

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

**HON'BLE SHRI JUSTICE SUSHRUT ARVIND
DHARMADHIKARI**

&

HON'BLE SHRI JUSTICE GAJENDRA SINGH

ON THE 10th OF APRIL, 2024

MISC. PETITION No.5802 of 2022

BETWEEN:-

THE CHIEF EXECUTIVE OFFICER/DIRECTOR ZIQITZA HEALTH CARE LTD. THROUGH ITS AUTHORIZED SIGNATORY SHRI SOORAJ TILLORE S/O SHRI GAURI SHANKAR TILLORE, AGED ABOUT 27 YEARS, OCCUPATION : OPERATIONS EXECUTIVE ADD. SUNSHINE TOWER 23RD FLOOR, SENAPATI BAPAL MARG, DADAR (W) MAHARASTRA AND ZIQUITZA HEALTH CARE LIMITED 108 AMBULANCE OFFICE, LUCKNOW (UTTAR PRADESH)

.....PETITIONER

(SHRI KARPE PRAKHAR MOHAN, ADVOCATE)

AND

**108 AMBULANCE KARMACHARI SANGH MADHYA PRADESH THROUGH ITS PRESIDENT SHRI RAM SWAROOP PARMAR NEAR
1. SUNSHINE SCHOL, DEVNAGAR COLONY, JHAAGARIYA RAOD, DISTRICT SEHORE (MADHYA PRADESH)**

2. NATIONAL HEALTH MISSION THROUGH ITS MISSION DIRECTOR LINK ROAD NO. 3, PATRAKAR COLONY, BHOPAL (MADHYA PRADESH)

.....RESPONDENTS

(SHRI GAJENDRA SINGH CHOUHAN, ADVOCATE FOR THE RESPONDENT NO.1)

This petition coming on for admission this day, Justice Sushrut Arvind Dharmadhikari passed the following:

ORDER

With consent of both the parties the matter is heard finally at Motion Stage.

2. The present Petition has been filed by the petitioner under Article 227 of the Constitution of India assailing order dated 23.08.2022, passed by Presiding Officer, Industrial Tribunal, Indore in reference case No.01/ID/2019, whereby claim submitted by Respondent No.1 Union has been accepted and hours of service rendered by Respondent No.1 union in excess of 8 hours has been considered as overtime and Petitioner has been directed to make payment of overtime wages.

3. In brief, facts of the case necessary for adjudication of present petition are being narrated as hereunder :

3.1 Respondent No.1 Union '108 Ambulance Karamchhari Sangh' represents its members employed as Driver/Technician with petitioner company Ziquitza Healthcare Limited, a company registered under the Companies Act, 1956, and is providing ambulance services in almost all the districts and cities of the State of Madhya Pradesh under the name of Sanjeevni 108, Janani Express, Medical Mobile Units and Health Helpline 108.

3.2 The Respondent No.1 Union approached labour commissioner, raising a dispute under Industrial Disputes Act, 1947 regarding non-payment of overtime wages to some of its

employees by the petitioner company. The said Dispute was referred to Industrial Tribunal, Indore vide reference order dated 25.01.2019 after framing 3 questions of reference which are as under:

- “1. क्या आवेदक सेवानियुक्तगण एवं उक्तानुसार अभावेदकगण (1) मे. जिकिराजा हेल्प कंवर लिमिटेड, गोपाल तथा (2) राष्ट्रीय स्वास्थ्य मिशन, म.प्र.. भोपाल के मध्य नियुक्त नियोक्ता संबंध है? यदि हाँ तो क्या उमा दोनों अनावेदकगण अथवा उक्त में से कौन से एक अनावेदक उक्त सेवानियुक्तगण के नियोक्ता है?
2. यदि हाँ तो क्या उक्तानुसार सेवानियोजक संस्थान में कार्यरत सेवानियुक्तगणों पर नोटर यातायात कर्मकार अधिनियम 1961 के प्रावधान लागू होते हैं ?
3. यदि नहीं तो उन्हें किन वैधानिक प्रावधानों के अन्तर्गत "सामान्य कार्य दिवस, कार्य के घण्टे कार्य के घण्टों का विस्तार (स्प्रेड ओवर), अधिसमय मुगतान तथा साप्ताहिक अवकाश की पात्रता होगी? तदनुसार वे किस सहायता के पात्र हैं तथा इस संबंध में सेवानियोजकगण को क्या निर्देश दिये जाने चाहिए?

3.3 Consequently, Respondent No.1 union had submitted Statement of claim before Industrial Tribunal claiming overtime wages of four hours duty, over and above Eight Hours in a day under Minimum Wages Act, 1948 and rules prevalent there under. It was averred by the Respondent No.1 union that they are employed with Respondent No.2 National Health Mission.

3.4 The claim of Respondent No.1 union has been contested by

Petitioner company in their reply on ground that Drivers/technician only act upon emergency calls, which are mostly 2 to 3 per ambulance during a day, therefore they perform their duties for 3 to 4 hours on average per day. 'Ambulances' are emergency Transport vehicles and Petitioner is a Motor Transport Undertaking covered under Motor Transport Workers Act, 1961 and hence as provisions contemplated therein working hours of Respondent no.1 union members can be spread over upto 12 hours which includes 8 hours of duty and 4 hours of resting period. It had been further averred that even if Rule 25 of The Minimum Wages (Madhya Pradesh) Rules, 1958 is considered to be applicable over workers of Respondent No.1's Union, then also claim of Respondent No.1 Union is liable to be rejected, because the said rule also provides for Spread over period of 4 hours over and above 8 hours of working hour during a day. Petitioner company has also averred in reply that provision of Section 91 of Motor Vehicles act, 1988 has not been considered in Misc Petition 4116/2018 and therefore provisions of Motor Transport Workers Act, 1961 are applicable upon Petitioner company and Respondent no.1 union employees in light of Section 91 of Motor Vehicles act, 1988. It has been further averred that since provisions of Motor Transport Workers Act, 1961 are applicable therefore, claim under Section 20 of Minimum Wages Act, 1948 is liable to dismissed.

3.5 Respondent no.2 has remained ex-parte before Industrial Tribunal and before this Court as well, as Despite service of notice, there is no representation on their behalf.

3.6 The Industrial Tribunal has passed order dated 23.08.2022 by

answering questions of references whereby question no.1 has been answered in favour of Petitioner company, holding that Petitioner company is principal employer of Respondent no.1 union employees. Question no.2 has been allowed in light of judgment passed by the **Hon'ble High Court of Madhya Pradesh, Indore Bench in case no. MP 4116/2018, Ziquista Health Care Ltd. Vs. Asst. Labour Commissioner & others** passed on 17.06.2019. Question no. 3 has been decided in favour of Respondent no.1 union granting overtime wages for excess work of 4 hours under Minimum Wages Act, 1948.

3.7 Hence this petition came to be filed on behalf of Petitioner before this Court.

4. Learned Counsel for Petitioner has argued that while deciding reference question No.2, Industrial Tribunal has wrongly relied upon judgment dated 17.06.2019 passed in case No.MP 4116/2018 whereas the aforesaid order dated 17.06.2019 has been rendered *per incuriam*, as the same has been passed without considering the effect of Section 91 of Motor Vehicles Act, 1988, which states that Hours of work of any person engaged for operating a transport vehicle shall be such as provided in the Motor Transport workers Act, 1961. The said ground was raised in the reply filed by the petitioner company but the Industrial Tribunal has not recorded any finding with regard to the aforesaid stand taken by the petitioner, while passing the impugned order. It has been further argued that the Principal act i.e. Motor Vehicle Act, 1988 demands that question for Hours for work shall be governed by Motor Transport Workers Act, 1961 and the subsidiary act i.e. Motor

Transport Workers Act, 1961, provides an exemption under *Section 38* for transport vehicles which are used to transport sick individual. Central Government has notified “*ambulance*” as Transport Vehicle vide notification dated 5/11/2004, i.e after more than 20 years of promulgation of both the acts. It is submitted that *Ambulances* are not exempted under section 38 of Motor Transport Workers Act, 1961. It is further submitted that it is trite in law that whenever any conflict between statutes then *Principles of Harmonious Construction* has to be resorted to. Under present circumstance, the provision of section 38 has to be read alongwith statutes as a whole and the same does not reconcile with objective of the Motor Transport Workers Act, 1961 and Motor Vehicles Act, 1988.

5. It has been further submitted by counsel for the petitioner that learned Tribunal has failed to consider provision of Minimum wages Act, 1948 as well, so far as it relates to Spread Over and Overtime. In Para 19 of impugned order, the Tribunal has mentioned Rule 25 of Minimum Wage Act (Madhya Pradesh Rules) 1958, however, no finding with regard to the effect of that provision in the case at hand has been given. It has been contended that Petitioner company while replying before learned Tribunal have categorically denied taking work from Respondent No.1 employees for 12 hours, however, a contradictory finding has been recorded by learned Tribunal in *Para 20* of the impugned order that it has been admitted by petitioner that workers worked for 12 hours whereas no evidence had been led by Respondent No. 1 to substantiate their claim of overtime work. It has been further

submitted that Driver of Ambulance renders only 3-4 hour of service per day for which he is paid Minimum wages for 8 hours as per law and remaining hours of his service cannot be treated as Working hours for overtime as the same is calculated as *spread over*. No Evidence of employee with regard to Overtime has been adduced before the learned Tribunal. Learned Counsel for the petitioner relied on the judgment of Single Bench of this court passed in case of *Sunil Jaiswal Vs. Ziqitza Health Care Limited [MP 1788/2022]*, wherein with regard to *spread over* and *overtime*, this Court has passed order dated 05.03.2024 and has held as hereunder:

“16. On Careful examination of the impugned order, vis-à-vis the provisions of Rule 24 as aforesaid, this court is of the considered opinion that admittedly, the total work hours which the petitioner was required to put in were eight only whereas, the four hours were provided for the resting period, also termed as spread over period, and the petitioner, in his deposition before the authority has admitted that spread over time was the time for rest. It is also found that the spreading over of the four hours during the twelve hours shift were not fixed but was variable. What was fixed was that the spread over time would be four hours, and it has also been found by the authority, and also reflected by the deposition of the petitioner that the petitioner’s was not required to work continuously for eight hours. In such circumstances, when the resting period itself was not fixed, but it was spread over the entire period of twelve hours in a shift, it cannot be said that the petitioner has worked for over and above eight/nine hours, which ca be termed as overtime. It is also not the case of the petitioner that he had worked over and above twelve hours time, which

was the maximum period including the spread over time in a shift.

17. This court is also for the considered opinion that when the Rule 24 of the Rules of 1950 itself provides that the working day of a adult worker shall be so arranged that inclusive of the intervals of rest, if any, it should not spread over more than twelve hours on any day, and the fact that the number of hours which the petitioner was required to work were eight hours, the respondents were entitled to spread over the eight hours work of with additional four hours as the resting period. In such circumstances, the claim of the petitioner that he has worked for over and above eight hours' shift, for further four hours, which according to him, should be treated as over time, cannot be accepted as accepting the same would amount to infraction of Rule 24 of the Rules of 1950."

6. In support of arguments, Counsel for petitioner has relied upon judgments passed in case of *Workmen Bombay Port Trust Vs. The Trust Port of Bombay [AIR 1966 SC 1201]*, *Gurusharan singh Brijbhushan Singh Vs. Manager, Rewa Transport Services and others [1967 MPLJ 442]*, *DJ Malpani and others Vs. Commissioner of Central Excise, Nashik and others [(2019) 9 SCC 120]*, *State of Uttar Pradesh and others Vs. Jeet S. Bisht and others [(2007) 6 SCC 586]*, *Hyder Consulting Ltd. Vs. Governor, State of Orissa [(2015) 2 SCC 189]*, *Khadi and Village Industries' Commission Vs. B Satyanarayana [(1985) MHLJ 390]*.

7. Per Contra, learned counsel for Respondent No.1 has argued that order dated 23.08.2022 has been passed by Learned Industrial

Tribunal after careful consideration of facts and evidences on record and rightly in light of judgment dated 17.06.2019 passed by this Hon'ble Court in M.P. No.4116/2018, against which Petitioner had filed a writ appeal, but the same was withdrawn. Learned counsel for Respondent no.1 has also relied upon decisions rendered by Division Bench of this Court, wherein issue related to applicability of Motor Transport Workers Act, 1961 and Minimum Wages Act, 1948 has been decided and in light of exemption provided under section 38 of Motor Transport Workers 1961, Petitioner company has been made liable under Minimum Wages Act, 1948. Reliance has been placed upon *order dated 29.05.2020 passed in Writ appeal no. 329/2020 [Ziqitza Health Care Ltd. Vs. Rakesh Singh & Ors.]*, *Order dated 28/04/2021 passed in Writ Appeal no. 457/2020 [National Health Mission Vs. Ramendra Singh Narwaiya and others]*

8. Learned Counsel for Respondent No.1, has further submitted that in furtherance to order passed in Writ appeal No.457/2020, Petitioner company has complied by order passed by Labour court and paid Overtime wages of Rs.1,12,100/- to the employee therein, after contempt case bearing No.1141/2021 was filed against Respondent No.2 and Petitioner company. In light of aforesaid, Respondent No.1 has prayed for dismissal of Petition.

9. Heard learned counsel for the parties and perused the record.

10. Before advertng towards the merits of the case, it is apposite to reproduce relevant provisions of Motor Vehicles Act, 1988, Motor Transport workers Act, 1961 and Minimum Wages act, 1948

& Minimum Wages (Madhya Pradesh) Rules, 1958 which are necessary to be perused for the adjudication of the present petition :-

Motor Vehicles Act, 1988

91. Restriction of hours of work of drivers.—

1 [(1) The hours of work of any person engaged for operating a transport vehicle shall be such as provided in the Motor Transport Workers Act, 1961 (27 of 1961).]

Motor Transport Workers Act, 1961

1(4) It applies to every Motor Transport undertaking employing five or more motor transport workers:

2(f) “Hours of Work” means the time during which a motor transport worker is at disposal of the employer or of any other person entitled to claim his services and includes:

- i) The time spent in work done during the running time of the transport vehicle;*
- ii) The time spent in subsidiary work;*
- iii) Periods of mere attendance at terminals of less than fifteen minutes.*

1)Running time: in relation to a working day means the time from the moment a transport vehicle starts functioning at the beginning of the working day until the moment when the transport vehicle ceases to function at the end of the working day, excluding any time during which the running of the transport vehicle is interrupted for a period exceeding such duration as may be prescribed during which period the persons who drive, or perform any other work in

connection with the transport vehicle are free to dispose of their time as they please or are engaged in subsidiary work;

2) “subsidiary work” means work in connection with a transport vehicle, its passengers or its load which is done outside the running time of the transport vehicle, including in particular -

(i) work in connection with accounts, the paying in of cash, the signing of registers, the handling in of service sheets, the checking of tickets and other similar work;

(ii) the taking over and garaging of the transport vehicles;

(iii) traveling from the place where a person signs on to the place where he takes over the transport vehicle and from the place where he leaves the transport vehicle to the place where he signs off; (iv) work in connection with the upkeep and repair of the transport vehicle; and

(v) the loading and unloading of the transport vehicle;

(3) “period of mere attendance” means the period during which a person remains at his post solely in order to reply to possible calls or to resume action at the time fixed in the duty schedule;

(g) “motor transport undertaking” means a motor transport undertaking engaged in carrying passengers or goods or both by road for hire or reward, and includes a private carrier;

(k) “spread-over” means the period between the commencement of duty on any day and the termination of duty on that day;

13. *Hours of work for adult motor transport workers- No adult motor transport worker shall be required or allowed to work for more than eight hours in any day and forty-eight hours in any week:*

Provided that where any such motor transport worker is engaged in the running of any motor transport service on such long distance routes, or on such festive and other occasions as may be notified in the prescribed manner by the prescribed authority, the employer may, with the approval of such authority, require or allow such motor transport worker to work for more than eight hours in any day or forty-eight hours in any week but in no case for more than ten hours in a day and fifty-four in hours in a week, as the case may be :

Provided further that in the case of a breakdown or dislocation of a motor transport service or interruption of traffic or act of God, the employer may, subject to such conditions and limitations as may be prescribed, require or allow any such motor transport worker to work for more than eight hours in any day or more than forty-eight hours in any week.

15. *Daily intervals for rest- (1) The hours of work in relation to adult motor transport workers on each day shall be so fixed that no period of work shall exceed five hours and that no such motor transport worker shall work for more than five hours before he has had on interval for rest for at least half-an-hour;*

Provided that the provisions of this sub-section in so far as they relate to interval for rest shall not apply to a motor transport worker who is not required to work for more than six hours on that day.

(2) The hours of work on each day shall be so fixed that a motor transport worker is, except in any case referred to in the second provision to section 13, allowed a period of rest of at least nine consecutive hours between the termination of duty on any one day and the commencement of duty on the next following day.

16. Spread-over- (1) The hours of work of an adult motor transport worker shall, except in any case referred to in the second provision to section 13, be so arranged that inclusive of interval for rest under section 15, they shall not spread-over more than twelve hours in any day.

(2) The hours of work of an adolescent motor transport worker shall be so arranged that inclusive of interval for rest under section 14, they shall not spread-over more than nine hours in any day.

Minimum Wages Act, 1948

*13. Fixing hours for a normal working day, etc-
1) In regard to any scheduled employment minimum rates of wages in respect of which have been fixed under this Act, the appropriate government may-*

a) fix the number of hours of work which shall constitute a normal working day, inclusive of one or more specified intervals.

14. Overtime – (1) where an employee, whose minimum rate of wages 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 normal working day, the employer shall pay him for every hours or for part of an hour so worked in excess at the overtime rate fixed under this Act or under any law or the appropriate Government for the

time being in force, whichever is higher.

Minimum wages (M.P) Rules, 1958

25. Number of hours of work which shall constitute a normal working day. -

(1) The number of hours which shall constitute a normal working day shall be -

(a) in the case of an adult.....9 hours

(b) in the case of a child.....4 ½ hours.

(2) The working day of an adult worker shall be so arranged that inclusive of the intervals for rest, if any, it shall not spread over more than twelve hours on any day or such longer period as the Government may notify by general or special order.

11. It is an admitted position in the present case that Concept of Spread Over and Overtime is identical in both the statutes, Motor Transport Workers Act, 1961 and Minimum Wages Act, 1948 and its Rules of 1958. Learned Counsel for Respondent No.1 has not denied the fact that issue with regard to Spread Over and Overtime wages of identically placed employees, who happen to be members of Respondent No.1 Union has been recently decided by Single Bench of this Court in M.P. 1788/2022, vide order dated 05.03.2024, whereby it has been held that period of duty above and in excess of 8 hours upto 12 hours cannot be considered as overtime, when employee has rendered only 3-4 hours of working hours. We are aligned with the view taken by the learned Single Judge, as, Rule 25 of Minimum Wages (M.P) Rules, 1958, itself provides that working day of an adult worker shall be so arranged that inclusive of the intervals of rest, if any, it should not spread

over more than twelve hours on any day and the fact that the number of hours which the Respondent No.1 employees were required to work were eight hours, the Petitioner are entitled to spread over Eight Hours Work with additional four hours as resting period.

12. In light of aforesaid and coupled with fact that Respondent No.1 has not submitted any evidence to substantiate that they have worked overtime over and above 8 hours, resting period of 4 hours cannot be termed as Overtime. Contention of counsel for Respondent No.1 that they had to wait for emergency calls and respond within minutes to urgency and thus same should be treated working hour for overtime, cannot sustain in eye of law, as there is distinction between working hour and resting period as deliberated by this Court in case of **Gurusharan singh Brij Bhushansingh Vs. Manager, Rewa Transport Services and others. [1967 MPLJ 442]**, in which it has been held as hereinunder :-

“7.The essence of the definition is that the worker must be at the disposal of the employer or of any other person to claim his services during certain hours. The definition also emphasises the fact that the hours spent on duty have relation to the running time of the transport vehicle. From the mere fact that at the terminal the petitioner remained in charge of the cash of his master, it cannot be inferred that the petitioner remained at the disposal of the Company and was not free to utilize the time during which the stage carriage halted at the terminal in any manner he liked. This is the reason why the petitioner tried to introduce at the evidence stage a further ground that he was also required to guard the stage carriage during the halt. For the abovesaid reasons, we are of the

view that the petitioner failed to establish that he had worked in excess of the 'hours of work' fixed under the Motor Transport Workers Act and the petition is liable to be dismissed.”

13. It is trite in law that onus to prove claim lies upon claimant himself and in present case as well, it was burden of employee to prove that they have worked for more than 8 hours, excluding 4 hours of spread over period, which they have blatantly failed to do so by leading no evidence in that regard. The impugned order dated 23.08.2022, is silent with regards to applicability of spread over and calculation of overtime wages. Even otherwise, in the judgment dated 17.06.2019 relied upon by Tribunal passed in M.P. 4116/2018, the High Court has remanded back the matter to Authority under Minimum Wages Act, 1948 to decide the entitlement of employee and thereafter to calculate the quantum of overtime wages payable to such employee. In absence of any evidence for hours of work committed by employees such finding is perverse and contradicts provisions of law. Therefore, in considered opinion of this Court, the Industrial Tribunal has committed an error in law in granting overtime wages to the Respondent No.1 employees.

14. So far as, question regarding applicability of Motor Transport Workers Act, 1961 and Minimum Wages Act, 1948 is concerned, Learned Tribunal has relied upon decision passed in M.P. 4116/2018, wherein contention regarding *Section 91* of Motor Vehicles Act, 1988 was not raised and hence the issue was not decided. However, upon perusal of the Reply submitted by Petitioner company before learned Tribunal, they have

categorically made averments raising the aforesaid issue in para 5.9 of reply but no finding with regards to the said issue has been recorded by Learned Tribunal in the impugned order. Motor Transport Workers Act, 1961 derives its power from Motor Vehicles Act, 1988. Admittedly 'Ambulance' has not been defined under any of the Act and therefore Central Government vide notification dated 5th November 2004 have incorporated 'Ambulance' under category of Transport Vehicle, exercising powers conferred by sub section 4 of section 41 of Motor Vehicles Act, 1988. 'Ambulance' is mentioned at serial No. (xiv) under Transport Vehicle tab and defined as – "*Vehicle specially designed constructed or modified and equipped and intended to be used for emergency transportation of persons who are sick, injured, wounded or otherwise incapacitated.*" Upon perusal of judgment in M.P. 4116/2018 and other judgments relied upon by Respondent No.1, the aforesaid definition of 'Ambulance' and Section 91 of Motor Vehicles Act, 1988 has not been considered anywhere. The said decision is therefore passed in *sub silentio* and thus, are not binding precedent. The meaning of a judgment *sub silentio* has been explained by the Hon'ble Apex Court in case of **Municipal Corpoartion of Delhi Vs. Gurnam Kaur [(1989) 1 SCC 101]** also referred in **State of Uttar Pradesh and others Vs. Jeet S. Bisht and others [(2007) 6 SCC 586]**, as under:

“ A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court of present to its mind. The court may consciously decide in favour of one party because of point A, which it

considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point b in his favour; but point B was logically involved in the facts and although the case had specific outcome, the decision is not an authority of point B. point B is said to pass sub silentio.”

15. Now, the question arises whether hours of work of any person engaged in ‘Ambulance’ (Transport Vehicle), should be governed by Motor Transport Vehicle Act, 1961 or Minimum Wages Act, 1948? As per section 91 of Motor Vehicles Act, 1988, the answer to that question will be Motor Transport Workers act, 1961. However, in MP 4116/2018 (order dated 17.06.2019), the learned Single Judge has held that provisions of Minimum Wages Act, 1948 are applicable, since as per Section 38 of Motor Transport Workers Act, 1961 an exception is provided, which reads as under:

*“Exemptions.--(1) Nothing contained in this Act shall apply to or in relation to any transport vehicle--
(i) used for the transport of sick or injured persons;
(ii) used for any purpose connected with the security of India, or the security of a State, or the maintenance of public order.*

It is transpired from the abovesaid provision that, any transport vehicle which is used for transport of sick or injured persons must be exempted from provisions of the act.

16. It is apparent that there is a conflict between two statutes namely Motor Vehicles Act, 1988 (parent Statute) and Motor Transport Workers Act, 1961. Therefore, it is an essential rule for

interpreting statutes with regards to Harmonious Construction, that when there are inconsistencies, we should try to reconcile the conflicting parts so that one part doesn't negate the purpose of another and the Court should interpret the laws in a way that removes the inconsistency and allow both provisions to remain in force, working together harmoniously. The goal is to give effect to all the provisions. To avoid conflicts, the interpretation of the statute should be consistent with all parts. Section 91 of Motor Vehicles Act, 1988 speaks about '*hour of work*' and Section 38 of Motor Transport Workers Act, 1961 exempts only Transport Vehicle which are used to transport sick or injured person, however, does not specifically mentions '*Ambulance*' which is used for 'emergency' purposes only. Therefore, it would be necessary here to interpret the provisions harmoniously and when done so, in our opinion, only for purpose of counting '*Hour of Work*' of any person engaged in Ambulance service provisions of *Motor Transport Workers Act, 1961* should be made applicable and for any other liability arising out of the said act, *Ambulances* are exempted under Section 38 of the Act.

17. Admittedly, *Motor Transport Worker Act, 1961* and *Minimum Wages Act, 1948* are equally beneficial legislations for both the employees and employer with cognate provisions. The only difference comes down to counting of 'Hour of Work'. In *Motor Transport Worker Act, 1961* the same is elaborately defined under Section 2 (f) of the act, which speaks about '*Running Time*', '*Subsidiary Work*' and '*Period of mere attendance*'. In *Minimum Wages Act, 1948*, no such elaborate classification of 'Hour of

Work' has been elucidated except the fact that for 9 hours of work the working day of an adult worker be so arranged that it includes 1 hour of rest and shall not spread over more than twelve hours on any day. Even maximum working hour in both the acts is prescribed as 12 hours which includes 8 hours of working hour and 4 hours of spread over period. Therefore, to maintain harmony between statutes and convenient interpretation, it will be justified to hold that for any worker engaged in Ambulance, 'hour of work' shall be determined as per relevant provision of *Motor Transport Worker Act, 1961* and for all other purposes it is exempted from the said Act.

18. Accordingly, In view of the foregoing discussion, the Petition is **allowed** and **Disposed off** in above terms and impugned order dated 23.08.2022 passed by learned Industrial Tribunal is hereby **set-aside**.

No order as to costs.

(S.A. Dharmadhikari)
Judge

(Gajendra Singh)
Judge

Aiyer*