(1993) 07 KAR CK 0009

In the Karnataka High Court

Case No : Writ Petition No''s. 801 to 803 of 1986

Bharat Tobacco Trading Co. APPELLANT

Vs

Labour Officer RESPONDENT

Date of Decision : 27-07-1993

Acts Referred:

Industrial Disputes Act, 1947 — Section 33 (c)
Karnataka Industrial Establishments (National and Festival Holidays) Act, 1963 — Section 5, 7 C
Karnataka Industrial Establishments (National and Festival Holidays) Rules, 1964 — Rule 10, 10C

Citation : (1993) ILR (Kar) 3378 : (1993) 3 KarLJ 219

Hon'ble Judges : A.J. Sadashiva, J

Bench : Single Bench

Advocate : R. Gururajan, for the Appellant; M.C. Narasimhan, for R-2, for the Respondent

Judgement

Sadashiva, J.—The petitioners in these Writ Petitions are three Industries engaged in the business of tobacco processing at Nippani. They have sought for a Writ of Certiorari to quash the order dated 4.4.1985 passed by the first respondent in No. LOB/NFH/CR-55/84-85 produced at Annexure-B, by which the petitioners are directed to pay wages for National Holidays to the employees, who were working in their establishments.

2. The contention of the petitioners in these Writ Petitions is that, the order at Annexure-B is without jurisdiction as the first respondent has no power of adjudication under the provisions of the Karnataka Industrial Establishments (National and Festival Holidays) Act, 1963 and the Karnataka Industrial Establishments (National and Festival Holidays) Rules, 1964 (hereinafter called ''the Act'' and ''the Rules'', respectively). Elaborating the said contention Sri R.Gururajan, learned Counsel for the petitioners, submits that, in view of the objection raised by the petitioners before the first respondent as to their liability to pay wages to their workmen in respect of National and Festival Holidays,

namely, 15th August and 2nd October 1983 and 1984, the first respondent has no jurisdiction to adjudicate upon the liability and such adjudication shall be only u/s 33(c) of the Industrial Disputes Act or under the provisions of the Payment of Wages Act.

3. Per contra Sri M.C.Narasimhan, learned Counsel for respondent-2, submits that the first respondent is duty bound to satisfy himself that wages in respect of National Holidays are paid in exercise of powers u/s 7(C) of the Act read with Rule 10(C) of the Rules. In order to appreciate the rival contentions raised by the petitioners and respondent-2, it is necessary to note the relevant provisions under the Act and the Rules.

4. Section 3 of the Act provides for grant of National and Festival Holidays. Section 4 of the Act deals with the statement of the employer to be submitted to the Inspector, Section 5 deals with the payment of wages for such of the holidays allowed, to the employees, u/s 3 and Section 7 deals with the power of Inspectors. Rule 10 of the Rules deals with the duties of the Inspectors.

5. It is submitted by Sri R.Gururajan, learned Counsel for the petitioners, that an employee is not entitled for wages for National and Festival holidays unless he has been in service of the employer for a period of 30 days within continuous period of 90 days immediately preceding such holiday. He therefore contends whether or not an employee has been in service of the employer for a period of 30 days within a continuous period of 90 days immediately preceding such holiday, is the question for adjudication and as the first respondent has no power to adjudicate, the order impugned herein is without jurisdiction. In view of this contention, it is necessary to note Section 5 of the Act and the same reads as under:

"5. WAGES.- (1) Notwithstanding any contract to the contrary, every employee shall be paid wages for each of the holidays allowed to u/s 3.

(2) Where an employee works on any holiday allowed u/s 3 he shall at his option, be entitled to -

(a) twice the wages; or

(b) wages for such day and to avail himself of a substituted holiday with wages on any other day.

(3) Notwithstanding anything contained in Sub-section (1) or Sub-section (2) an employee who is paid wages by the day or at piece rates shall be entitled to be paid wages for any holidays allowed u/s 3 -

(i) Only at a rate equivalent to the daily average of his wages to be calculated in the prescribed manner;

(ii) Where he works on any such holiday, only at twice the rate mentioned in Clause (i) or in lieu thereof, at the rate mentioned in that clause and to avail himself of a substituted holiday with wages at the rate on any other day;

Provided that no such employee shall be entitled to be paid any wages for any of the holidays allowed u/s 3, other than the 26th January, the 15th August and the 2nd October unless he has been in the service under the employer for a total period of thirty days within a continuous period of ninety days immediately preceding such holiday."

From the reading of Section 5 of the Act, it is clear that an employee is entitled for payment of wages, in respect of holidays allowed u/s 3. Proviso to Section 5 provides that in order to become entitled for payment of wages in respect of holidays allowed u/s 3 of the Act, the employee shall be in the service of the employer for a period of 30 days within a continuous period of 90 days immediately preceding such holiday. However, the very Proviso excepts the employee, for payment of wages in respect of National holidays, from the rigour of having been "in the service of the employer for a period of 30 days within continuous period of 90 days immediately preceding such holiday." It is therefore clear that, an employee is entitled for National holiday with full wages, irrespective of the duration of his service. Where an employee is entitled for wages in respect of National holidays, there is nothing to be adjudicated. The question in controversy in these Petitions is whether the employees are entitled for payment of wages for National holidays falling on 15th August and 2nd October during the years 1983 and 1984 and Sri Gururajan does not dispute this position of law. He admits that the employees are exempted from the requirement of "having been in service of the employer for a period of 30 days" during the period of 90 days immediately preceding the holiday for the purpose of payment of wages in respect of the National holidays. It is therefore clear that there was no controversy for the first respondent to adjudicate upon, as the employees are admittedly entitled for wages in respect of National holidays, and in fact the first respondent has not adjudicated upon any controversy in this case. He has simply given effect to the provisions of the Act and the Rules.

6. The next contention of Sri R.Gururajan is that, the petitioners have raised objections that during the relevant period the establishments have not engaged any casual workers and as such they are not entitled for full wages for the National holidays also and in view of such objection, the direction issued by the first respondent vide Annexure-B amounts to adjudication, which is impermissible under the provisions of the Act and the Rules. In this regard he placed reliance on the Decision of this Court in the case of NGEF LTD. v. LABOUR OFFICER AND INSPECTOR and Ors. 1976 (2) KarLJ 110. It was a case where the Labour Inspector while adjusting the holidays for festivals had increased the number of holidays by one day more than the prescribed holidays. Dealing with power of the Labour Officer and Inspector, this Court has held that inclusion of one more holiday to the prescribed number of holidays amounts to adjudication and it is beyond the powers of the Labour Officer and Inspector. However, it is not disputed by Sri R.Gururajan that the Labour Inspector has power "to exercise such other powers as may be necessary for carrying out the purpose of this Act" as empowered by Section 7 of the Act. Section 7 of the Act read as under:

"7. POWERS OF INSPECTORS. - Subject to any rules made by the State Government in this behalf, an inspector may, within the local limits for which he is appointed or within which the industrial establishments for which he is appointed is or are situated,

(a) Enter at all reasonable times and with such assistants, if any, who are persons in the service of the Government or of any local authority as he thinks fit to take with him, any place which is, or which he has reason to believe is, an industrial establishment or as the case may be, the industrial establishment or one belonging to such class of industrial establishment for which he is appointed.

(b) make such an examination of the premises and of any prescribed registers, records and notices and take on the spot or otherwise, the evidence of such person as he may deem necessary for carrying out the purposes of this Act.

(c) exercise such other powers as may be necessary for carrying out the purposes of this Act.

Provided that no one shall be required under this section to answer any question or give any evidence tendering to incriminate himself."

The purpose of the Act is to see that the employees are granted holidays as allowed u/s 3 and they are also paid wages in respect of the said holidays, as prescribed in Section 5.

7. Sri R.Gururajan submits that the first respondent has no authority to pass the impugned order under Clause (c) of Section 7 of the Act. It is beyond his powers. In the very Decision upon which Sri Gururajan placed reliance, this Court at para 9 of the Judgment has observed as follows:

"This rule, no doubt, confers power on the Inspector to alter and approve the list of Holidays submitted by the Company, but that power appears to be highly limited and limited to see that the provisions of the Act are properly implemented. The Inspector has to see first whether the employer has given the minimum number of holidays prescribed by Section 3. If he finds that the employer''s list is not according to Section 3, he could add to the list, to make the good deficiency. If he finds the list satisfying the requirements of Section 3 then he could consider the claim of the employees, if any, based on Section 11, if Section 11 is attracted to a given case, he may ask the employer to give such other holidays that have been consistently enjoyed by the employees when the Act came into force. In either case, he should consider the objections or suggestions, if any, from the employees and the representations, if any, by the employer before approving the list of holidays. If the list is not in conformity with the provisions of the Act, he cannot alter it by way of addition or deletion. He may, however, rearrange the festival holidays as suggested or mutually agreed upon. It must be borne in mind that he is not an adjudicating authority to determine any dispute of the employer and the employees. He is only a statutory authority to enforce the provisions of the Act. If there is any dispute falling out-side the scope of the Act, he may direct the parties to get it adjudicated by having recourse to the remedies provided under the Industrial Disputes Act."

Relying on this paragraph, Sri R.Gururajan says that whether or not the employees are entitled for wages in respect of National holidays is a dispute between the employer and the employees and it cannot be adjudicated upon by the first respondent. On a reading of the provisions of the Act and the Rules, I am not able to pursuade myself to agree with the contention of Sri R.Gururajan.

8. It is not the case of the petitioners that the employees have been terminated from service. If the employees are in service, Sections 3, 4 and 5 are attracted. The dispute may arise with respect to the entitlement of the employees in respect of festival holidays, in the absence of proof of having been in service for a period of 30 days during the continuous period of 90 days immediately preceding the holidays, but no such dispute would arise with respect to National holidays, for Proviso to Sub-section (3) of Section 5 clearly excludes the National holidays from the purview of "having been in service for a period of 30 days" within a continuous period of 90 days immediately preceding the holidays. Therefore whether the employees have been in service for a period of 30 days or not, they are entitled for National holidays with wages. In the case on hand the grievance of the employees is, that they are not paid the full wages for the National holidays and during the enquiry the petitioners have raised certain objections, which were over-ruled by the first respondent and directed the petitioners to pay wages in respect of National holidays. Where the facts are admitted and the liability is also prescribed by law, it needs no adjudication. Therefore it cannot be said that the first respondent has adjudicated upon the dispute under the provisions of the Act and the Rules in respect of the dispute falling out-side the scope of the Act.

9. In another unreported Judgment of this Court in the case of BAGALKOT UDYOG LTD. v. LABOUR OFFICER AND INSPECTORS and Ors., W.A. No. 508 of 1980 a Division Bench of this Court has held as follows:

"Section 7 empowers the Inspector to exercise powers as may be necessary to carry out the purposes of the Act and one such purpose is to ensure that the employees get their National holidays and five festival holidays every year u/s 3 of the Act."

Therefore the order made by the first respondent vide Annexure-B is nothing but enforcing what is provided under the provisions of the Act and the the Rules framed thereunder for which employees are entitled.

10. Clause (c) of Section 7 as stated above provides for power to the Inspectors to "exercise such other powers as may be necessary for carrying out the purpose of this Act." One such purpose is to ensure that the employees get three National holidays with full wages. Rule 10 of the Rules which deals with the duties of the Inspector prescribes that an Inspector, shall at such inspection of an industrial establishment satisfy himself "that the amount of holiday wages has been paid,"

It is not in dispute in these Petitions, that the employees have not been paid their wages for the National holidays falling on 15th August 1983 and 15th August 1984 and it is also not in dispute that they are entitled for full wages for the said holidays under the provisions of the Act. When they are entitled and they are denied, it is the duty of the Labour Inspector to see that the National holidays wages are paid to the employees under Rule 10(c) of the Rules in the exercise of such other power as may be necessary for carrying out the purpose of the Act. In exercise of his powers and in observance of the duties, the first respondent has passed the order impugned in these Writ Petitions. In the facts and circumstance of the case, it cannot be said that there was any dispute between the employer and the employees falling out-side the scope of the Act and the said dispute was adjudicated upon by the first respondent. He has simply directed the employers to comply with the provisions of the Act and the Rules and on their failure, of course, has stated in Annexures C and D "consequences would follow."

11. It is submitted by Sri R.Gururajan, learned Counsel for the petitioners, that in view of the Writ Petitions, the petitioners are not able to submit their explanation to the show-cause notices issued by the first respondent vide Annexures C and D. The petitioners are allowed to file their explanation to the show-cause notices within seven days from the date of receipt of this order.

12. For the reasons stated above, I make the following order.

(i) Rule is discharged.

(ii) In the facts and circumstances of the case, the parties to bear their own costs.

