been referred on a difference of opinion between Raghubar Dayal and Brij Mohan Lall JJ., had held that the punishment awarded by the Board of High School and Intermediate Education in disqualifying examinees was in exercise of quasi-judicial functions as opposed to the concurrent opinion of the two differing Judges and further that an opportunity should have been given to the examinees before the order was passed, on which the two Judges had differed. Thus, even the Allahabad view which prevailed is the judgment of Agarwala J. affirmed, as it has been, by their Lordships of the Supreme Court.

On a review of the case law, I am of the opinion that the absence of an opportunity provided to the petitioner amounted to a denial of justice and a violation of an essential principle of natural justice. This petition will, therefore, be allowed and the impugned order quashed. The petitioner is entitled to the costs of this petition.

GURDEV SINGH, J.—I agree. Gurdev Singh, J.

K. S. K.

CIVIL MISCELLANEOUS

Before Inder Dev Dua and R. S. Narula, JJ.

THE MUNICIPAL COMMITTEE, RAIKOT,—*Petitioner*

versus

SHAM LAL KAURA AND OTHERS,—*Respondents*

Civil Writ No. 1679 of 1962.

1965

May, 25th.

Mininmum Wages Act (XI of 1948)—Ss. 2(i) and 20—'Employee"—Definition of—Whether includes ex-employee—Application under section 20—Whether maintainable by an ex-employee—Punjab Minimum Wages Rules (1950)—Rules 24 and 25—Employer not governed by Factories Act—Normal working day of the employee—Whether of eight hours or nine hours.

Held, that the word "employee" as defined in section 2(i) of the Minimum Wages Act, 1948, does not include an ex-employee and that the only person who can maintain an application under section 20 of the Act is an employee who is in actual employment of the

employer in question on the date on which he presents the application under that provision of law. It is significant that in section 20 of the Act the word employee is not left alone but the phrase used is "employees employed". If the intention was to include ex-employees, there would have been no meaning in adding the word "employed" to the phrase. There appears to be no reason why the special machinery provided by section 20 of the Act for 'employees' should be allowed to be extended to 'ex-employees'. It appears to be plain that one, who is not emplayed, cannot be said to be an employee.

Held, that Rule 25(1) of the Punjab Minimum Wages Rules (1950) has no application to an employer who is not governed by the Factories Act though the employees may be in scheduled employment. The number of hours which have to constitute a normal working day under Rule 24 of such employees is of nine hours and not eight hours.

Case referred by the Hon'ble Mr. Justice Inder Dev Dua, on 30th April, 1965, to a larger Bench for decision of an important question of law involved in the case. The case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice Inder Dev Dua, and the Hon'ble Mr. Justice R. S. Narula, on 25th May, 1965.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ in the nature of Certiorari, Prohibition or any other appropriate writ, order or direction be issued quashing the order passed by respondent No. 8, dated the 23rd July, 1962, and further praying that the execution proceedings be stayed pending the decision of the writ petition.

BHAGIRATH DASS, ADVOCATE, for the Petitioner.

C. L. LAKHANPAL AND ISHAR SINGH VIMAL, ADVOCATES, for the Respondents.

ORDER OF THE DIVISION BENCH

Narula, J.

NARULA, J.—This case has come up before us for decision on a reference to a larger Bench made at the instance of my learned brother, Dua, J., in view of the obvious conflict of authority on the main point involved in the case on which no earlier judgment of this Court is available.

The Punjab Government, in exercise of its powers under section 3(1)(a) read with section 5(2) of the Minimum

Wages Act, 11 of 1948 (hereinafter referred to as the Act) fixed the minimum rates of wages under section 4(1)(iii) of the said Act with respect to certain categories of employees employed under local authorities in the State. The Municipal Committee, Raikot is one such local authority. The original notification dated 31st December, 1959 was superseded by a fresh notification dated 1st February, 1960, under which the minimum wage rate for Octroi Clerks was fixed. These rates were to come into force from the 1st of May, 1960. Respondents Nos. 1 to 7 were employees of the petitioner committee. In the meantime, however, Sham Lal Kaura and Tarsem Lal, respondents Nos. 1 and 2 as well as Satya Paul Thapar, Faqir Chand and Ajit Singh, respondents Nos. 5 to 7 were retrenched from Service with effect from 7th April, 1961. On July 13, 1961, respondents 1 to 7 filed an application before the Senior Sub-Judge, Ludhiana (who is the authority appointed under the Act) under sections 20 and 21 and of the Act claiming payment of certain amounts on the basis of weekly rests which had not been allowed to them. There was also a disputed claim relating to alleged overtime working. The petitioner committee, in its defence, raised, *inter alia*, two pleas with which we are concerned. One was that respondents Nos. 2 to 4 were not entitled to claim anything on account of overtime for their working upto 9 hours a day as the normal working hours for them were 9 and not 8. The second relevant plea was that respondents Nos. 1 and 2 as well as 5 to 7 had ceased to be employees of the petitioner committee before the institution of action by them under the Act and that, therefore, the authority under the Act had no jurisdiction to deal with their claim. On the pleadings of the parties, the issue framed on the basis of the second plea was issue No. 2 and it was in the following words:—

> "2. Whether this application on behalf of petitioners Nos. 1, 2 and 5 to 7 is also maintainable, even if they were not employees of the respondent on the date of the filing of the petition ?
>
> (Before the competent authority under the Act respondents Nos. 1 to 7 were petitioners Nos. 1 to 7 respectively and the petitioner committee was respondent).

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By order dated July 23, 1962, the authority under the Act, respondent No. 8, decided issue No. 2 (quoted above) against the petitioner committee and also allowed charges for overtime to respondents Nos. 2 to 4 on the basis of calculating normal working hours for them at 8 hours instead of 9 hours in a day.

On 11th October, 1962, the petitioner committee filed this writ petition impugning the order of respondent No. 8, which is otherwise final under section 20(6) of the Act, in so far as it relates to the above two findings. It is said that error of law in both the above findings is apparent on the face of the record and that the impugned order in so far as it relates to those findings is liable to be quashed.

The only provisions relevant for deciding the first question arising in the case are rules 24 and 25 of the Punjab Minimum Wages Rules, 1950. Rule 24(1) reads as follows:—

> 24. *Number of hours of work which shall constitute a normal working day*:—(1) The number of hours which shall constitute a normal day shall be—
>
> (a) in the case of an adult ... 9 hours.
> (b) in the case of a child ... 4½ hours.

Relevant part of rule 25 of the said rules is in the following terms:—

> "25. *Extra wages for overtime.*—(1) Where an employee in a scheduled employment is governed by the provisions of the Factories Act or any other enactment, prescribing extra wages for overtime, he shall receive overtime wages at the rates so prescribed.
>
> (2) In cases not covered by sub-rule (1) when a worker works in an employment for more than a number of hours of work constituting a normal working day prescribed in rule 24 or for more than 48 hours in a week, he shall in respect of overtime work be entitled to wages.
>
> (a) * * * * *".

The solitary argument of Shri Bhagirath Dass, the learned counsel appearing for the petitioner committee, is that rule 25(1) has no application to respondents Nos. 2 to 4 or as a matter of fact to any of the employees of the committee as the Committee is not governed by the provisions of the Factories Act though employees of the Committee are in a scheduled employment. That being so, the number of hours which have to constitute a normal working day under rule 24 in the case of employees of the petitioner committee is of 9 hours and not 8 hours as their case is covered by sub-rule (2) of rule 25. This appears to be correct. Shri Lakhanpal, learned counsel appearing for the respondents, has not been able to contest this proposition. It is also not disputed that in the impugned order overtime charges have been allowed to respondents Nos. 2 to 4 on the basis of calculating their normal day as being of 8 hours. This is an error of law apparent on the face of the record and the impugned order in so far as it suffers from this error has to be set aside.

The second question, because of which this reference appears to have been necessitated, is of substantial importance. The question is whether an erstwhile employee, who has ceased to be in the employment of the employer concerned, can maintain an application under section 20 of the Act or not. In other words the point to be decided on this count is whether an ex-employee is an "employee employed" within the meaning of section 20 of the Act whose claims arising out of the payments less than the minimum rate of wages, etc. can be tried by the authority under the Act or not.

The preamble of the Act shows that it has been enacted to provide for fixing minimum rates of wages in certain employments. No doubt the preamble of an Act does not control its scope but it does indicate the principal intention behind the legislation. Section 2(c) defines "competent authority". Section 2(h) defines "wages" in the following terms:—

> "(h) wages means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person

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employed in respect of his employment or of work done in such employment and includes house rent allowance, but does not include—

(i) the value of—

(a) Any house-accommodation, supply of light, water, medical attendance, or

(b) any other amenity or any service excluded by general or special order of the appropriate Government;

(ii) any contribution paid by the employer to any pension Fund or Provident Fund or under any scheme of social insurance;

(iii) any travelling allowance or the value of any travelling concession;

(iv) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(v) any gratuity payable on discharge;"

It is significant to note that in contradistinction to the corresponding provisions of the Industrial Disputes Act, any payment in the nature of gratuity, etc., due on discharge is specifically excluded from the scope of wages under this Act.

"Employee" is defined in clause (i) of section 2 of the Act as follows:—

"(i) "employee" means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out-worker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of that other person, where the process is to be carried out either in the home of the out-worker or in some other premises not being premises under the control and management of that other person;

and also includes an employee declared to be an employee by the appropriate Government; but does not include any member of the Armed Forces of the Union."

The relevant section under which a petition lies and the scope of which section is to be interpreted by us is section 20 of the Act which is in the following terms:—

"20 (1) The appropriate Government may by notification in the official Gazette, appoint any Commissioner for Workmen's Compensation or any officer of the Central Government exercising functions as a Labour Commissioner for any region, or any officer of the State Government not below the rank of Labour Commissioner or any other officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate to be the Authority to hear and decide for any specified area all claims arising out of payment of less than the minimum rates of wages or in respect of the payment of remuneration for days of rest or for work done on such days under clause (b) or clause (c) of sub-section (1) of section 13 or of wages at the overtime rate under section 14, to employees employed or paid in that area.

(2) Where an employee has any claim of the nature referred to in sub-section (1), the employee himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, or any Inspector, or any person acting with the permission of the authority appointed under sub-section (1), may apply to such authority for a direction under sub-section (3):

Provided that every such application shall be presented within six months from the date on which the minimum wages or other amount became payable;

Provided further, that any application may be admitted after the said period of six months

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when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

(3) When any application under sub-section (2) is entertained, the Authority shall hear the applicant and the employer, or give them an opportunity of being heard, and after such further inquiry, if any, as it may consider necessary, may, without prejudice to any other penalty to which the employer may be liable under this Act, direct—

(i) in the case of a claim arising out of payment of less than the minimum rates of wages, the payment to the employee of the amount by which the minimum wages payable to him exceed the amount actually paid, together with the payment of such compensation as the Authority may think fit, not exceeding ten times the amount of such excess;

(ii) in any other case, the payment of the amount due to the employee, together with the payment of such compensation as the Authority may think fit, not exceeding ten rupees,

and the Authority may direct payment of such compensation in cases where the excess or the amount due is paid by the employer to the employee before the disposal of the application.

(4) If the Authority hearing any application under this section is satisfied that it was either malicious or vexatious, it may direct that a penalty not exceeding fifty rupees be paid to the employer by the person presenting the application.

(5) Any amount directed to be paid under this section may be recovered—

(a) if the Authority is a Magistrate, by the Authority as if it were a fine imposed by the Authority as a Magistrate; or

(b) if the Authority is not a Magistrate, by any Magistrate to whom the Authority makes application in this behalf, as if it were a fine imposed by such Magistrate.

(6) Every direction of the Authority under this section shall be final.

(7) Every Authority appointed under sub-section (1) shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908, for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such Authority shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898."

Section 21 of the Act, which provides that a single application may be presented under section 20 on behalf of or in respect of any number of employees in the scheduled employment is significant inasmuch as it uses the phrase "any number of employees *employed* in the scheduled employment" (italicised by me) which indicates that it is only such employees which are actually employed in the scheduled employment at the time of making an application that are deemed to be covered by section 20 of the Act.

Section 22D of the Act provides for wages due to a late employee or an untraceable employee being deposited with the authority but no provision is made for the legal representatives of a late employee or for any one on behalf of untraceable employee to make an application for withdrawal of that amount. It appears that such persons have to take the normal course of litigation for recovering the amount deposited under section 22D of the Act,

[illegible] us has arisen in as many as 4 [illegible] two different High Courts, i.e., be- [illegible] Court and Kerala High Court as also [illegible] ioner for the State of Tripura. In

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the Tripura case and the Kerala case it was held that an ex-employee can also maintain an action under section 20 of the Act. In the two reported judgments of the Madras High Court contradictory views were taken by two learned single Judges of that Court.

In *Wakefield Estate* v. *Maruthan Uchi and others* (1). (Madras High Court) Balakrishna Ayyar, J. held as follows:—

> "In the Industrial Disputes Act, 1947, which is an enactment earlier to Minimum Wages Act the word "Workman" is defined as meaning any person employed in any industry and includes for certain purposes workmen who have been discharged. But persons who have ceased to be employees are not included in the definition of 'employee' in the Minimum Wages Act. According to ordinary routine practice a draftsman who was called upon to define a word in a statute would look for precedents in the earlier Acts and it is unlikely that he would have overlooked the definition of workman in the Industrial Disputes Act of 1947, which had been passed only about a year before. The inference legitimately arises that persons who ceased to be employees were deliberately left out of the definition of the word 'employee' in 1948. Such a construction would not deprive the concerned ex-employee of his other remedies to recover the wages claimed by him. Where minimum wages have been fixed for an employee in any industry, he would have earned those minimum wages during the period he was in employment. The sum of money payable to him would be a debt which he can collect by resort to, should the need arise, the ordinary courts. It will also be open to him to raise an industrial dispute over the matter. An employee whose services are terminated will not, therefore, lose the wages he has earned. The only thing is that he will not be entitled to invoke the summary machinery provided in

(1) 1959 (I) L.L.J. 397.

S. 20 of the Minimum Wages Act after he ceases to be an employee.

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Since S. 20 of the Minimum Wages Act speaks only of employees and does not speak of past employees and since the word "employee" is defined as a person who is employed, it must be held that the summary remedy provided by S. 20 is not available to past employees."

In Proprietor, Murugan Transports, Cuddalore v. *P. Rathakrishnan and others* (2) Ramachandra Iyer, J. did not accept the law laid down by Balkrishna Ayyar, J. and held that section 20 was intended to give a summary remedy to any person who having been an employee complains that he had not been paid the minimum wage. The learned Judge observed that nothing was necessary beyond the fact that the applicant under section 20(2) of the Act should have been an employee at the time when he earned the minimum wage and that in order to give full effect to the intention of the Act, it would be necessary to bring within its scope not merely the present but also the past employees.

In *Chacko* v. *Varkey and others* (3), a learned Single Judge of the Kerala High Court followed the view expressed by Ramachandra Iyer, J. in *Proprietor, Murugan Transports, Cuddalore* v. *P. Rathakrishnan and others,* and held that even an ex-employee or a dismissed employee would be competent to file an application under Section 20 of the Act against his quondam employer, claiming relief under the Act.

...epal J. N. Datta, J. C. in the *Malabati Tea Estate* v. *Sm.* of the unit *Munda and others* (4), held as follows:—

withdrawing tha...
have to follow the r... that the application of the employees
ing such amounts dep... ompetent as they had ceased to be
if so advised. ...fore the date on which the applica-
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have been raised before the Authority, and in the course of arguments, it was pointed out to me that the evidence of the first manager (A.W. 2) went to show that some of the applicants left about a fortnight before the Manager left the service and some thereafter and some were there even when he was examined. This witness left service in January, 1957. In any case there is nothing in the Act which can be reasonably construed as importing the meaning or intention, which was sought to be inferred on behalf of the Tea Garden; and it seems to me, that any such construction would go against the very grain of the Act."

In our view the law laid down by Balakrishna Ayyar J. in *Wakefield Estate* v. *Maruthan Uchi and others* (1), (Madras High Court) is correct and that the contrary view expressed in the other judgments referred to above does not appear to be in consonance with the scheme of the Act.

The scheme of the Industrial Disputes Act is entirely different from that of the Act under consideration before us. Disputes under the Industrial Disputes Act involve claims for re-instatement, claims for retrenchment allowance, etc. and though even without making the definition of workman wider, it could be argued that a workman for the purpose of that Act would include an ex-workman, no such consideration applies to the Minimum Wages Act. When it is seen that in the Industrial Disputes Act where even without enlarging the scope of the definition, the enlarged scope would have been obvious by necessary implication, it is patent that in having so enlarged scope of the word 'employee' in the Minimum Wages Act, it is not intended to give the extended meaning to that class of persons. "Employee" according to its meaning in Webster's New International Dictionary means a person who works for wages or salary in the service of an employer. The

(1) 1959 (I) LLJ 397.

moment the person is out of such service, even according to the ordinary dictionary meaning, he ceases to be an employee.

It is also significant that in section 20 of the Act the word employee is not left alone but the phrase used is "employees employed". If the intention was to include ex-employees, there would have been no meaning in adding the word "employed" to the phrase. Again in Section 2(i) of the Act 'employee' is defined as 'a person who is employed'. Special rights have been conferred under the Act on a certain class of persons. This also involves a corresponding special liability on the employers. The scope of such special legislation cannot be allowed to be extended beyond what is expressly stated in the Act or is quite obvious by necessary intendment. It is not as if an ex-employee has no remedy to recover the amounts to which he would have been entitled under the Act. In the absence of any special definition of wages and in view of the manner in which that phrase is defined in the Act, the sum payable to an ex-employee would not be included in that term but would indeed assume the character of a debt which can be recovered by the ex-employee either by resort to the machinery provided by the Workmen's Compensation Act or if that Act is not applicable, by an action in an ordinary Court of original Civil Jurisdiction. He may even raise a dispute under the Industrial Disputes Act if he is a 'workman' within the meaning of that Act. There appears to be no reason why the special machinery provided by section 20 of the Act for 'employees' should be allowed to be extended to ex-employes. It appears to be plain that one, who is not employed, cannot be said to be an employee.

Ramchandra Iyer, J. in *Murugan Transports' case* observed that the summary remedy provided by section 20 was intended to be made available to "any person who having been an employee" complains that he had not been paid the minimum wage. It appears to be difficult to equate an 'employee' to 'any person who having been employed' has ceased to be so employed. According to the learned Judge all that is necessary is that the applicant under section 20 of the Act should have been an employee at the time when he earned the minimum wage.

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This does not appear to lend any force to the argument in favour of the ex-employee. If the applicant was not an employee at the time to which the claim relates, he would never have earned any wage during that period and no question of minimum wage could arise. It was then observed by the learned Judge in that case that if full effect were to be given to the intention of the Act, it would be necessary to bring past employees within the scope of section 20. We have not been able to gather any such intention from any part of the Act. On the contrary the definition of 'employee' in clause (i) of section 2 of the Act suggests that the word is intended to cover only such person who is in service. The learned Judge in *Murugan Transports' case* takes notice of the said definition but observes that the definition is subject to repugnancy in the context in which the word may be used in any part of the Act. There is no doubt that all the definitions in section 2 of the Act are subject to avoiding repugnancy in any particular context. But no such repugnancy appears to arise on a reading of section 20 of the Act. The analogy of the Rent Act in the matter of getting standard rent fixed does not appear to be apt. Under the Rent Restriction Acts it is made unlawful for any landlord to claim any rent beyond standard rent or fair rent. In that case the amount due does not lose the character of rent even after the termination of the tenancy and since no landlord can recover more than the standard rent, the tenant can avail of the remedy for fixation of standard rent if the particular Rent Restriction Act allows the same. In that case the relief available to a tenant under the Rent Control Act would itself be lost if an ex-tenant is deprived of the remedy under the Rent Act. In the instant case the claim or relief available to an ex-employee is not lost by taking him out of the category of employees. As stated above only a special remedy under section 20 of the Act is not available to him and there seems to be no reason why it must be available to a person to whom the Legislature has not made it available.

Vaidialingam, J. of the Kerala High Court in *Chacko's case* merely followed the judgment of Ramachandra Iyer, J. in *Murugan Transports' case* in preference to that of Balakrishna Ayyar, J. in *Wakefield Estate's case.* For exercising that preference the learned Judge also relied

on some unreported judgment of Varandaraja Ayyangar, J. of that Court (Kerala High Court). The reasoning adopted in that unreported judgment is not available to us. In *Chacko's case* an additional reason was ascribed by the Kerala High Court for expressing agreement with the judgment of Ramchandra Iyer, J. in *Murugan Transports' case*. The argument was that when a claim can be made by an employee within six months and if he waits till the last day of the said period for filing his application and if one day before the expiry of that period the management chooses to remove him from service for any reason, it would amount to allowing the management to effectively succeed in preventing the filing of application by an employee or prevent an employee from claiming relief under the provisions of the Minimum Wages Act. With the greatest respect to the learned Judge of the Kerala High Court we think that this argument begs the question. Question of depriving somebody of a remedy can arise only if the statute provides that remedy to him. The moment a person passes out from the category of an employee to that of a non-employee, which will include ex-employee, he ceases to be a member of the class of persons for whom the remedy under section 20 of the Act has been enacted. This additional argument adopted by the Kerala High Court does not, therefore, assist us in swerving to the view of Ramachandra Iyer, J.

The only other case on which reliance was placed by the respondent to support the impugned order, is the judgment of J. N. Datta, J. C. in *The Malabati Tea Estate* v. *Sm. Budhni Munda and others* (4). One additional argument used by the learned Judicial Commissioner in that case was that any such construction as is sought to be imposed on the meaning of the word "employee" in section 2(i) of the Act would go against the very grain of the Act. I am inclined to hold that the construction, which has been placed on the meaning and scope of the word "employee" by the authority under the Act in the impugned order goes contrary to the scheme of the Act. It is manifest that the object of the Act is to give relief to employees employed in certain establishments to a certain extent. With the greatest respect to the learned Judicial Commissioner for the State of Tripura we are not able to

(4) A.I.R. 1959 Tripura 16.

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agree with the construction placed by him on the relevant phrase used in section 20 of the Act.

In this view of the matter we hold that the word "employee" defined in section 2(i) of the Act does not include an ex-employee and that the only person who can maintain an application under section 20 of the Act is an employee who is in actual employment of the employer in question on the date on which he presents the application under that provision of law.

The finding of the authority under the Act on issue No. 2 to the effect that respondents Nos. 1, 2 and 5 to 7 herein could maintain an application under section 20 of the Act even though they were not employees of the respondent on the date of filing of their petition is vitiated by an error of law apparent on the face of the record. We, therefore, quash and set aside that finding of the said authority.

The result is that under the Act, respondent No. 8 before us had no jurisdiction to entertain, adjudicate upon or decide the application under section 20 of the Act on behalf of respondents Nos. 1, 2 and 5 to 7 as they were not "employees" within the meaning of the Act on the date of filing the application. The only claim allowed by the authority under the Act to Bharat Chand and Om Parkash, respondents Nos. 3 and 4, (who are not hit on the first ground) was for overtime to the extent of one hour a day during the month of August, 1960 on the basis that their normal working day consisted of 8 hours. Since this part of the order of the authority under the Act has been found to be unsustainable, no operative part of the impugned order subsists and the whole of it is, therefore, set aside.

This writ petition is, in these circumstances, allowed and the impugned order of the authority under the Minimum Wages Act, Ludhiana, dated 23rd July, 1962 in application No. 28 of 1961—*Sham Lal Kaura and six others* v. *The Municipal Committee, Raikot,* is quashed and set aside. But the parties are left to bear their own costs in this Court.

Dua, J.

INDER DEV DUA, J.—I agree.

K. S. K.