
(1967) 03 P&H CK 0017
In the Punjab And Haryana At Chandigarh

Associated Cement Companies Ltd.

APPELLANT

Vs

Industrial Tribunal and Others

RESPONDENT

Date of Decision : 03-03-1967

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Factories Act, 1948 — Section 78, 79, 84
Industrial Disputes Act, 1947 — Section 10

Citation : (1969) 1 LLJ 674

Hon'ble Judges : D.K. Mahajan, J

Bench : Single Bench

Judgement

D.K. Mahajan, J.—This is a petition by the Associated Cement Companies, Ltd., Bhupendra Cement Works, Surajpur, under Articles 226 and 227 of the Constitution of India and is directed against the award of the industrial tribunal, Punjab, Chandigarh, dated 20 September 1966.

2. The workmen of Bhupendra Cement Works, Surajpur, through the Bhupendra Cement Karamchari Union (registered), Surajpur, served a notice of demands on the company on 20 July 1965. The matter was referred to the conciliation officer, but without any success. Accordingly, the dispute was referred by the State of Punjab u/s 10(1)(d) of the Industrial Disputes Act, 1947, for adjudication to the tribunal. The demands made by the employees were as follows:

(1) Whether the workers of packing plant, coal gang, cement mills, fluxo, coal mills, and shaker tunnels and fuller coolers are entitled to the grant of dust allowance ? If be, with what details ?

(2) Whether the workmen of the following departments/sections are entitled to the supply of uniforms, including boots ? If so, with what details ?-

(i) packing plant;

(ii) coal gang;

- (iii) ropeway;
- (iv) crane;
- (v) sample boys;
- (vi) workers employed for repairs in raw mills, cement mills and coal mills;
- (vii) welders;
- (viii) turners;
- (ix) painters;
- (x) shift fitters; and
- (xi) cooks,

(3) Whether the daily-rated workmen should be allowed the same amount of sick leave as is allowed to the monthly-paid workers ? If so, with what details ?

3. It may be mentioned that respondent 2, Bhupendra Cement Workers' Union, Surajpur, is a recognized union and has been in existence for a long time, whereas respondent 3, Bhupendra Cement Karamchari Union, Surajpur, was registered as a trade union on 26 May 1965. The demands in question were raised by respondent 3 and not by respondent 2. The industrial tribunal, to which the disputes were referred, proceeded to adjudicate upon these disputes and by the Impugned award rejected demand 1 but allowed demands 2 and 3. Respondent 3 seems to be satisfied with the award, but the company is not. Hence the present petition is by the company. The decision of the tribunal on demands 2 and 3 is being challenged on the ground that it is without jurisdiction.

4. Regarding demand 2, the tribunal gave its decision after consideration of the following evidence:

It may be mentioned at the very outset that Sri I.M. Nanavati, representative of the management, conceded during arguments that bag painters and painters were entitled to uniforms. As regards cooks, he left the point to the tribunal. It means that the claim of the cooks is also not contested. Now let us see whether the other workmen mentioned in item 2 of the reference are entitled to the uniforms as prayed.

Om Parkash, A.W. 1, has made a detailed statement on the point. He is general secretary of the Bhupendra Cement Karamchari Union and is working in the factory since 1947. He is a turner and the nature of his duties is such that he has often to go to the various departments of the factory in his capacity as a turner. It is, therefore, necessary to set out his statement in some detail,

He has admitted that in the packing department packers are provided with overalls and some of the other workmen of the plant are provided with some sort of uniform. According to him, in order to protect the workmen from hot cement

which generally drops on their clothes and body, it is necessary to provide them with suitable uniforms, including boots and head-covers. The job of the coal garmazdoors is to unload the wagons of coal. Their clothes get soiled and torn in the process and sometimes lumps of coal fall on their feet. The linesmen, khalasis and ropeway inspectors get some uniforms, but the fitters and the bucket-unloaders and tally-checkers, the nature of whose duty is identical with the other workmen mentioned above, do not get any uniforms. In the crane section only the drivers get uniforms, but those too are not sufficient. Other workmen, namely, fitters, khalasis, blacksmiths and others working in that section, do not get any uniforms. They work on repairs and the nature of their duties is such that it soils their clothes. The sample boys work in the laboratory and their job is to bring samples from kilns and also from cement mills and raw mills. In this process their clothes get soiled and sometimes they get burns on their feet on account of hot cement and cylinders. The repair work done by the workmen in the raw mills, cement mills and coal mills is of such a dirty nature that the clothes of the workmen get soiled every day and are rendered unfit for use the next day. The clothes in this way get worn out quickly. In the raw mills and in the cement mills temperature is so high that the clothes of the workmen get dirty even by perspiration. Without boots there is always a risk to their feet. The job of a turner is to handle machine every moment and in this way his clothes are soiled every time by oil and grease. In cross-examination he stated that the job of tally-checkers, mistris and mates is of a supervisory nature, but the nature of their work is such that they have always to be there in the event of breakdown, etc. Wagons of coal come almost dally and in such large numbers that oven extra temporary men are kept for unloading them. So, according to this witness, all the workmen need uniforms in view of the nature of their duties. The spoiling and wear and tear of the clothes is much more than it would have been otherwise if they were on some other duty involving no such risk. The statement of Hakumat Rai, A.W. 5, who is a fitter in the factory, is also important. He is working in the factory since 1949. According to him in ropeway department 14 kilograms of grease, 30 litres of diesel oil, one drum of mobil oil and 10 kilograms of heavy grease is used every week. Because of this, clothes of the workmen get soiled and torn. In his cross-examination he has admitted that tally-checkers do not come into contact with machinery and that the fitters have to repair 365 trollies. Amar Nath, A.W. 6, who is a khalasi in the mill house of the factory, has stated that by perspiration and oil and grease their clothes get soiled and worn out earlier. Similarly the clothes of blacksmiths, hammermen, fitters and welders get soiled. In his cross-examination it has been brought out that it is the job of khalasis to bring oil and put it into the machinery and also to bring grease and apply it to the doors. R. S. Raghav, A.W. 7, is a welder in the factory and is there for the last sixteen years. He does both gas and electric welding, which damages his clothes. The sparks that shoot out sometimes fall on the clothes. The welders cannot use light clothes because the arc in welding is so strong that it sometimes penetrates into the body. When a metal is cut by electric welding, the sparks spread so much that it is difficult to save oneself. He

admitted in his cross-examination that at the time of welding they get screens and goggles to protect their eyes and leather aprons.

Similar are the statements of Sunder, A.W. 11, and TejRam, A.W. 12, who are coal mill attendant and mazdoor coal unloader, respectively.

As against this, we have the evidence of Sri Subrahmanyam, R.W. 1, Chief Engineer of the respondent-factory. He is in the factory since April 1965. He has made a statement about all the categories of workmen involved in this demand. According to him, none of these workmen is entitled to any uniform and those who are in need of some sort of protective and uniform have been supplied the same by the factory. It was rightly pointed out by the representative of the workmen that the witness cannot be expected to know the conditions of each and every department and section of the factory. He is, therefore, not in a position to depose to all the necessary matters. It is in the statement of Daya Krishan, A.W. 2, who is an employee of the Dadri Cement Factory, that that factory provides uniforms to a number of its employees. That uniforms are supplied to a number of categories of the workers of the Dadri Cement Factory will also be seen from Ex. A.W. 2/2 which contains answers given by the factory to the questionnaire of July 1965 issued by the Government of India, Second Central Wage Board for Cement Industry.

According to Darbara Singh, A.W. 3, who is a workman in the inspection department of the Hindustan Machine Tools Factory, Pinjore, all the workmen of the factory get three uniforms consisting of three T-shirts and one pant every year. In his cross-examination he has stated that uniforms are provided to the workmen by the management from the very day the factory went into production. It is not necessary that uniforms should be provided only after a dispute over the matter has actually arisen. The fact that uniforms are supplied voluntarily by the management is a strong pointer to the necessity and justification for the same.

5. Sri I.M. Nanavati, who appears for the company, has laid stress on the fact that the evidence of Sri Subrahmanyam, R. W. 1, who is the Chief Engineer of the company, has been ignored on illegal grounds and, therefore, the tribunal has acted with material irregularity in the exercise of its jurisdiction while determining issue 2 which related to demand 2. I have already quoted from the impugned award what the tribunal has said about the evidence of Sri Subrahmanyam. If the matter is approached in a purely legalistic manner, there is some force in the contention of the learned counsel, but if the matter is approached from a broader perspective it can safely be said that the evidence of Sri Subrahmanyam was considered and not accepted. No advantage can be derived by the company from the manner of expression of the tribunal, particularly when the entire evidence led on issue 2 has been considered. The decision on issue 2 being based on evidence and being on a question of fact, is immune from attack in proceedings under Articles 226 and 227 of the Constitution of India. I would accordingly uphold that decision and reject the

contention of the learned counsel for the company, that the evidence of R.W. 1 has been illegally rejected.

6. Regarding demand 3 Sri Nanavati is on firm ground. The contention of the learned counsel is that on the matter of sick leave there is a statutory enactment in the State of Punjab, namely, the Punjab Industrial Establishments (National and Festival Holidays and Casual and Sick Leave) Act, 1966 (14 of 1965). It is maintained by the learned counsel that in view of this specific enactment the tribunal could not fix the period of sick leave more than the one provided by the Act. As a matter of fact the company is giving fifteen days" sick leave with full pay to its daily-rated workmen, whereas the Act provides for only fourteen days" sick leave with half-pay. Sri Nanavati has drawn my attention to the Supreme Court decision in *May and Baker (India), Ltd. v. their workmen* 1961 L.L.J. 94. Wanchoo, J., who spoke for the Court, while dealing with a similar problem, observed as follows at p. 96:

The next contention is with respect to leave facilities. The tribunal has directed that accumulation of privilege leave shall be allowed up to the maximum period of twelve weeks. This direction is attacked on the ground that it is against the provisions of Section 22(1)(b)(i) of the Delhi Shops and Establishments Act (7 of 1954). This contention must succeed, for Section 22(1)(b)(i) provides that privilege leave admissible may be accumulated up to the maximum period of thirty days. It was, therefore, not open to the tribunal to allow accumulation of leave up to twelve weeks. The award of the tribunal is, therefore, modified and the accumulation of privilege leave is allowed up to thirty days only as provided by law.

7. These observations fully support the contention of the learned counsel. The learned counsel has also drawn my attention to the following observations in the decision of the Supreme Court in *Alembic Chemical Works Company, Ltd. v. its workmen* 1961 L.L.J. 328 ;

Then it is urged that the provision made by the award for privilege leave introduces discrimination between the clerical staff covered by the present reference and operatives covered by the earlier awards made by the same tribunal. We were told that operatives had made a similar claim for privilege leave before the same tribunal, and the said claim had been rejected. The argument is that the provision for privilege leave made by the present award would create discontent amongst the operatives to whom similar leave has been denied, and that would disturb industrial peace. We are not impressed by this argument. It is not seriously disputed that a distinction has generally been made between operatives who do manual work and clerical and other staff; in fact, the appellant's standing orders themselves make different relevant provisions for the two categories of its employees. It is also not disputed that in practice such distinction is made by comparable concerns, and awards based on the same distinction are generally made in respect of the two separate categories of employees. We are, therefore, unable to appreciate the argument that in

granting privilege leave to the present staff the tribunal has either overlooked its earlier award or has made a decision which suffers from the vice of discrimination. The practice prevailing in comparable concerns and the trend of awards both seem to show that a distinction is generally made between the two categories of employees, and since the said distinction is perfectly justifiable no question of discrimination can arise.

and on these basis has contended that the tribunal could not equate the daily-rated workmen with the monthly-paid employees and proceed to allow the claim on the basis that there was discrimination as to sick leave between these two categories of workmen. Again the observations of the Supreme Court quoted above do support the learned counsel's contention. The tribunal has in fact proceeded to increase their sick leave from fifteen days to twenty-one days on the basis that monthly-paid employees are granted that amount of leave whereas the daily-rated workmen are granted lesser leave. This consideration is not germane to the fixing of the amount of leave.

8. Sri Anand Swarup, who appears for respondents 2 and 3, argued that the provisions of the Punjab Industrial Establishments (National and Festival Holidays and Casual and Sick Leave) Act do not take away the power of the industrial tribunal in the matter of fixing the amount of leave higher than that provided in the Act and he relied for this contention on certain observations of the Supreme Court in *Alembic Chemical Works Company case* 1961 L.L.J. 328 . Those observations were made in a case where Section 79 of the Factories Act, 1948 (63 of 1948), fell for consideration in the matter fixing of privilege leave by the tribunal. Section 79 only deals with annual leave with wages. A similar argument, as has been advanced by Sri Nanavati, regarding Section 79 was repelled by their lordships of the Supreme Court with the following observations at pp. 331-332:

This argument raises the question of construing Section 79 in the light of the other relevant provisions of the Act. It may be conceded that the provisions made by Section 79 are elaborate, and in that sense may be treated as self-contained and exhaustive. It is also clear that Section 79(1) does not use the expression " not more than or not less than" as it might have done if the intention of the legislature was to make its provisions correspond either to the minimum or the maximum leave claimable by the employees ; but, even so, when Section 79(1) provides that every worker shall be allowed leave as therein prescribed, the provision prima facie sounds like a provision for the minimum rather than for the maximum leave which may be awarded to the worker. If the intension, of the legislature was to make the leave permissible u/s 79(1) the maximum to which a workman would be entitled, it would have used definite and appropriate language in that behalf. We are, therefore, inclined to think that even on a plain construction of Section 79(1) it would be difficult to accede to the argument that it prescribes standardized leave which inevitably would mean the maximum permissible until Section 79(1) itself is changed.

Even on the basis that Section 79(1) is capable of the construction sought to be placed on it by the appellant, the question would still remain whether the said construction should be preferred to the alternative construction which, as we have just indicated, is reasonably possible. The answer to this question must be in the negative for two reasons; first, having regard to the obvious policy and object of the Act, if Section 79(1) is capable of two constructions that construction should be preferred which furthers the policy of the Act and is more beneficial to the employees in whose interest the Act has been passed. It is well-settled that in construing the provisions of a welfare legislation Courts should adopt what is sometimes described as a beneficent rule of construction ; but, apart from this general consideration about the policy and object of the Act, Sections 78 and 84 occurring in the same chapter as Section 79 clearly indicate that Section 79(1) is not intended to standardize leave provisions as contended by the appellant, and that is the second reason why the appellant's argument cannot be accepted.

Let us then consider the provisions of Sections 78 and 84. Section 78(1) provides that the provisions of Chap. VIII shall not operate to the prejudice of any right to which a worker may be entitled under any other law, or under the terms of any award, agreement or contract of service. There is a proviso to this sub-section which lays down that when such award, agreement or contract of service provides for longer annual leave with wages than provided in this chapter the worker shall be entitled only to such longer annual leave. Section 78(2) exempts specified workers from the operation of Chap. VIII. The first difficulty which this section raises against appellant's argument is that it undoubtedly recognizes exceptions to the leave prescribed by Section 79(1). It is well-known that standardization of conditions of service in industrial adjudication generally does not recognize or permit exceptions; if the hours of work are standardized, for instance, or the wage-structure is standardized, it is intended to make hours of work and wages uniform in the whole industry brought under the working of standardization.

Standardization thus inevitably means levelling up of those whose terms and conditions of service were less favourable than the standardized ones, and levelling down those of such others whose terms and conditions were more favourable than the standardized ones. That being so, if Section 79(1) intended to standardize annual leave with wages, it would normally not have made provisions in regard to exceptions as Section 78(1) obviously does. "

It is no doubt true that prima facie these observations do lend support to the contention of Sri Anand Swarup, but the provisions that fell for consideration in that decision were those of the Factories Act, a general provision. In the instant case, we have a specific Act dealing with casual and sick leave and it seems that the intention of the legislature was to fix a uniform pattern of casual and sick leave for all industrial establishments, and in view of the clear observations, in similar circumstances of the Supreme Court in *May and Baker (India), Ltd.* case

1961 L.L.J. 94 the conclusion is inescapable that the industrial tribunal was not justified in making a departure from the provisions of the Punjab Industrial Establishments (National and Festival Holidays and Casual and Sick Leave) Act I would, therefore, accept the contention of Sri Nanavati in preference to that of Sri Anand Swarup. The result would be that the award of the tribunal with regard to demand 3 would be without jurisdiction.

10. For the reasons recorded above, I allow this petition to the extent that the decision of the tribunal with regard to demand 3 will be set aside, whereas its decision with regard to demand 2 will stand. In view of divided success, there will be no order as to costs.