hours was decided to be paid. Accordingly, the Reference (IT) No.98 of 1989 was withdrawn. The settlement was duly approved by the appellant-Corporation.

5. On 30.10.1993, the Union again raised a grievance about working hours of the employees in the Fire Department. It was insisted that the same may be kept at 8 hours and accordingly, the Standing Committee of the Corporation passed a Resolution No.1597 deciding to offer an option to the employee-workman in the Fire Department either to opt for duty of 24 hours or 8 hours duty with a rider in the event that they opt for duty for 24 hours, they would be given special allowances, rent free quarter, exemption from paying electricity bill and also to grant safety kits every year. It is not disputed that none of the employees opted for 8 hours duty, but opted for 24 hours duty with all the benefits.
6. In the year 1999, on 08.07.1999, the respondent Union again persisted in their demand for changing the existing system of 24 hours of duty for the employees engaged in the Fire



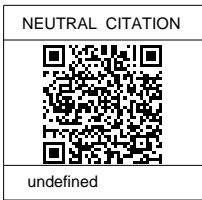
Department. It is the case of the Corporation that while considering the proposal dated 08.07.1999 of the Municipal Commissioner and also the rights of various Unions, including the respondent-Union, on 13.01.2000, unanimously resolved and passed a Resolution No.68 resolving that employees working in the Fire Department of the appellant-Corporation will have 12 hours shift. The said Resolution was approved by the Joint Body of the appellant-Corporation on 22.02.2000 vide its Resolution No.19. Accordingly, the appellant-Corporation passed an order on 07.04.2001 commencing shift of 12 hours in the Fire Department with effect from 14.04.2001.

7. On 11.09.2002, the respondent-Union raised a demand to alter the practice of working hours for 12-12 hours shift to 8-8-8 hours shift and the employees should be paid overtime wages for 4 hours with effect from 14.04.2001. The said dispute culminated into Reference (IT) No.75 of 2003 and which has been decided by the final Award dated 09.11.2017.
8. It is the case of the appellant that during the pendency of the Reference proceedings, a joint decision was taken by the Union and the appellant-Corporation for fixing of 12-12 working hours, which could be ascertained from the deposition of the respondent witnesses. It is further claimed by the appellant-Corporation that on 30.03.2017, the demand



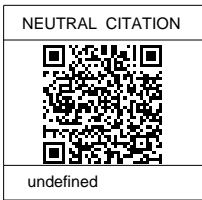
of the respondent-Union for fixing shift of 8 hours in place of 12 hours, the settlement came to be arrived at between the parties and accordingly, the Corporation passed a Resolution No.103 of 2017, *inter alia*, approving Resolution No.274 of 2017 passed by the Standing Committee by resolving from the first date of next month, i.e. 01.04.2017, resolving that there will be shift of 8 hours in place of earlier system of 24 hours.

9. It is also stated that on 01.05.2017, the Industrial Tribunal partly allowed the award below Exhibit 80 in terms of the settlement between the parties and as conveyed in the Resolution of the Corporation and accordingly from 01.04.2017, 8-8-8 hours shift had commenced.
10. Thus, it is contended by the Corporation that despite the respondents having agreed to work in 12-12 hours shift from 01.04.2017 and they are also paid special allowance, the Industrial Tribunal has directed the appellant-Corporation to pay overtime to the employees working in the Fire Department with effect from 14.04.2001 to 30.03.2017, by assuming that that they had worked for 12 hours a day.
11. The appellant-Corporation by filing the captioned writ petition, as mentioned above, has assailed the impugned judgment and award dated 09.11.2017, which is rejected giving rise to filing of the captioned LPA.



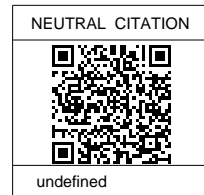
SUBMISSIONS ON BEHALF OF APPELLANT-CORPORATION:

12. Learned Senior Advocate Mr. Kamal Trivedi appearing for the Corporation has submitted that right from the year 1989, the respondent-Union has been raising the dispute time and again with regard to the shift either for 12-12 hours or 8-8-8 hours. It is submitted that the Tribunal as well as the learned Single Judge has failed to appreciate that shift of 8-8-8 hours commenced in view of the consensus arrived at between the parties. It is submitted that the Tribunal fell in error in issuing the directions for payment of the allowances / overtime from 14.04.2001 to 30.03.2017 by ignoring that the respondent-Union in the year 1999, had insisted for changing the system of 24 hours of duty and introducing the shift of 12-12 hours and accordingly, the allowances were also paid at the relevant time as per the settlement. It is submitted that on the 3rd occasion, on 11.09.2002, the respondent-Union had raised a dispute about 8-8-8 hours shift instead of 12-12 hours shift, upon which also consensus was arrived at between the Corporation and the respondent-Union.
13. While referring to the evidence of the workman who deposed on behalf of the Union, and who had worked in the Fire and Emergency Department namely Dinesh, it is submitted by Senior advocate that he has admitted that the shift of 12-12 hours was arrived at due to the consensus between the respondent-Union and the appellant-Corporation. It is submitted that one of the witnesses – Nileshkumar Manubhai



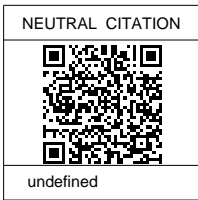
Dave, who was working in the Fire and Emergency Department and is a witness of the respondent Union has admitted that out of 12 hours shift, they had worked for 7-8 hours on very few occasions and in case of emergency only, they have to work for more than 8 hours. It is submitted that it is admitted by the witness that he has never worked for more than 12 hours and none of the employees or members of the Union had resisted the settlement/contract arrived at between the Union and appellant Corporation.

14. Learned Senior Advocate Mr. Kamal Trivedi has also referred to the deposition of the witness of the Corporation viz. Mr.Pankajbhai Madhavbhai Patel, who was the Chief Fire Officer, has asserted that the employees of the Fire Department never worked for more than 8 hours and they are working less than 8 hours and hence, the Union cannot claim the allowances by asserting that in fact, they had worked for more than 12 hours. Similarly, he has referred to the deposition of another witness Sanjaykumar Acharya, who was working as Deputy Chief Officer. It is submitted that in the wake of the evidence which was adduced before the Tribunal, the Tribunal has erred in directing the Corporation to pay overtime wages for 4 hours without actually examining the evidence in this regard and has submitted that the learned Single Judge has also committed an error in confirming the judgment and award passed by the Industrial Tribunal. It is also submitted that the employees working in



the Fire and Emergency Services Department of the Corporation is an emergency service and hence, they have been provided residential facilities to attend emergency cause and when it is generally stated that there is 12-12 hours shift of the employees, the same would not mean that the employees are working round the clock for 12 hours, and to establish the factum of having worked for 12 hours continuously, the respondent-Union was required to address the same by leading cogent evidence, which is not on record.

15. It is contended that the Corporation has not approved any Resolution passed by the Standing Committee making payment of overtime wages to employees of the Fire and Emergency Services Department. It is also submitted that the Tribunal has misinterpreted the order dated 07.04.2001, in view of the Resolution No.19 dated 22.02.2000 addressing the General Body's Resolution No.68 dated 13.01.2000.
16. While referring to the findings of the learned Single Judge, it is submitted by learned Senior Advocate Mr. Kamal Trivedi that the learned Single Judge without appreciating the evidence on record adduced by the witnesses of the Union has erred in confirming the award passed by the Tribunal. It is submitted that the learned Single Judge has ignored the very fact that the Corporation while fixing 12-12 hours shift in the Fire and Emergency Services Department has not referred to any payment of overtime wages. It is submitted

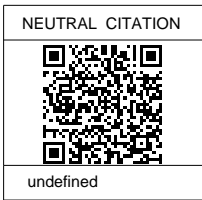


that in fact the minimum rate of wages for the employees working in the Fire and Emergency Services Department of the Corporation has never been fixed by the State Government under the provisions of Minimum Wages Act, 1948 inasmuch as the entire pay structure meant for the employees of the Corporation is governed by the Gujarat Civil Services (Pay) Rules, 2002 on the basis of the approval of the State Government from time to time. It is contended that the Minimum Wages Act, 1948 is not applicable to the Corporation and hence, the provisions of Section 14 of the Minimum Wages Act, 1948 will not apply to the appellant Corporation, which defines “overtime”. Thus, it is urged that the Tribunal as well as the learned Single Judge have travelled beyond the pay structure adopted by the Corporation meant for its employees.

17. In support of his submissions, learned Senior Advocate Mr.Kamal Trivedi has placed reliance on the judgment of the Supreme Court in the case of Municipal Council, Hatta vs. Bhagat Singh and Ors., (1998) 2 S.C.C. 443. Thus, it is urged that the judgment and award passed by the Industrial Tribunal, Vadodara allowing the Reference as well as the order passed by the learned Single Judge confirming such award may be quashed and set aside.

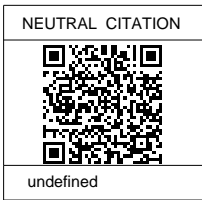
SUBMISSIONS ON BEHALF OF THE RESPONDENT-UNION

18. While opposing the submissions advanced by learned Senior



Advocate Mr. Kamal Trivedi, learned Advocate Mr. P.C. Chaudhary appearing for the respondent-Union has referred to the observations recorded by the Industrial Tribunal in the impugned award and has submitted that the order passed by the learned Single Judge confirming the award may not be interfered with as the same is precisely passed. Learned Advocate Mr. P.C. Chaudhary has submitted that in fact, the Corporation has filed the captioned writ petition challenging the award on the ground that there is a consensus between the appellant-Corporation and the Union with regard to the 12-12 hours shift however, no such settlement or concession has been arrived at between the Union and the Corporation and accordingly, an affidavit is also filed to that effect. It is submitted that as per the provisions of the Minimum Wages Act, 1948 more particularly, Section 14 read with Rule 25 of the Minimum Wages Act, 1948, the members of the Union are entitled for overtime wages.

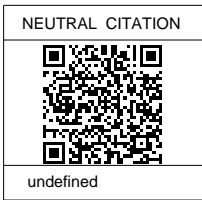
19. Learned Advocate Mr. P.C. Chaudhary has submitted that the Resolution passed by the Corporation on 14.10.2001 for fixing the working hours for 12 hours is impermissible and hence, the Union raised a dispute, which has culminated into Reference (IT) Case No.75 of 2003. It is submitted that two demands were raised by the Union that the employees working in the Fire Department should be employed in 8 hours working shift and 8 hours working shift should commence in the Fire Department since they are supposed to



work for 12 hours from 13.01.2000 and hence, they are entitled for difference of wages for extra 4 hours. It is submitted that with effect from 14.04.2001, the working of 12-12 hours shift was commenced and accordingly, the employees are entitled for differential amount of 4 hours of overtime wages. It is submitted that subsequent to 13.04.2001, the Corporation has agreed to continue 8-8-8 hours shifts. While placing reliance on the judgment of the Supreme Court in the case of Management of Singareni Collieries Company Limited, Kothagudam vs. Workmen of Singareni Collieries Company Limited, 2002 (9) S.C.C. 414 and Chairman Railway Board vs. T. Vittal Rao, (2006) 2 S.C.C. 467, it is submitted that the Supreme Court has held that the employees, who are working for overtime, are entitled to overtime wages and it is urged that the appeal may be rejected.

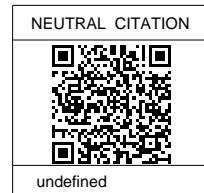
ANALYSIS AND CONCLUSION:

20. We have heard the learned advocates appearing for the respective parties at length. The written submissions submitted by them are also perused. The entire dispute before the Industrial Tribunal and before us and as examined by the learned Single Judge stems out of the demand made by the Union addressing a letter dated 11.09.2002 to the Assistant Labour Commissioner to replace the existing structure of 12-12 hours shift to that of 8-8-8 hours shift, and all the employees working in the Fire Department should be paid



differential amount of overtime wages of 4 hours with effect from 14.04.2001. The said demand culminated into Reference (T) Case No.38 of 2003. The terms of Reference also are in line with the demand. Vide Part-Award dated 01.05.2017 passed below Exhibit 80 in Reference (IT) No.75 of 2003, with regard to demand No.1 which pertains to re-fixation of 8-8-8 hours shift, it was held that the dispute has been amicably settled, and for examining demand No.2, the Reference proceedings have been further adjourned. Thus, so far as the demand No.1 is concerned it was agreed between the Corporation and the Union that from 14.04.2017, the 8 hours shift will commence. Part 1 of the award is passed in view of the purshis tendered by the Union on 29.04.2017. The same categorically refers that so far as the demand of overtime is concerned, no settlement has been arrived upon.

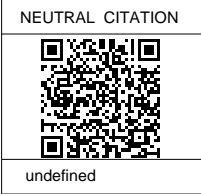
21. When the matter was further scheduled for hearing for rest of the demand i.e. for differential amount of overtime wages for 4 hours for the period from 14.04.2001 to 13.04.2017, the Corporation has opposed the same by examining the witnesses. It was contended before the Industrial Tribunal, and before the learned single judge and before us also that the Union cannot demand the overtime wages for working for 12-12 hours shift since the shift of 12-12 hours was introduced on a consensus and for that, the appellant-Corporation was already paying the additional facilities such as rent and tax free quarters, free electricity and special



allowance. However, vide final award dated 07.11.2017, the Tribunal ordered for payment of overtime wages w.e.f 14.04.2001 to 30.09.2017.

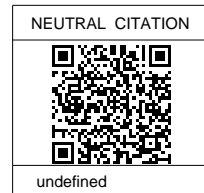
22. At this stage, we may succinctly state the demands and settlements arrived at between the Corporation and the Union:

| Demand | Settlement |
|---|--|
| Dated : 23.08.1989 to enhance Long Duty Special Pay since employees were working for 24 hours, and also increased pay scale, and to take actual duty for 16 hours and with total exemption of 8 hours duty. | Dated 24.10.1989. Special Pay at the rate of Rs.400/-, Rs.350/- and Rs.325/- for different categories of employees/officers w.e.f.01.01.1986 granted for 24 hours. |
| Demand in 1993 for working for 8 hours shift | Dated :30.10.1993: Option was given to the employees for 24 hours and 8 hour shift. For 24 hours shift all allowances were continued, whereas for 8 hours no allowances or special pay was paid, and the employee has to remain in staff quarter after completion of 8 hour shift as standby for which they will not be paid any extra allowance, and in case they have worked for more than 8 hours, at the end of the month for extra 8 hours, they will be given one day extra leave. |
| Dated 10.04.1999 for taking the work for 8-8-8 hours only | After considering the staff strength and the set-up expenditure and the financial burden, the Commissioner, recommended the Corporation for 12-12 hours shift vide his report dated 08.07.1999. The standing Committee met on 06.01.2000 with the Union leaders and passed Resolution no.68/2000 by consensus and it |



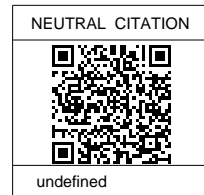
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|--|---|
| | was recommended to implement 12-12 hours shift. The Corporation passed an order dated 07.04.2001 implementing 12-12 hours shift w.e.f 14.04.2001. |
| Dated 11.09.2002: demand for overtime wages from 14.04.2001 and for commencing 8-8-8 hours shift | Culminated into Reference No.75 of 2003. Settlement arrived for 8-8-8 hours shift w.e.f 01.04.2017. however, no settlement for overtime wages, hence, the impugned award dated 07.11.2017 directing for overtime wages. |

23. The aforementioned statement will elucidate that the demand for the working hours shift by the respondent-Union has remained in the state of flux. In the year 1989, the Union had demanded special pay for longer duty since they were working for 24 hours, and demand was also made to convert 24 hours duty to 16 hours duty, and exemption of 8 hours duty from 16 hours. The demand culminated into settlement dated 24.10.1989 with enhanced special pay for longer duty, hence Reference (IT) No.98 of 1989 was withdrawn. Similarly, in the year 1993, when the demand was made for 8 hours, an option was given to the employees either to work for 24 hours shift with all the allowances such as special longer duty allowance, rent free and tax free quarters, exemption from payment of electricity bill, or for 8 hours duty without any allowances. It is asserted by the Corporation and not denied by the respondent-Union that none of the employees in Fire Department chose to opt for 8 hours shift, and continued



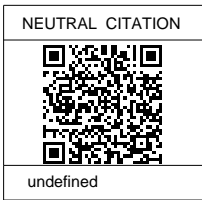
with the option of 24 hours duty with all the allowances.

24. Again in the year 1999, on the demand by Union, the shifts were changed from 24 hours to 12-12 hours w.e.f 14.04.2001. Thereafter, the genesis of the present proceedings was laid down by the Union in the year 2002 by demanding overtime wages w.e.f 14.04.2001. 12 hours shift was altered to 8 hours shift by way of settlement, but the issue of overtime wages was not resolved.
25. The conspectus of the foregoing facts is that the Corporation was paying long hours duty allowance coupled with other amenities like rent free and tax free quarters and exemption from paying electricity bills if the members of the Union opted for 24 hours shift. For 8-8-8 hours shift, such allowances and amenities were not available. When such option was given in the year 1993, it is not disputed that the employees opted for 24 hours shift with all allowances and amenities instead of 8 hours shift.
26. It is pertinent to note that 12 hours shift was only introduced w.e.f. 14.04.2001 with consensus, and the overtime is claimed from the said date. It is not claimed by the Union that prior to the said date, though the shift was of 8 hours, they were doing their duty for 12 hours. 8 hours shift was introduced in the year 2017. The statement of demand and the dispute, which was referred by the



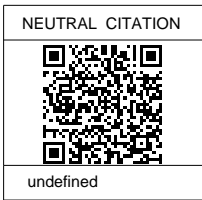
Government vide order dated 22.08.2003 related to the demand of overtime for 4 hours on the pretext that the employees were working for 12 hours, they should be paid overtime. Thus, there was no shift of 8 hours in existence at the time of raising the demand however, the Union demanded over time of extra 4 hours, as if though it was agreed upon by the Corporation for 8 hours shift, they had to work in 12 hours. The 8-8-8 hours shift has been implemented for the first time in the year 2017. Thus, it becomes necessary to prove that though there was 8 hours shift in existence, when the demand was made in the year 2003, the members of the respondent-Union were actually doing duties in 12 hours shift since 2001. Prior to the year 2000, there existed 24 hours shift and 8 hours shift. The option was given to the employees to either work for 24 hours with all the attached allowances and amenities or for 8 hours without it. The employees did not choose for 8 hours.

27. It is not in dispute that special allowance and the amenities which have extended to the workers or employees of the Fire Department have not been extended to any other employee of any other Department such as long duty hour pay, residential facilities with no rent and no tax, and no payment of electrical power, use of machinery. In order to arrive at a suitable finding about the working hours of the shifts, the respondent Union examined its witness. One of the witnesses –Dinubhai Chotubhai Naik, who was serving as a Driver-cum-



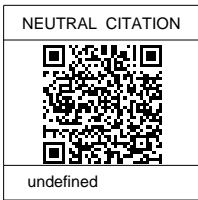
Operator in the Fire and Emergency Department, has been examined in the proceedings at Exhibit 19. It is deposed by him that when he was working in 12 hours shift, he has surrendered his quarters and was living at his own house. It is also admitted that the employees of the Fire Brigade Department used to work for 24 hours and thereafter, the settlement was arrived at between the appellant-Corporation and the Union on many occasions to convert 24 hours shift into 8-8-8 hours shift. He was cross examined by the Corporation. In his cross examination, he has admitted that he was provided rent free and tax free quarters and in case the tax is not levied, then there would be cost of Rs.3,000/- per month. It is also admitted that such a facility is not given to the employees of other department. He is financially benefited because of living in a rent free and tax free quarters. He has admitted that he has also been paid risk allowance of Rs.325/-, which is not given to other employees of other Departments. He has also admitted that they are doing the work as per the terms of the settlement arrived at between the Union and the Corporation.

28. Another witness – Nileshkumar Manubhai Dave, a Fireman in the Fire and Emergency Services Department has been examined on behalf of the respondent Union. In his cross-examination, it is admitted by him that he is a member of the respondent-Union and there are various Unions in the Corporation. He has admitted that as per the settlement



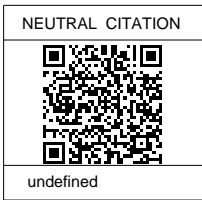
arrived at between the respondent-Union and other Unions, it was decided to have 12-12 hours shift and accordingly, the appellant-Corporation had issued the Resolution. He has admitted that the shift of 12-12 hours, they hardly work for 7-8 hours and in case of emergencies only, they have to do work for more than 8 hours. He has also admitted to the facility of residence provided by the Corporation. It is also admitted that they have to go to the Control Room as and when they are called. He has also stated that they are being paid Rs.325/- as Risk Duty Allowance. He has admitted that he lives with his family in the quarters. He has further admitted that there is no evidence to show that he is working for 12 hours continuously in 12-12 hours shift. He has further stated that they have a Union, which has entered into the terms of settlement with the Corporation. This witness has also admitted that in case of extra work, he is also given extra help.

29. From the deposition of the witnesses of the respondent Union, it is evident that for the shift of 12-12 hours, they are not actually working for 12 hours, but working for 8 hours. It is also pertinent to note that they are also being paid the allowances and other amenities for 12 hours shift, as mentioned herein above. In the settlements arrived at in the years 1989 and 1993, the Corporation had clarified that for 24 hours duty, the employees will be entitled to all the aforesaid allowances and amenities, whereas the same will



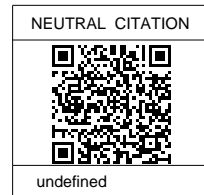
not be paid for 8 hours shifts. The initial demand in the year 1989 made by the Union was in fact relating to long hours duty allowance, which is being paid in the form of special allowance. This vital aspect has not been appreciated by the Tribunal and the learned single judge in its true perspective.

30. The deposition of the witness of the appellant-Corporation Pankajbhai Madhavbhai Patel, who was the Chief Fire Officer is also relevant to consider. He has categorically held that for the shift of 12 hours, none of the employees are working continuously for 12 hours. He has admitted that there is no record available as to the working of 8 hours by the employees of the Fire Department. It is also submitted that it cannot be construed for 12 hours shift that the employees are continuously working for 12 hours. This does not mean that the employees of the Fire Department render their duties for 12 hours every day and in fact, none of the employees of the Fire Brigade Department are working for more than 8 hours. It is submitted that the Factories Act, 1948 is not applicable to the Fire Brigade Department. Similarly, another witness of the appellant-Corporation viz. Sanjaykumar Acharya, who was the Deputy Officer has also reported that only in case of huge accidents, the employees have to work for more than 8 hours.
31. Thus, for answering demand No.2, which is related to working of actual extra 4 hours, the Industrial Tribunal was required to examine the documentary evidence, in light of the



oral evidence. No documentary evidence has been adduced by the Union proving that the employees were doing overtime of 4 hours. The Tribunal has assumed that the employees were actually rendering extra 4 hours duty however, the important aspect which was required to be determined was whether there existed 8-8-8 hours shift since 14.4.2001 till 30.09.2017, and the employees were actually working in 12-12 hours shift. The Tribunal and the learned single judge has failed to appreciate the vital fact that prior to the year 2000, there existed only two shifts of 24 hours with all the amenities and long duty hour allowances and 8 hours shift without such benefits, and the employees chose 24 hours duty with all the benefits.

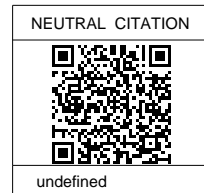
32. A bare perusal of the award passed by the Tribunal reveals that in fact, there is no finding of the Tribunal in this regard and the same based are upon the settlement arrived at between the Corporation and the Union for 12-12 hours shift in the year 2017. The Industrial Tribunal has presumed that since the Corporation has entered into settlement for 12 hours shift, it is presumed that the members of the respondent-Union are actually working for 4 hours and hence, they are entitled to overtime wages with retrospective effect. The Tribunal as well as the learned Single Judge fell in error in holding that such employees are also paid extra allowances for their services, which are paid to other employees of other Departments, though they are working for some hours. The



learned Single Judge also fell in error in ignoring the evidence, which was adduced before the Tribunal. Hence, in absence of documentary evidence and any discussion, on the evidence which has been adduced by the witnesses, the Industrial Tribunal could not have arrived at a definite conclusion that the members of the respondent Union are actually working for extra 4 hours in 12 hours shift instead of 8 hours shifts.

33. With regard to the issue of ‘overtime wages’ being claimed on the substratum of Minimum Wages Act, 1948, it appears that before the Tribunal neither the appellant-Corporation nor the workmen have raised the issue of overtime wages in relation to the Minimum Wages Act, 1948 or the Gujarat Civil Service Pay Rules, but the Union by resorting to the provisions of Section 14 of the Minimum Wages Act, 1948, has claimed overtime wages before the learned single judge, and the learned Single Judge has considered the same in favour the Union by holding that the employees working in the Fire Brigade Department are entitled to statutory overtime wages as per Section 14 of the Minimum Wages Act, 1948.

34. At this stage, we may refer to the decision of the Supreme Court in the case of *Municipal Council, Hatta (supra)*, wherein the Supreme Court, while examining the provisions of M.P. Municipalities Act, 1961 and the provisions of the Minimum Wages Act, 1948 dealt with the issue of payment of



overtime, where the workers have devoted 4 hours and held thus :-

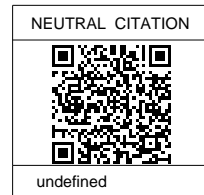
“3. The respondents contended that they would be entitled to overtime under the [Minimum Wages Act, 1948](#) by virtue of [Section 14](#) of the said Act. According to them, service with Local Authority is one of the employments covered by the [Minimum Wages Act, 1948](#). Now, the minimum wages which are prescribed under the [Minimum Wages Act, 1948](#) which would be applicable to the respondents are Rs. 50/- per month. Admittedly, the respondents are getting wages above the minimum wages prescribed under the [Minimum Wages Act, 1948](#). The short question is whether [Section 14](#) of the Minimum Wages Act, 1948 would apply to such persons. [Section 14\(1\)](#) which is relevant for the present purposes is as follows:

[Section 14](#):

"Overtime - (1) Where as employee, whose minimum rate of wages is fixed under this Act by the hour, by the day or by such a longer wage period as may be prescribed, works on any day in excess of the number of hours constituting a normal working day, the employer shall pay him for every hour or for part of an hour so worked in excess at the overtime rate fixed under this Act or under any law of the appropriate Government for the time being in force, whichever is higher."

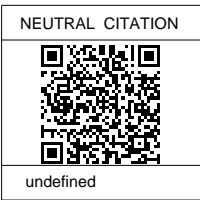
4. There is also an amendment to [Section 14](#) by addition of sub-section (1a) under the Minimum Wages (Madhya Pradesh Amendment and Validation) Act, 1961 being Act 23 of 1961. Sub-section (1a) which is inserted in [Section 14](#) entitles the State Government by Notification to fix the limit for overtime work in a Scheduled employment. This provision is not directly relevant. To claim overtime under [Section 14](#), the following conditions must be fulfilled by an employee (1) the minimum rate of wages should be fixed under the [Minimum Wages Act, 1948](#); and (2) such an employee should work on any day in excess of the number of hours constituting a normal working day. Therefore, overtime under [Section 14](#) is payable to those employees who are getting a minimum rate of wage as prescribed under the [Minimum Wages Act, 1948](#). These are the only employees to whom overtime under [Section 14](#) would become payable. In the present case the respondents cannot be described as employees who are getting a minimum rate of wages fixed under the [Minimum Wages Act, 1948](#). They are getting much more and that too under the Madhya Pradesh Municipal Service (Scales of Pay and Allowances) Rules, 1967. Therefore, [Section 14](#) has no application to them. We have not been shown any other provision under which they can claim overtime.

5. The application under [Section 22](#) of the Minimum Wages Act, is,



therefore, misconceived. The respondents seem to have proceeded on the basis that because employment under any Local Authority is listed as Item 6 in the [Schedule to the Minimum Wages Act, 1948](#) they would automatically get overtime under the said Act. [Section 14](#), however, clearly provides for payment of overtime only to those employees who are getting minimum rate of wage under the [Minimum Wages Act, 1948](#). It does not apply to those getting better wages under other statutory Rules.

35. The Supreme Court has held that where the employees get more than the minimum rate of wages prescribed under the Minimum Wages Act, they would not be entitled to the overtime on the rate of wages fixed under the Minimum Wages Act since they are paid more in view of the pay and allowance of the Municipal Corporation and in such a case, Section 14 of the Minimum Wages Act, 1948 would not have any application. In the present case also, the respondent-employees are being paid as per the rules adopted by the Municipal Corporation at par with the State Government and they are being paid more than the minimum wages as stipulated under the Minimum Wages Act, 1948 hence , the provision to Section 14 which expressly directs payment of overtime to the employees who are getting minimum rate of wages under the Minimum Wages Act, 1948 will not apply. Thus, the learned single judge has erred by invoking Section 14 of the Minimum Wages Act to hold in favour of the members of the Union. Reliance placed by learned Advocate Mr. P.C. Chaudhary in the case of *Chairman Railway Board* (supra) will not apply to the facts of the present case and will not come to the rescue of the respondent Union.



36. Hence, in light of the foregoing analysis and observations, the present appeal **succeeds**. The impugned judgment and award dated 09.11.2017 passed by the Tribunal directing overtime wages for 4 hours from 14.04.2001 to 31.03.2017 is hereby quashed and set aside. The order passed by the learned Single Judge confirming the award is also quashed and set aside.
37. As a sequel, the connected Civil Application stands disposed of accordingly.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(GITA GOPI, J)

CAROLINE