

Administration of  
Dadra and Nagar Haveli and Daman and Diu, U.T.  
Labour Department  
Silvassa

No. LEO/MW/Overtime/2020/212

Date: 11/02/2020

**NOTICE**

Whereas, the Minimum Wages Act, 1948 and the rules made there under are enforced in the U.T. of Dadra and Nagar Haveli and Daman and Diu.

And whereas, the Department has been receiving complaints with regards to non – payment of Overtime wages by the Employer as the workers are made to work for 12 hours a day.

And whereas rule 24 has prescribed number of hours of work which constitutes a normal working day under which no worker shall be required or allowed to work in an employment for more than nine hours in any day and **forty eight hours in any week** provided that a worker may be allowed to work in an employment for any period in excess of the limit fixed under this rule subject to the payment of overtime wages at double the ordinary rate of wages, if the period of work including over time work, does not exceed 10 hours in any day and in the aggregate **fifty-four hours in any week.**

And whereas Section 3 (h) of the Act provides for "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 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

And whereas, recently the Deputy Labour Commissioner/ Authority appointed under the Minimum Wages Act, 1948, DNH has passed an order dated 18/10/2019 in the matter of M/s Yashasvi Yarns Ltd., Amli V/s Group of Workers, represented by Janhit Kamdar Sangh, Silvassa (Copy enclosed).



And whereas, it is noticed that employers are indulged in brazen, blatant and rampant violation of the provisions of the Minimum Wages Act, 1948 and the rules made thereunder by not paying wages to their regular and contractual workers who are made to work for 12 hours as above and the workers are subjected to exploitation and. The workers those who are being made to work for 12 hours are being paid much below the wages. These workers are required to be paid an amount of difference between the wages payable as per the above mentioned order and the wages actually paid.

In view of the above, all the All Industries, Shops & Establishments, Dadra and Nagar Haveli are hereby directed to pay their workers wages as per the above order dated 18/10/2019 failing which stringent action against the defaulters shall be initiated under the provision of the Act which may be noted.

  
(P.S. Joshi)

Labour Enforcement Officer/  
Inspector under M.W. Act

To

All Industries, Shops & Establishments,  
Dadra and Nagar Haveli.

Copt to :

1. The P.A. to Labour Commissioner, Dadra and Nagar Haveli, Silvassa
2. The P.A. to Deputy Labour Commissioner, Dadra and Nagar Haveli, Silvassa
3. The President, Federation of Industries Association, Dadra and Nagar Haveli, Silvassa to take up the matter with their member Associations/ Industries.



IN THE COURT OF THE RESIDENT DEPUTY COLLECTOR / AUTHORITY APPOINTED UNDER  
SECTION 20 (2) OF MINIMUM WAGES ACT, 1948, D&N.H. AT SILVASSA

M. W. Case No. 20/2017

Janhit Kamdar Sangh  
Room No. 201-202, Gog Building  
Near Collector's Office, D &NH

Claimant

V/s.

M/s. Yashasvi Yarns Ltd,  
Survey No. 185/1/1, Plot No. 18  
Dokmardi, Village Amlh  
U.T. of Dadra and Nagar Haveli.

Opponent

1. Shri Dhirubhai Patel, President Janhit Kamdar Sangh representative for Claimant.
2. Shri P.K. Jadia, authorized representative for Opponent.

ORDER

This order shall dispose of the Claim application dated 13/09/2017 filed by Janhit Kamdar Sandh, Silvassa on behalf of its member workmen (herein referred to as the Claimant) against the management of M/s Yashasvi Yarns Ltd., Dokmardi (herein referred to as the Opponent) for non- payment of overtime wages.

Both the parties were issued notice dated 13/11/2017 directing to remain present on 17/11/2017 for disposal of the claim application. The representative of both the parties remained present. Both the parties were given equal and ample opportunity to represent the matter.

The final hearing in the matter was held on 26/08/2019. The Claimant representative submitted a letter stating that the workers agree to the number of hours and rate of wages as mentioned by the Opponent in its submission before this Authority. However, it is pertinent to note that the Opponent has deducted the number of "in active hours" from the number of working hours. In this regard, the Opponent agrees that the nature of work of the employee in yarn industry is such that the employee is required to intervene only when there is breakage of thread and for loading and unloading of the spools. Further, it has been informed by the Opponent and confirmed by the work Shri Dharmendra Yadav, that on any given working day a break of 1 hour is given for lunch/ dinner and one tea breaks of 15 minutes is given to each employee during which the neighboring employee has to take care of the work of the employee on break. Thus, the matter of number of hours has been seemingly resolved, yet the disagreement remains with regard to the calculation of number of overtime hours which shall be decided on the basis of both the parties.

Recd.  
18/10/19

18/10/19



On perusal of the relevant provision of the Act and Rules along with the judgment of the Hon'ble Bombay High Court in case of "Workmen of Bombay Port Trust Vs Trust of The Port of Bombay (1966 AIR 1201, 1996, SCR (2) 632 )" submitted by the Opponent it is clear that the intervals of rest shall not be counted as actual work time only if "the period is specified, and the workmen is neither called upon to work nor expected to work".

In this case, as specified by the Claimant, the usual shift starts at 8:00 am to 8:00 pm and there is a break for lunch between 11 am and 1 pm during which the employee can take a break of one hour and one tea break between 4 pm to 6 pm. At this point, the representative of the Opponent objects and states that tea break is of 30 minutes; the time of the day during which the tea break can be taken is not disputed. The company has however, given overtime for three hours. This calculation by the company seems to be fair and requires no further intervention on behalf of this Authority.

Therefore, the only other issue that remains to be decided is the payment for the overtime.

Both the parties have made their submission in details along with case citations in the matter on previous date of hearing.

The representative of the Opponent submits that the pay of the employees as calculated by the company has the following components (1) HRA and (2) Basic Wage. The opponent has computed overtime at double the rate of basic wages. The basic wages as calculated by the company varies from Rs 140 to Rs 215 per day out of minimum wages amounting to Rs 303 (the minimum wages for the said period were declared as Rs 303.50/- by the U.T. Administration of DNH vide order LEO/MW/SA/533/2017 dated 25/05/2017). Upon being asked about the grounds on which the basic wages and the HRA have been calculated, the Opponents representative stated that the HRA is paid based on informal survey of rent paid by the workmen for the bachelor accommodation around the factory.

Accordingly, on the basis of the Opponent, the cost of bachelor accommodation around the factory varies from Rs 4238/- to Rs 2288/-. On the face of it, as a percentage the HRA varies from 29% to 53.8% of the total wages. For a city like Silvassa, the HRA paid by the Government is at the rate of 8% of the Basic Pay. So the HRA as submitted by the company is absurdly high, which seems to be set on an arbitrary manner as it is not possible that the total wages of each of the employees shall come out to be exactly equal to the minimum wages as specified by the Government even when the HRA as per the company is significantly different. Therefore, the HRA may be calculated at maximum of 10 %.

In light of the above, I am of the opinion that the division of the minimum wages into basic and HRA is nothing but way for the employee to reduce its liability for payment of overtime allowance. Hence, it is ordered that overtime be paid at rate of Rs 273.15/- per day for each of the overtime hours put in by the worker.

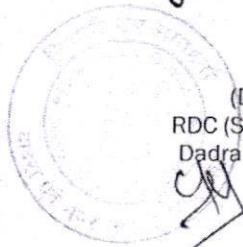
*Shammi*  
18/10/2019



Therefore, in exercise of the powers conferred by section 20 (3) of the Minimum Wages Act, 1948, the company is directed to pay the amount of difference to the applicants as per above annexure- A within 15 days of receipt of this order in the presence of the Labour Enforcement Officer who in turn shall submit compliance report with copy of voucher to the undersigned. If the amount as directed above is not paid within the stipulated period the same shall be recovered under section 20 (5) of the said Act.

No order as to cost.

Given under the Sign and Office seal on eighteenth day of October 2019



(Dr. Apurva Sharma)  
RDC (S) / Authority under M.W. Act  
Dadra and Nagar Haveli, Silvassa.

NO. LEO/mw/claim/744/2014/1483/2019  
Silvassa. Dtd. 18/10/2019.