IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION

Present : Hon'ble Justice Rajasekhar Mantha
And
Hon'ble Justice Rai Chattopadhyay

F.M.A. 766 of 2025

With

CAN 1 of 2025

And

CAN 2 of 2025

And

CAN 3 of 2026

Nihar Ranjan Kanjilal & Ors.

Versus

National Industrial Tribunal, Kolkata & Ors.

For the appellants-	Mr. Sardar Amjad Ali, Sr. Advocate Mr. Samir Kumar Ghosh
For the added Appellant/Bombay Mint-	Mr. Kallol Basu Mr. Suvodeep Bhattacharyya Mr. Nilanjan Pal Mr. Atreya Chakraborty
For the Union of India-	Mr. Arup Nath Bhattacharyya Ms. Sreetama Biswas Mr. Arya Bhattacharyya

Hearing concluded:- 15th July 2026

Judgment pronounced on :- 20th July, 2026

RAJASEKHAR MANTHA, J.

1. This intra-court appeal is directed against the judgment and order dated May 20, 2025, passed by a learned Single Judge of this Court, whereby the award of the National Industrial Tribunal, Kolkata, dated July 30, 2020, in Reference Case No NT-03 of 205 was upheld. By the impugned award, the learned Tribunal rejected the appellants' claim for a 19% salary hike, a demand asserted by the mint workers as a purportedly agreed condition precedent, for increasing their weekly working hours from 37.5 hours to 44 hours.
2. The mint workers claim that the general manager of the three mint offices at Calcutta, Bombay, and Andhra Pradesh has promised them that their claim for a salary hike of 19% will be 'favourably considered' by the Department of Expenditure, Finance Ministry, Government of India. The latter, therefore, is bound to grant the said salary hike.
3. The question that falls for our consideration is whether the General Managers of the respective mints possessed the requisite authority or jurisdiction to bind the Department of Expenditure, Finance Ministry, Govt. of India to a definite 19% salary hike for the workmen of the aforesaid three mints.

FACTS

4. India has four mint factories/units i.e. in Calcutta, Bombay, Andhra Pradesh, and at NOIDA in Uttar Pradesh. They are managed and supervised by Security Printing & Minting Corporation of India Ltd. The said Corporation is wholly controlled and managed by the Department of Economic Affairs, Ministry of Finance.

5. On 1st, October, 1951, the mint workers at the Calcutta mint office found that their muster roll/wage register for the first time prescribed the working hours is **40 hours, per week** as opposed to the hitherto existing **37 hours and 30 minutes per week,** since its establishment in 1757. No corresponding increase in salary was, however, announced. The mint workers, therefore, continued to work for 37 hours and 30 minutes per week in the month of October, 1951.
6. Consequently, the workers started to receive a reduced salary for the month of October, 1951. They filed PWA Case No. 353 of 1951, before the Payment of Wages Authority, Calcutta, claiming illegal deduction of salary. By order dated August 13th, 1952,the first Authority under the Payment of Wages Act, 1936, directed for refund of the deducted sum to the mint workers because 'the mint authority increased the working hours without proposing a corresponding salary increase'.
7. At this stage, the workers point out that the first authority in the order dated August 13th, 1952, has held that the Calcutta mint office and workers has an implied contract i.e. the latter will work for 37 hours and 30 minutes in a week. This order was affirmed in the appeal, preferred by the mint authority.
8. Meanwhile, the 4th pay commission recommended an increase of working hours to 44 hours per week in the mints offices. Accordingly on 16th January, 1988,the Calcutta Mint issued a notice under Section 9A of the Industrial Disputes Act, 1947, for increasing the working hours from 37 hours, 30 minutes to 44 hours per week.
9. The Calcutta mint workers filed W.P. No. 9523 of 1990 challenging the said notice under Section 9A (supra), which was dismissed, for

availability of an alternative remedy before the Industrial Tribunal. In an intra court appeal preferred there against, the said notice was stayed. The said appeal was subsequently withdrawn. The stay thus stood vacated.

10. On April 9th, 1994, the 5th Pay Commission was constituted. Discussions were held with all stake holders in connection with the increase in the working hours of the mints offices. The discussions are recorded in paragraphs 66.26, 66.27, 66.28, 66.29, 66.30, 66.31, 66.32, 66.33, and 66.34 of its report. The summary of the discussions is as follows:-

a) The mint workers are pursuing court cases challenging the increase in their work hours. In first spell of the litigation, the Court stayed the increase of working hours since there was no corresponding increase in salary.

b) The infrastructure for manufacturing coins, currency notes and other products and the working conditions in the mint offices have improved over the decades and centuries. The mint workers, therefore, should receive a higher pay scale for working 44 hours per week.

c) The mint workers should now work for 44 hours per week. The work schedule of 37 hours and 30 minutes per week was fixed at a time when the mint offices did not have cutting edge technology and machines or improved working conditions.

d) The working hours at the four mint offices should also be rationalized.

11. The percentage of salary increment, recommended by the 5th pay commission, is lesser than the claim for a 19% salary hike. Accordingly, a Joint Action Committee comprising mint workers from Calcutta, Bombay and Andhra Pradesh was constituted to canvass the need for 19% salary hike. The mint workers' Union in Calcutta, Bombay, and Andhra Pradesh called for a strike at the mint offices, by notice dated February 18th, 1998.

12. Consequently, the General Managers and representatives of Calcutta, Bombay, and Andhra Pradesh mint offices met with the said Joint Action Committee at New Delhi on April 15th, 1998, where the following were discussed and agreed to-

    a) The mint workers will work for 44 hours per week as recommended by the 5th pay commission;

    b) The mint authority will extend all the benefits/salary increments as per the 5th pay commission;

    c) The said pay scale will be enforced as and when the mint workers start working for 44 hours per week.

    d) The demand of the workmen for salary hike of 19% will be taken up with the Department of Expenditure, Finance Ministry, for <u>favourable consideration</u>.

13. Point no. 7 of the said meeting directed the concerned General Manger of the respective mints to implement the aforesaid terms of discussion. Pursuant thereto, on May 5th, 1998, the parties herein confirmed the minutes of discussion recorded in the meeting held at New Delhi on April 15th, 1998 before the Regional Conciliation Officer. The Notice of Strike was withdrawn by the workmen.

14. By order dated May 13th, 1998, the workers of the Calcutta mint office were allowed to withdraw FMA no. 466 of 1992, which was filed challenging the notice under Section 9A dated 16th January, 1988, as already stated hereinabove. The minutes of the meeting dated 15th April 1998 and conciliation report dated 5th May, 1998, were placed on record in support of the said withdrawal.

15. Since the Department of Expenditure of the Ministry of finance was yet to decide upon the demand of the workmen for increase in salary hike of 19%, the Mint Union of Kolkata moved the Central Administrative Tribunal at Kolkata. By order dated Feb 8th, 2001 passed in I. A. 74 of 2001 and O.A. 115 of 2001,theCentral Administrative Tribunal, Calcutta, directed the mint office at Calcutta to take steps for before the Department of Expenditure, Finance Ministry, Govt. of India to decide the workmen's claim for a salary hike of 19%.

16. Accordingly, on 15th, May 2001, the Department of Expenditure, Govt. of India, considered and rejected the claim of the additional salary increment of 19%. The said department held that any additional increment to the salary of mint workers would result in discriminating other similarly situated Central Govt. Employees.

17. The said rejection was referred to conciliation. On June 6th, 2005, the Conciliation Officers across India reported failure of conciliation and that no settlement could be arrived at between the mint workers and mint authority.

18. By Order dated June 6th, 2005 passed by the Ministry of Labour, Government of India, made a reference to the National Industrial

Tribunal to decide whether the refusal to grant a 19% salary hike for working 44 hours per week is illegal.

FINDINGS OF THE NATIONAL TRIBUNAL, CALCUTTA:-

19. By the award dated July 30th, 2020, the National Industrial Tribunal, inter alia, held the following:

   a) The decision of the First and appellate Authority at Calcutta under the Payment of Wages Act, 1936, does not operate as res judicata. It merely decided that increase of working hours without corresponding salary hike is unsustainable. The claim for a 19% salary hike was not before the said authority.

   b) The general manager of the respective mint offices could not have not promised for 19% salary hike. It was at best agreed to be placed before the Department of Expenditure, Finance Ministry, Govt. of India for 'favourable consideration'. The said expression did not confer and legal right to receive a salary hike of 19%. There was no promissory estoppel enforceable against the Mint management.

   c) The minutes of meeting dated April 15th, 1998 and conciliation Report dated May 5th, 1998, constitutes an agreement between the workers and three mint offices, whereby the workers were to work 44 hours per week and receive a higher salary as per the 5th pay commission.

d) Hence, a fresh issuance of a notice under section 9A of the ID Act, 1947 announcing the increase of working hours, was not called for in view of the proviso to the section 9A.

e) Under the Factories Act, 1948, the mint offices can increase the working hours to 44 hours per week since the said statute has fixed 48 hours of work per week as the maximum limit.

20. The single Bench has affirmed the aforesaid findings of the Ld. Tribunal in the impugned judgement dated May 20th, 2025

ANALYSIS OF THIS COURT:-

21. We have heard Mr. Sardar Amjad Ali, Ld. Sr. Counsel, appearing for the appellant nos. 1 and 2, Mr. Kallol Basu, Ld. Counsel, appearing for the added appellant no. 3, the Bombay Mint Employees' Federation, and Mr. Arup Nath Bhattacharyya, Ld. Counsel, appearing for the Mint management.

22. The appellant no. 3 laid a challenge to the impugned award of the Ld. Tribunal before Bombay High Court. However, during the pendency of the writ petition before the said High Court, the judgement and order dated May 20th, 2025 impugned in this appeal was pronounced. The said writ petition was withdrawn with a leave to approach this Court. By order dated January 6th, 2026, a coordinate Bench allowed the application for impleadment being CAN 2 of 2025 and directed Bombay Mint Employees' Federation to be added as appellant no. 3 to this appeal.

a) Settlement arrived in a conciliation proceedings wields greater sanctity

23. Learned Senior Counsel for the mint workers/appellant has argued that the minutes of the meeting dated April 15th, 1998, could not have formed part of the conciliation report dated May 5, 1998. The minutes of the meeting are not an agreement between the parties. Therefore, the consent of the workers given during the said meeting dated April 15, 1998, to work for 44 hours and receive the salary increment as recommended by the 5th Pay Commission is not a legal consent, if at all any such consent is given.

24. Section 2(p) of the Industrial Disputes Act, 1947, provides for two kinds of settlement- a) the settlement arrived at during the course of conciliation proceedings, and b) the settlement arrived at by written agreement between the parties. Sec. 2(p) is set out below

> Sec.2(p) "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding ***where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to 5*** [an officer authorised in this behalf by] the appropriate Government and the conciliation officer;]

Emphasis applied

25. In the case of ***Jhagrakhan Collieries (P) Ltd. v. G.C. Agrawal, Presiding Officer, reported in (1975) 3 SCC 613***, the difference between a settlement arrived at by and under a written agreement and one that arrived at during conciliation proceedings was pointed out as follows:-

> 11. An analysis of the above definition would show that it contemplates only two kinds of settlements: (i) A settlement arrived at in the course of conciliation proceedings under the Act and (ii) a written agreement between the employer and the workmen arrived at otherwise than in the course of conciliation proceedings. ***<u>But a written agreement of the latter kind in order to fall within the definition must satisfy two more</u>***

> ***<u>conditions, namely: (a) it must have been signed by the parties thereto in the prescribed manner, and (b) a copy thereof must have been sent to the authorities indicated in Section 2(p)</u>***
>
> Emphasis Applied

26. An agreement arrived in a private sitting between an employer and employee has to pass a strict test before it is recognised as a settlement binding between the parties. The law, therefore, insists for a signature of the rival parties.

27. Whereas, an agreement arrived at between the employee and employer in presence of a conciliation officer during the course of conciliation proceedings wields a higher degree of legal sanctity since a public officer presides over the said meeting. The said officer ensures that the employer and employee are equally informed and have equal bargaining power.

28. The duties of the conciliation officer are specified in Section 12 of the Industrial Disputes Act, 1947, which is set out below:-

Sec. 12. Duties of conciliation officers.—

> (2) The conciliation officer shall, for the purpose of bringing about a settlement of the dispute, without delay, ***<u>investigate</u>*** the dispute and all matters affecting the merits ***<u>and the right settlement thereof</u>*** and **may do all such things as he thinks fit for the purpose of *<u>inducing</u>* the parties to come to a <u>fair and amicable settlement of the dispute</u>**.
>
> (3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings ***<u>the conciliation officer shall send a report thereof to the appropriate Government</u>*** [or an officer authorised in this behalf by the appropriate Government] together with a memorandum of the settlement signed by the parties to the dispute.
>
> Emphasis applied

29. The conciliation officer, therefore, is duty-bound to induce the parties to arrive at a fair settlement. He is to send the conciliation

report to the appropriate government. What is most significant is that the effect of a settlement arrived at during the course of conciliation proceedings is not confined to the employer and employee present and who have participated in the said conciliation proceedings. It would even be binding on the next generation of workers who will join the organization. A settlement arrived at in conciliation proceedings thus carries serious present and future ramifications. In this regard, section 18 of the Industrial Disputes Act, 1947 is set out below:-

> **18. Persons on whom settlements and awards are binding.—**
>
> [(3)] A settlement arrived at in the course of conciliation proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on—
>
> (a) all parties to the industrial dispute;
>
> (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] [Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;
>
> (c) where a party referred to in clause (a) or clause (b) is an employer, ***his heirs, successors or assigns in respect of the establishment to which the dispute relates;***
>
> (d) where a party referred to in clause (a) or clause (b) is composed of workmen, **all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons *who subsequently become employed in that establishment or part.***

Emphasis applied

30. In **Jhagrakhan Collieries (Supra),**it was held that a settlement arrived at in the course of conciliation proceedings is an insignia of collective bargaining between the parties. Para no. 13 of the said decision is set out below:-

> 13. It is clear from a perusal of Section 18, that a settlement arrived at in the course of conciliation proceedings **is binding not only on the actual parties to the industrial dispute but also on the heirs, successors or assigns of the employer on the one hand, and all the workmen in the establishment, present or future, on the other. In extending the operation of such a settlement beyond the parties thereto, *sub-section (3) of the section departs from the ordinary law of contract and gives effect to the principle of collective bargaining.***
>
> Emphasis applied.

31. Subsection 2 of Section 19 of Industrial Disputes Act, 1947, provides for the termination of a settlement. In the present case, the mint workers have not issued a letter of termination against the settlement, which was first arrived at on April 15th, 1998, and thereafter placed before the conciliation officer on May 5th, 1998 for its final confirmation.

b) Positive Conduct amounts to acceptance.

32. On May 5th, 1998, the conciliation officer, upon perusal of the minutes of the meeting and after further deliberations with the mint workers and the General Manager of the three respective mills, sent a report to the government, inter alia, stating that the workers would work for 44 hours. The government shall extend all benefits to them as per the Fifth Pay Commission. Therefore, the settlement arrived at between the parties reflected in the conciliation report dated May 5th, 1998 cannot and should not be casually brushed aside. It attained finality since it was never terminated.

33. The appellants cannot be permitted to approbate and reprobate in the same breath. They seek to place reliance on the minutes of the meeting dated April 15, 1998, and the subsequent conciliation report dated May 5, 1998, to enforce a 19% salary increment, but deny that the former was a settlement.

34. They seek to repudiate the reciprocal obligation contained therein requiring them to work 44 hours per in lieu of the benefit of the 5th Pay Commission recommendation. It is a settled principle of equity and industrial law that a party cannot selectively enforce beneficial clauses of a settlement while discarding the corresponding obligations.

35. The learned Industrial Tribunal has correctly held that the workers cannot reject the portion of the settlement which appears to them as non-beneficial, and in the same breath, accept and seek enforcement of the portion which is beneficial to them.

c) <u>Notice under Section 9A revived after withdrawal of the intra-court appeal</u>

36. It is next argued by Counsel for the appellants that after the withdrawal of the intra-court appeal FMA no. 466 of 1992, the notice under Section 9A of the Industrial Disputes Act, 1947, increasing the working hours from 37 hours and 30 minutes per week to 44 hours per week has not stood revived. There could be no change of hours of work without proceedings under Section 9A.The argument is preposterous.

37. The conduct of the workers in constituting the Joint Action Committee, and thereafter deliberating with the general managers of

the mints of Calcutta, Bombay, and Andhra Pradesh at New Delhi, followed by their participation in the conciliation proceedings, clearly establishes that they were very much aware that they had to work for 44 hours per week. In fact, the said mint workers went on a strike after issuance of the said notice under Sec. 9A. The strike was immediately withdrawn after the said meeting in New Delhi. There was therefore a settlement within the meaning of the proviso of Section 9A of the Act of 1947.

38. Therefore, the workers were not taken by surprise when they were called upon to work for 44 hours, pursuant to the said meeting. They became aggrieved when the Department of Expenditure refused to grant them salary hike of 19%. The notice under Section 9A had become infructuous and abandoned by the workmen.

d) <u>The Pay Commission can recommend increase in working hours.</u>

39. Learned Sr. Counselfor the mint workers/appellantshas argued that the mint authority cannot increase working hours of the mint workers based on the recommendation of the Pay Commission. It is argued that in the present case, the mint authority has increased the working hours based on recommendation of the 4^{th} pay commission.

40. Pay commissions are constituted by issuing executive orders in exercise of Article 73 of the Constitution of India. The scope of jurisdiction of such pay commissions, therefore, is specified by the concerned executive order.

41. The aforesaid argument against the increase of working hours based on the recommendation of the pay commission is incorrect

since fixation of salary first calls for an assessment of the nature, volume, and hours of work put in by an employee. The Pay Commission is, therefore, entitled to examine and recommend the number of working hours to justify its recommendation for an increase in salary.

42. The terms of reference of 4th and 5th Central Pay Commission are set out below:-

Terms of reference of the 4th Pay Commission

2. The terms of reference of the Commission will be as follows:-

To examine the present structure of emoluments and conditions of service, taking into account the total packet of benefits, including death-cum-retirement benefits, available to the following categories of Government employees and to suggest changes which may be desirable and feasible :-

(i) Central Government employees-industrial and non-industrial

(ii) Personnel belonging to the All India Services.

(iii) Employees of the Union Territories.

Terms of reference of the 5th pay commission

2**.** The terms of reference of the Commission will be as follows:-

(a) To evolve the principles which should govern the structure of emoluments and **those conditions of service of Central Government employees which have a financial bearing.**

(b) To examine the present structure of emoluments and conditions of service of the following categories of Government employees, taking into account the total packet of benefits available to them and suggest changes therein which may be desirable and feasible

i) Central Government employees industrial and non-industrial;

(d) **To examine the work methods and work environment** as also the variety of allowances and benefits in kind that are presently available to the aforementioned categories in addition to pay and to suggest rationalisation and simplification thereof with a view to promoting efficiency in administration, reducing

> redundant paper-work and optimising the size of the Government machinery.
>
> Emphasis applied

43. The terms of reference of 4th and 5th pay commission called upon the commission to examine the service conditions, work methods, and work environment under which the central government employees worked. Therefore, the 4th and 5th pay commission have rightly examined the working hours of the mint authority.

44. Section 9A of the Industrial Disputes Act, 1947, employs the expression 'conditions of service' to enable the employer to effect any change thereof. Item no. 4 of the Fourth schedule to the Industrial Disputes Act, 1947, itemizes 'hours of work' and 'interval of rest' under the head 'conditions of service'.

45. Therefore, it follows that when the pay commission deliberates upon the conditions of service of an employment sector, it can propose the working hours for the workers of an industry. The Pay Commission recommendations are beyond the scope and jurisdiction of the Act of 1947. They are implemented across the whole spectrum of workmen in all industries under the control of the Central Government and autonomous bodies under it.

46. The acceptance by the workmen of such recommendations could itself also be interpreted as a deemed settlement under Section 9A of the Act of 1947. Refusal to apply this principle would also attract the mischief of approbation and reprobation.

e) <u>Res judicata is not strictly applicable to industrial adjudication</u>

47. Learned Senior Counsel for the mint workers/appellants has next argued that the decision of the first authority under the Payment of Wages Act, 1936 on the working hours was binding on the industrial tribunal, as well as the single Judge. The said decision was unsuccessfully challenged in an appeal filed by the mint management.

48. The said first authority under the Payment of Wages Act, 1936, held that an increase in working hours should be reciprocated by an increment in salary. In 1951, Calcutta Mint authority did not increase the salary. The increase in working hours was thus declared illegal. Therefore, the said decision would not be binding when the working hours are increased with a corresponding increase in the salary of the mint workers.

49. This Court is of the view that the principle of '*res judicata'* does not strictly apply to the industrial adjudication. The number of working hours needs to be changed with the change in the economic structure of the Country. In ***Associated Cement Staff Union v. Associated Cement Co. Ltd., reported in 1963 SCC OnLine SC 126 & AIR 1964 SC 914*** on similar set of facts, it was held as follows :_

> 5. **It was next urged that the existing working hours having been found reasonable by the Industrial Tribunal in 1950 there was no sufficient justification for changing them in the present reference. There is, in our opinion, no substance in this argument.** It is true that too frequent alterations of conditions of service by industrial adjudication have been generally deprecated by this Court for the reason that it is likely to disturb industrial peace and equilibrium. ***At the same time the Court has more than once pointed out the importance of remembering the dynamic nature of industrial relations. That is why the Court has, specially in the more recent decisions, refused to apply to industrial adjudications principles of res judicata that are meant and suited for ordinary civil litigations***. ***Even where conditions of service have been changed only a few years before industrial adjudication has allowed fresh changes if convinced of the necessity and justification of these***

> ***by the existing conditions and circumstances***.....It is important to remember in this connection that ***working hours remained unchanged for many years in this concern and during these years, considerable changes have taken place in the country's economic position and expectations. With the growing realisation of need for better distribution of national wealth has also come an understanding of the need for increase in production as an essential pre-requisite of which greater efforts on the part of the labour force are necessary.*** That itself is sufficient reason against accepting the argument against any change in working hours if found justified on relevant considerations that have been indicated above. We are satisfied that in arriving at the figure of 36 working hours in a week the Tribunal has given proper weight to all relevant considerations.
>
> Emphasis Applied

f) Increase of Working hours near to or at 48 hours is in public interest.

50. The next question that arises for consideration is whether the employer is entitled to increase the *existing* working hours with a corresponding increase in the salary of the workers, provided the said increase is within statutory limit of maximum working hours?.

51. The aforesaid question calls for a perusal of Section 51, 54, read with Section 65 the Factories Act, 1948. The said sections, inter alia, specify the maximum working hours to be 48 hours per week and 9 hours per day, and further set out the circumstances under which the said maximum working hours can be increased.

52. The object and purpose of the Factories Act, 1948, was alluded to in ***S M Datta vs. State of Gujarat, reported in (2001) 7 SCC 659***. Paragraph no. 14 of ***S M Datta (supra)*** is set out below:-

> 14. ...the establishment of cotton mills in Bombay in 1851 and the jute mill at Rishra in Bengal marked the beginning of factory system in India and it is only thereafter that the factories grew steadily both in Bombay and in Bengal **but the conditions prevailing in these factories were inhuman, both as regards *working hours*, welfare measures and wages**. ......**the first Factories Bill, 1880 was introduced in the legislature, subsequently however, the Bill was adopted as an Act. No sooner however, the Act was passed, agitation started afresh**

> **in Bombay and other places and on the basis of the report of a Committee, the Indian Factories (Amendment) Act of 1891 was passed. The provisions of the amended Act were also inadequate and a somewhat revised Bill was subsequently introduced in 1909 and the same was passed as a statute in 1911. Though the Factories Act, 1911 was amended from time to time but it could not meet the required growing activities in the country, especially after the Second World War by reason whereof,the Factories Act, 1948 was engrafted in the statute-book where emphasis had been on the welfare of the workers. Factory Inspectors have been placed with very heavy responsibility on them and provisions have been made in the statute empowering the State Governments to make and frame rules for the purposes of meeting the local exigencies of situation."**
>
> Emphasis applied

53. In ***Gujarat Mazdoor Sabha v. State of Gujarat, reported in (2020) 10 SCC 459,*** the Court examined the validity of a notification that exempted certain classes of factories from complying with the mandate of maximum working hours in a week and day. The said exemption notification termed the Covid 19 pandemic a public emergency and accordingly, enabled the owners of certain factories to force the workers to labour beyond 48 hours and 9 hours in a week and day respectively. The Court tested its validity in light of the object and purpose (supra) alluded to in ***S M Datta*** (supra). In the said factual backdrop, the Court held as follows:-

> 32. The Factories Act, as it currently stands, was enacted to guarantee occupational health and safety. It ensures the material and physical well-being of workers by fastening responsibilities and liabilities on 'occupiers' of factories. As a legislative recognition of the inequality in the material bargaining power between workers and their employers, ***the Act is meant to serve as a bulwark against harsh and oppressive working conditions.***
>
> 33. The notifications in question, besides specifically exempting all factories from the applicability of Sections 51, 54, 55 and 56, effectively override Section 59 of the Factories Act. The above provisions form a part of Chapter VI which prescribes the 'Working Hours of Adults'. ***The Chapter, broadly concerned***

> ***with worker productivity*** and ***fair remuneration***, ***prescribes working hours***, mandatory days of rest, intervals between stretches of work and adequate compensation for overtime. The notifications, putatively, are a response to the COVID-19 pandemic and exempt all factories from the provisions of Sections 51, 54, 55 and 56
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> 35. **The notifications make significant departures from the mandate of the Factories Act.They (i) increase the daily limit of working hours from 9 hours to 12 hours;** (ii) increase the weekly work limit from 48 hours to 72 hours, which translates into 12 hour work-days on 6 days of the week; (iii) negate the spread over of time at work including rest hours, which is typically fixed at 10.5 hours; (iv) enable an interval of rest every 6 hours, as opposed to 5 hours; and (iv) mandate the payment of overtime wages at a rate proportionate to the ordinary rate of wages, instead of overtime wages at the rate of double the ordinary rate of wages as provided under Section 59.
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> 36. ***While enacting the Factories Act, Parliament was cognizant of the occasional surge of the demand for, or requirement of, the manufacture of certain goods which would demand accelerated production.*** The law – makers were aware of the exigencies of the war effort of the colonial regime in World War II, with its attendant shortages, bottlenecks and, in India, famine as well. Section 64(2) of the Factories Act envisages exemption from certain provisions relating to working hours in Chapter VI, for instances such as urgent repairs, supplying articles of prime necessity or technical work, which necessarily must be carried on continuously. Section 65(2) enables classes of factories to be exempt from similar provisions in order to enable them to cope with an exceptional pressure of work. However, these exemptions are circumscribed by Section 64(4) and 65(3) respectively, at limits that are significantly less onerous than those prescribed by the notifications in question. ***Despite these concessions, these provisions do not enable an exemption of Section 59 which prescribes mandatory payment of overtime wages to the workers at double the ordinary rate of their wages***
>
> Emphasis Applied

54. The following principles of law flow from the above decisions regarding maximum working hours under the Factories Act, 1948:-

I) Before our Country gained independence, working hours were unjustifiably long and wages abysmally low. Therefore, the workers were wronged.

II) The Factories Act of 1948, a post-independence legislation, thus fixed 48-hour workweek and 9 hours per day as the maximum working hours.

III) It further entitles the worker to mandatory intervals/break during work and holidays between working days.

IV) The said statute has also been simultaneously alive to the needs of the hour. Therefore, an exception to the total maximum weekly working hours and daily working hours was provided. The employer has been enabled to increase the maximum statutory working hours during public emergencies.

V) A balance between the demand for production of goods and need for humane conditions of works is struck at by the said statute.

55. Appling the aforesaid principles to the present facts of case, the mint authority, Government of India, has increased the working hours from 37 hours 30 minutes per week to 44 hours per week. Therefore, the workers working at the mints in Calcutta, Andhra, and Mumbai are not entitled to argue for the restoration of the previous working hours of 37 hours 30 minutes per week given that the codified maximum working hours is 48 hours per week.

g) <u>Convention of past working hours is a contingent contract which is subject to change</u>

56. Learned Sr. counsel for the mint workers/appellants has argued that these mint workers were working for 37 hours 30 minutes per week from time immemorial. Thus, the working hours of 37 hours 30 minutes per week has emerged as a convention. No departure therefrom can easily be made.

57. Hehas further argued that the decision of the first authority, and thereafter that of the appellate authority under the Payment of Wages Act, 1936 has found an implied contract between the mint authority and workers. It was that the latter shall work 37 hours 30 minutes in a week, and no further.

58. The workers cannot persist with the said implied contract unless they can show that similarly situated employees of the Central Government working in the same field, performing the same functions and responsibilities, are working below 44 hours per week. The workers cannot fall back on the ancient convention of working 37 hours 30 minutes in a week since the mint authority has not transgressed 48 hours/per week mandate.

59. With the emergence of cutting age technology, as noted by the 5th pay commission, the workers at the Calcutta, Bombay and Andhra Pradesh mints can be called upon to put in 44 hours of work per week. The working conditions in the mint has exponentially improved and rationalized with the advent of technology.

60. The employer would be called upon to furnish an explanation and materials for the increase of working hours when the mandate of the maximum working hours of 48 hours per week is departed from. Till the time the employer has kept the working hours below 48 hours, or

at 48 hours, the workers do not and cannot have any objection regarding the working hours. In **May and Baker (India) Ltd. v. Workmen, reported in 1961 SCC OnLine SC 146 & AIR 1967 SC 678**, it was held as follows :-

> 5. **The company next attacks the provision as to working hours. Its main contention is that fixation of working hours is peculiarly a management function and there was no reason for the tribunal to interfere with the hours of work fixed by the company, particularly <u>when they were well within the hours allowed under the Delhi Shops and Establishments Act.</u> ....In the circumstances the existing working hours <u>*which are well within the hours of work prescribed under the Delhi Shops and Establishments Act*</u> will continue and the tribunal's modification of them is set aside.**
>
> Emphasis Applied

61. The objection that the workers may have is the non-increase of salary with the increase in working hours. In fact, the first and appellate authority under the Payment of Wages Act, 1936, at Calcutta has held in favour of the workers since the mint authority at Calcutta increased the working hours to 40 hours per week without a corresponding increase in salary.

62. The Fourth Pay Commission, followed by the Fifth, Sixth, and Seventh Pay Commissions, has examined the issue of the increase in working hours and recommended for the corresponding increase in salary. With the increase in working hours, the workers were assured that there shall be a corresponding increase in salary. Therefore, the Union of India has compensated the increase in working hours by providing an increase in salary.

h) <u>Right to a specific increase in salary is not a legitimate expectation</u>

63. The convention of working for 37 hours and 30 minutes per week must also be examined in light of the principle of legitimate

expectation. The principle of 'legitimate expectation' provides for procedural as well as substantive rights.

64. Under the 'procedural legitimate expectation', the State is bound to provide an opportunity of hearing to an affected party before altering a long-held policy. Under the 'substantive legitimate expectation', the State must justify and offer valid reasons for changing a public policy. Change of policy in public interest will override a claim for enforcement of a substantive legitimate expectation. In ***Sivanandan C T and Others v. High Court of Kerala and Others, reported in* 2023 INSC 709**, it was held as follows:-

> 26. In Hindustan Development Corporation (supra), this Court cautioned against the use of the doctrine of legitimate expectation to safeguard a substantive right. **Yet, in a series of subsequent decisions, this Court accepted that the doctrine of legitimate expectations has become *a source of both procedural and substantive rights.*** In **Punjab Communication Ltd v. Union of India**, this Court explained the difference between procedural and substantive legitimate expectation in the following terms:
>
> > "**The procedural part of it relates to a representation that a hearing or other appropriate procedure will be afforded *before the decision is made*.** The substantive part of the principle is that if a representation is made that a benefit of a substantive nature will be granted or if the person is already in receipt of the benefit that it will be continued and not be substantially varied, then the same could be enforced."
>
> Emphasis applied

65. The promise announced to the citizens by the State must first be established. Finally, the legitimacy of the expectation arising from the said promise must appeal to the conscience of the Court. The principle of legitimate expectation calls upon the State to be predictable,

consistent, and rational while framing new policies. In ***Sivanandan decision (supra),*** it was held as follows:-

> 31. **While dealing with the doctrine of legitimate expectation, another important aspect that the courts have had to grapple with *is determining the "legitimacy" of the expectation***. The court can infer the legitimacy of an expectation ***only if it is founded on the sanction of law..............***The legitimacy of expectation is a question of fact and has to be determined after weighing the claimant's expectation against the larger public interest
>
> 39. Another significant development in the jurisprudence pertaining to the doctrine of legitimate expectation is the emphasis on predictability and consistency in decision-making as a facet of non-arbitrariness. In Ram Pravesh Singh (supra***), it was held that the doctrine of legitimate expectation applies to a regular, consistent, predictable, and certain conduct.....***
>
> Emphasis applied

66. Applying the principle of procedural legitimate expectation to the facts of this case, the workers were duly heard by the Mint Authority, Government of India on the increase of working hours to 44 hours per week and increase of salary at New Delhi on April 15th, 1998 and thereafter the said minutes of meeting were confirmed in conciliation proceedings on May 5th, 1998.

67. During the said meeting, the parties agreed to an increase in working hours. The Government reciprocated with that the mint workers would be paid the revised pay scales. A corresponding salary increase was thus promised, and in fact enforced.

68. Therefore, the workers were duly heard before the working hours were increased from 37 hours and 30 minutes to 44 hours. Hence, no violation of procedural legitimate expectation is made out.

69. One may argue that when workers were required to work 37 hours and 30 minutes per week over a long period, an expectation may arise

that they will continue with this work schedule for the rest of their working lives. Such an expectation is not legitimate because fixation of working hours calls for flexibility. It depends on market forces namely demand and supply. This expectation is against public interest of production should be increased with a rise in demand.

70. The 5th Pay commission has discussed that working hours of 37 hours and 30 minutes per week was adequate before the independence of the Country. With the economic surge and call for more coins, the said past working hours is no longer adequate.

71. Sec. 9A of the Industrial Disputes Act, 1947, therefore, enables the employer to change the service condition after furnishing prior notice. The first proviso to the Sec. 9A(supra) states that when the parties have agreed to the change of service conditions by and under an agreement, a notice under Sec. 9A is not mandatory. The meetings between the parties herein and minutes thereof constitute an agreement that the workers agreed to increase in working hours with the increase in salary as per the recommendations of the Pay commission.

72. Admittedly,the mint workers were working beyond 37 hours and 30 minutes per week and were compensated with an overtime allowance. Thus, working beyond 37 hours and 30 minutes per week in the mint factory is not inhumane.

73. The workers, having failed to establish the legitimacy of the expectation, and further having failed to demonstrate that the State has violated the principle of procedural legitimate expectation, cannot put forward the case for application of the substantive legitimate expectation.

74. The doctrine of substantive legitimate expectation does not furnish a cause of action in favour of the workers to prevent the mint authorities from prescribing a higher period of working hours. Thus, any increase in working hours below the statutory limit shall be deemed to serve the public interest. The percentage of salary increase is at the discretion of the executive, provided the discretion is used rationally. In ***Sivanandan decision (supra),*** it was held as follows:-

> 36. The doctrine of legitimate expectation does not impede or hinder the power of the public **authorities to lay down a policy or withdraw it. The public authority has the discretion to exercise the full range of choices available within its executive power.The public authority often has to take into consideration diverse factors, concerns, and interests before arriving at a particular policy decision. The courts are generally cautious in interfering with a bona fide decision of public authorities which denies a legitimate expectation provided such a decision is taken in the larger public interest.** Thus, public interest serves as a limitation on the application of the doctrine of legitimate expectation. Courts have to determine whether the public interest is compelling and sufficient to outweigh the legitimate expectation of the claimant. While performing a balancing exercise, courts have to often grapple with the issues of burden and standard of proof required to dislodge the claim of legitimate expectation.

Emphasis Applied

75. In such meetings between the parties herein, the mint workers, however, persisted with their demand of 19% increase in salary. This quantum was more than the quantum of salary recommended by the pay companion.

76. Let us examine whether the general managers of the mints at Calcutta, Bombay, and Andhra promised a 19% salary increase for the mint workers. The minutes of the meeting clearly record that the issue of the 19% compensatory salary increase would be referred to the Department of Expenditure, Finance Ministry, Government of India for favourable consideration.

77. The increase of salary may be recommended by an employer. The increase is however subject to the public exchequer permitting. The said general managers thus did not have the authority to make an announcement to the workers that they will receive a salary hike of 19%.

78. The expression 'favourable consideration' does not guarantee a favourable outcome. In administrative law, an undertaking to 'favourably consider' a representation is a duty to examine the request in good faith, objective reality, and without bias. To interpret it as a mandatory obligation to grant the demand, irrespective of fiscal policy and wider administrative parity, would introduce an element of arbitrariness and favouritism. This would offend Article 14 of the Constitution. In **Akhil Bhartiya Upbhokta Congress vs. State of Madhya Pradesh and Ors**, **reported in (2011) 5 SCC 29,** it was held as follows:-

> 65. What needs to be emphasised is that the State and/or its agencies/instrumentalities ***cannot give largesse*** **to any person according to the sweet will and whims of the political entities and/or officers of the State.** Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well-defined policy, which shall be made known to the public by publication in the Official Gazette and other recognised modes of publicity and such policy must be implemented/executed by adopting a non-discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence, etc. by the State and **its agencies/instrumentalities should always be done in a fair and equitable manner and the *element of favouritism or nepotism* shall not influence the exercise of discretion**, if any, conferred upon the particular functionary or officer of the State

Emphasis Applied

79. Pursuant to that meeting, the Department of Expenditure held that an additional 19% salary increase is not called for given that the mint

workers are receiving the salary increment as per the Seventh Pay Commission. Thus, the limited application of the principle of legitimate expectation required the State to consider the plea for a 19% salary increase. It did not obligate the Government to implement it.

i) <u>Scope of judicial review on recommendations of the Pay Commission is limited</u>

80. The scope of judicial review is limited on the recommendations of an expert body. Therefore, the propriety of the 19% salary hike vis-à-vis the percentage of salary hike proposed by successive Pay Commissions would be subject to a limited judicial review. In **Rajasthan Agricultural University, Bikaner, Through Its Registrar v. Dr.Zabar Singh Solanki And Ors , reported in 2024 INSC 581**, it was held as follows:-

> 20……..Whenever a Scheme/Policy is brought into force, ceteris paribus, the Court could not and would not import something which is not present therein and which may not be proper to be interfered with, ***<u>especially when it relates to financial matters where primacy is required to be granted to the pay-master as to what scale was to be granted to the category of staff concerned. By its very nature, such exercise would fall under the realm of policy-formulation…….</u>***
>
> Emphasis applied

81. Pay Commissions serve as specialised bodies to determine salary structures and service conditions. Its recommendations attain binding status upon formal acceptance by the State. Therefore, the Courts would not readily reject the percentage of salary hike proposed by the Pay Commission, an expert body, and accept the proposal of the mint workers on the salary hike, a non-expert body. In **Union of India &Ors. v. D.G.O.F. Employees Association and Anr., reported in 2023 INSC 995**, it was held as follows:-

> 10. A cumulative perusal of the opinion expressed by this Court would indicate that ***though the Courts would not undertake the exercise of determining the pay scale keeping in view the nature of the work by comparing employees who are not similarly placed in cases where the exercise of determining such complex issues would arise***, at the same time, relief cannot be denied to the employees when the entitlement is denied due to irrational consideration without application of mind to the facts involved in the case by the employer, thereby denying the benefits to the employees....
>
> Emphasis applied

j) **Rate of Salary increase is not bound to be at the rate of overtime allowance**

82. Learned Senior Counsel for the mint workers has contended that the percentage and quantum of overtime allowance paid to the mint workers for putting in hours of work exceeding the previous threshold of 37 hours 30 minutes per week outweighs the percentage of salary increase recommended by the Pay Commission. On this basis, the worker argues that since they previously benefited from higher overtime rates, their baseline salary for a 44-hour week should align with the said overtime rates. This justifies a 19% salary increase.

83. This argument proceeds on a fundamental misconception of the law governing overtime allowances. Overtime allowance is paid at double the rate of salary to compensate a worker for the labouring beyond prescribed standard hours. When the working hours are increased by an employer with a corresponding increase in the salary, the increase in salary pay scale takes care of the labour put in for the increased duration of work.

84. An increase in working hours does not automatically trigger a right to double pay rates. The extended hours now constitute regular,

prescribed service, compensated by a salary hike. The extended hours of work are no longer supplemental overtime.

85. Learned senior counsel for the mint workers argue that the enhancement of regular working hours was a colourable exercise designed to evade overtime liabilities and extract identical productivity at a reduced cost.

86. This argument seeks to equalise overtime allowance with the salary increase. The claim that over time allowance should be translated into a salary hike for the new normal working hours is an attempt to prevent the employer from increasing the working hours.

87. It also seeks to extract more money from the employer when the latter calls upon the employee to work for hours below the maximum statutory limit. An employer retains the administrative prerogative to rationalise working hours in accordance with operational demands, provided the working hours comply with the statutory limits. In ***Associated Cement Staff Union decision (supra)*** on similar set of facts , it was held as follows:-

> 3..... **It is argued that this increase in the working hours without an increase in the wage rates amounts really to a gift of a considerable sum of money to the Company, *as but for this increase the workmen would have been entitled to overtime payment for the additional hours they will have to work under the present award*.** This argument seems to us to be misconceived. **It is not the function of industrial adjudication to fix the working hours *with an eye to enabling the workmen to earn overtime wages.*** Hours of work have to be fixed in consideration of many factors, including the question of fatigue on the health of the workmen, the effect on their efficiency, the physical discomfort that may result from long and continuous strain, the need of leisure in the workmen's lives, the hours of work prevailing for similar activities in the same region and also in similar concerns and other relevant factors. **But once a conclusion about the normal working hours is reached after considering the optimum working hours on a**

> **consideration of all the relevant factors, industrial adjudication cannot hesitate to give effect to its conclusion merely because the workmen would have been entitled *to more wages at overtime rates if the hours of work had been fixed at less.*** While it is true that in fixing the proper wage scale the question of work load and so the matter of working hours cannot be left wholly out of consideration, **many other factors including the need of the workmen, the financial resources of the employer, the rates of wages prevailing in other industries in the region have all to be considered in deciding the wage scale.** It would be against the interests of workmen, the employers and the country as a whole to bring into force wage rates moving on a sliding scale according to the hours of work. **The proper solution of the difficulty lies in fixing wage scales after consideration of all the relevant factors including the working hours and again to fix working hours on a consideration of all relevant factors *but without an eye to the effect on the overtime payment of workmen***......................

Emphasis Applied

88. The mint workers seek to be unjustly enriched. They cannot, on the one hand, take advantage of the salary increase proposed by the successive pay commissions and, on the other hand, seek to insist upon an additional 19% salary hike. The workers are prevented from claiming a salary hike of 19% on being paid the pay scale as per the successive pay commissions. In **M/S Patanjali Foods Limited (Formerly Known As M/S Ruchi Soya Industries Ltd.) Versus Union Of India &Ors., reported in 2025 INSC 733**, it was held as follows:-

> 24. v. The doctrine of unjust enrichment is a just and salutary doctrine. **It is based on the principle that no person can seek to collect duty *from both ends***. Power of the court is not meant to be exercised for unjustly enriching a person. This doctrine is, however, inapplicable to the State as the State represents the people and no one can speak of the people being unjustly enriched.

Emphasis applied

89. An employee has a right to propose a salary hike and the corresponding right to get the hike considered by the concerned finance

authorities. When a counter salary hike is proposed by the State, and the employee accepts it, the employee is estoppel to pursue with their proposed salary hike since they have accepted the counter salary hike.

CONCLUSIONS

90. From the aforesaid discussions, it follows:-

a) The Pay Commissions are expert bodies. They decide and deliberate upon the service conditions. They, therefore, can recommend the working hours and an increase in salary.

b) The decision of the first authority and the appellate authority under the Payment of Wages Act, 1936, in the year 1951, has not decided the question as to whether the working hours of 37 hours 30 minutes per week can be increased to 44 hours with a corresponding salary increase. It therefore does not operate as a res judicata to the said question raised in the lis and this appeal.

c) The mint workers cannot question the prerogative of the employer when the latter increases the working hours from 37 hours 30 minutes to 44 hours per week, when the said working hours are within the statutory maximum limit of 48 hours.

d) The principle of legitimate expectation does not come to the aid of the mint workers because the Government of India never made a promise to increase their salary to the tune of 19%. The Government of India, instead, offered to extend the salary increments and the benefits arising from the recommendations of the Pay Commissions.

e) The mint workers cannot claim the rate of overtime allowance as their salary increment for the duration of their extended working hours.

91. With the aforesaid discussions, FMA 766 of 2025 is dismissed. Consequently all pending connected applications, if any, shall stand dismissed. There shall however be no order as to costs.

(Rajasekhar Mantha J)

I agree,

(Rai Chattopadhyay)