
(1978) 02 MAD CK 0056
In the Madras High Court

Bhagavathi Vilas Cigar Co.

APPELLANT

Vs

Labour Court and Others

RESPONDENT

Date of Decision : 23-02-1978

Acts Referred:

Beedi and Cigar Workers (Conditions of Employment) Act, 1966 — Section 26, 27
Industrial Disputes Act, 1947 — Section 33C

Citation : (1979) 2 LLJ 172

Hon'ble Judges : Mohan, J

Bench : Single Bench

Judgement

Mohan, J.—The short question that arises for any determination in this case is whether the workmen-respondents are entitled to encash the leave which they were unable to take in the following circumstances.

2. On 1st July, 1968, the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, came into force. By a notification issued u/s 26 of that Act on 16th September, 1968, the provisions of Payment of Wages Act became applicable to the workers under this Act. On 8th September, 1972, a Division Bench of this Court struck down Sections 26 and 27 of the Act, as ultra vires. The correctness of this judgment was canvassed before the Supreme Court when appeals were preferred. Their Lordships of the Supreme Court held both the sections as intra vires reversing the judgment of this Court as seen from the decision reported in Mangalore Ganesh Beedi Works and Others Vs. Union of India (UOI) and Others, . Thereupon the workmen contesting respondents preferred applications u/s 33C(2) of the Industrial Disputes Act claiming monetary equivalent for the leave. which they could not take in view of this litigation. The Labour Court under the impugned order rendered in C.P. Nos. 139 to 141 of 1974, dated 24th September, 1975, has computed the benefit.

3. Mr. V. Manivannan, learned counsel for the petitioner, urges that neither Section 26 nor Section 27 would enable the workers to claim the monetary compensation or equivalent thereof for the privilege leave which they could have

enjoyed. In support of this submission, the learned counsel cites the decisions in *Bombay Gas Company, Ltd. Vs. Kulkarni (R.N.)*, , *U.P. Electric Supply Co. Ltd. Vs. R.K. Shukla and Another, etc.*, and the judgment of Ramaprasada Rao, J., in Writ Petition No. 2459 of 1970.

4. Mr. K.T. Palpandian, learned counsel for the respondents, after taking me through Sections 26 and 27 states that if by reason of these provisions, a worker is entitled to payment for the leave allowed to him at the rate claimed, it will totally be a full-time earning, inasmuch as that has been denied to him because of the litigations relating to the vires of the provisions of the Act. Section 33C(2) of the Industrial Disputes Act could be availed of for working-out any monetary compensation.

5. In order to appreciate the respective contentions, let me extract Sections 26 and 27 of the Act:

26. "Annual leave with wages-

(1) Every employee in an establishment shall be allowed in a calendar year leave with wages-

(i) in the case of an adult, at the rate of one day for every twenty days of work performed by him during the previous calendar year;

(ii) in the case of a young person at the rate of one day for every fifteen days of work performed by him during the previous calendar year.

Explanation.-The leave admissible under this sub-section shall be exclusive of all holidays whether occurring during, or at the beginning or at the end of, the period of leave.

(2) If an employee is discharged or dismissed from service or quits employment during the course of the year, he shall be entitled to leave with wages at the rate laid down in Sub-section (1).

(3) In calculating leave under this section, any fraction of leave of half a day or more shall be treated as one full day's leave and any fraction of less than half a day shall be omitted.

(4) If any employee does not, in any calendar year, take the whole of the leave allowed to him under Sub-section (1), the leave not taken by him shall be added to the leave to be allowed to him in the succeeding calendar year:

Provided that the total number of days of leave that may be carried forward to a succeeding year shall not exceed thirty in the case of an adult or forty in the case of a young person.

(5) An application of an employee for the whole or any portion of the leave allowed under Sub-section (1) shall be in writing and ordinarily shall have to be made sufficiently in advance of the day on which he wishes the leave to begin.

(6) If the employment of an employee who is entitled to leave under Sub-section (1) is terminated by the employer before he has taken the entire leave to which he is entitled, or if having applied for leave, he has not been granted such leave, or if the employee quits his employment before he has taken the leave, the employer shall pay him the amount payable u/s 27 in respect of leave not taken and such payment shall be made, where the employment of the employee is terminated by the employer, before the expiry of the second working day after such termination and where the employee quits his employment, on or before the next day.

(7) The leave not availed of by an employee shall not be taken into consideration in computing the period of any notice required to be given before discharger or dismissal.

27. Wages during leave period.-

(1) For the leave allowed to him u/s 26, an employee shall be paid at the rate equal to the daily average of his total full time earnings for the days on which he had worked during the month immediately preceding his leave exclusive of any overtime earnings and bonus but inclusive of dearness and other allowances.

Explanation I.--In this sub-section, the expression "total full time earnings" includes the cash equivalent of the advantage accruing through the concessional sale to employees of food-grains and other articles, as the employee is for the time being entitled to, but does not include bonus.

Explanation II.--For the purpose of determining the wages payable to a home worker during leave period or for the purpose of payment of maternity benefit to a woman home worker, "day" shall mean any period during which such home worker was employed, during a period of twenty-four hours commencing at midnight, for making beedi or cigar or both.

(2) An employee who has been allowed leave for not less than four days in the case of an adult and five days in the case of a young person, shall, before his leave begins, be paid wages due for the period of the leave allowed.

6. A reading of this will clearly show that there is no provision as such to enable the encashment for the leave unavailed of by the worker. It is one thing to say that he is entitled to avail leave and it is another thing to say that he is entitled to encash that leave. In fact, a Division Bench of the Bombay High Court in *Bombay Gas Company, Ltd. Vs. Kulkarni (R.N.)*, : *The Bombay Gas Co. Ltd. Vs. R.N. Kulkarni and Another*, , laid down as under:

?Quite apart from these expressed grounds for the conferment of that benefit, it is well known that privilege leave is a sort of benefit granted to an employee so that he may recoup health after a long period of work and return to work refreshed. In short, it is a benefit which would have little meaning if it were not to be actually enjoyed by the worker and instead the worker were to be given a monetary privilege. It seems to us that this is the fundamental basis for the

grant of this benefit of privilege leave, and if so, it is implicit in the nature of that benefit and the purpose for which it is granted that it ought not to be allowed to be converted into money, except perhaps, when ultimately the worker retires with privilege leave to his credit, which is not the case here so far as either of the two respondents employees is concerned. We need not say anything about such a special case, but normally privilege leave, is by its very nature and purpose, a benefit meant to be enjoyed and not be encashed.

The Supreme Court also held in U.P. Electric Supply Co. Ltd. Vs. R.K. Shukla and Another, etc., , as under :

Finally, it was contended--and that contention relates only to the cases of 56 workmen in the Lucknow undertaking--that the workmen who had not availed themselves of earned leave were entitled to compensation equal to thirty days' wages. But we do not think that any such compensation is statutorily payable. So long as the company was carrying on its business, it was obliged to give facility for enjoying earned leave to its workmen. But after the company closed its business, it could not obviously give any earned leave to those workmen, nor could the workmen claim any compensation for not availing themselves of the leave. In the absence of any provision in the statute governing the right to compensation for earned leave not availed of by the workmen before closure or transfer of an undertaking, we do not think that any such compensation is payable.

My learned brother Ramaprasada Rao, J., in applying the principles laid down in the above two cases held in Rousdon Mullai Estate, Nilgiris v. V Vasu Nair Writ Petition No. 2549 of 1970, as under:

The Bombay High Court in Bombay Gas Ltd. v. R.N. Kulkarni AIR 1965 Bom. 137 and later the Supreme Court in U.P. Electric Supply Co. Ltd. Vs. R.K. Shukla and Another, etc., , have made the position clear that in cases where a privilege which is gained or earned by an employee is to be encashed or converted into money, the standing orders governing the employee and the employer should expressly provide for the same or in the alternative there should be a law of the land which should govern the position. Neither is the case here. As already stated by me, no standing order has been brought to my notice which compels the petitioner to allow encashment of the alleged accumulated privilege leave and respect the demand of the first respondent. In the absence of any such provision in the standing orders, I am unable to accept the view taken by the Labour Court that the first respondent would be entitled to such conversion of his alleged benefit, earned by him during his ad hoc service with the employer. The conclusion arrived at by the Labour Court is one which is against the accepted principle laid down by the Supreme Court and the Labour Court had no jurisdiction to hold that such a conversion of the benefit into money was possible, when there was no provision in the standing order to do so.

These three cases are clearly against the respondents workmen. Therefore, I

have to necessarily hold that the impugned order cannot be held to be tenable in law and consequently the writ petition will stand allowed. No costs.

7. I make it clear that certainly if there are other remedies open to these workmen to claim the monetary compensation for any unused leave, that is a matter to be agitated by separate proceedings.