

(1970) 10 P&H CK 0013
In the Punjab And Haryana At Chandigarh

Bhupindra Cement Workers' Union and Another	APPELLANT
Vs	
Associated Cement Companies and Others	RESPONDENT

Date of Decision : 12-10-1970

Acts Referred:

Factories Act, 1948 — Section 78, 79, 84
Industrial Disputes Act, 1947 — Section 10

Citation : (1971) 2 LLJ 28

Hon'ble Judges : Harbans Singh, C.J.; Prem Chand Jain, J

Bench : Division Bench

Judgement

1. The workmen of Bhupindra Cement Works, Surajpur, through the Bhupindra Cement Karamchhari Union (Registered), served a notice of demand on their employers on 20th July, 1965. The matter was referred to the Conciliation Officer but the same did not bear any fruit. Thus a dispute arose between them on various points, which was referred to the Industrial Tribunal for adjudication, by the Punjab Government, under Clause (d) of Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, vide Notification No. 45-SF-III-Lab-I-66, dated 19th January, 1966. One of the points that was raised before the Tribunal, and with which we are concerned in this appeal, reads thus:

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?

The Tribunal decided this point in favour of the appellants and held that the daily rated staff should also get 21 days' sick leave with full pay in a year like the monthly paid staff. The decision of the Tribunal was challenged by the Associated Cement Companies Ltd., Bhupindra Cement Works, in Civil Writ No. 2463 of 1966, which came up for hearing before D.K. Mahajan, J., who, after considering the various decisions of the Supreme Court and the relevant provisions of the law referred to before him, held 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, 1965

(hereinafter referred to as the Act), and, on that basis quashed the award of the Tribunal in respect of the point with which we are concerned in this appeal. It is against the said decision of the learned single Judge that the present appeal has been filed by Bhupindra Workers" Union, Surajpur and another, under Clause 10 of the Letters Patent.

2. The only point that requires consideration in this appeal is whether the Tribunal could or could not fix the period of sick leave more than the one provided in the Act. The contention of Mr. Bindra, learned Counsel for the appellants, was that the Tribunal could u/s 14 of the Act, allow the same number of sick leave to the daily rated workmen as was allowed to the monthly paid workers. Support was sought by the learned Counsel from the provisions of Sections 78 and 79 of the Factories Act, 1948, and also from the observations of their Lordships of the Supreme Court in *Alembic Chemical Works Co. Ltd. v. Their Workmen* [1961] 20 F.J.R. 78 which read as under (at pages 81 to 83):--

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 intention 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 standardised 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 standardise 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 Chapter 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 subsection 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 Chapter VIII. The first difficulty which this section raises against appellant's argument is that it undoubtedly recognises exceptions to the leave prescribed by Section 79(1). It is well known that standardisation of conditions of service in industrial adjudication generally does not recognise or permit exceptions; if the hours of work are standardised, for instance, or the wage-structure is standardised, it is intended to make hours of work and wages uniform in the whole industry brought under the working of standardisation. Standardisation thus inevitably means levelling up of those whose terms and conditions of service were less favourable than the standardised ones, and levelling down those of such others whose terms and conditions were more favourable than the standardised ones. That being so, if Section 79(1) intended to standardise annual leave with wages it would normally not have made provisions in regard to exceptions as Section 78(1) obviously does.

3. We are afraid, there is no merit in the contention of the learned Counsel for the appellants and the observations of their Lordships of the Supreme Court, referred to above, do not help him at all. In this case we are concerned with the specific provisions of the Act dealing with the casual and sick leave, which read as under:--

4. Casual and sick leave.--Every worker shall in each calendar year, be allowed by the employer casual leave for seven days and sick leave for fourteen days in such manner and on such conditions as may be prescribed.

14. Rights and privileges under other laws, etc., not affected.--Nothing contained in this Act shall affect any rights or privileges which any worker is entitled to receive under any other law, contract, custom, or usage, if such rights or privileges are more favourable to him than those to which he would be entitled under this Act.

4. u/s 4, every worker is allowed sick leave to the extent of 14 days. u/s 14, it is provided that a worker's rights or privileges which he may be entitled to receive under any other law, contract, custom or usage would not be affected adversely by any provision of this Act, if such rights or privileges are more favourable to him than those to which he is entitled under the Act. In the instant case, the increase in sick leave has been given by the Tribunal by an award and that

privilege is not covered by Section 14 of the Act. Section 78 of the Factories Act, which reads thus--

78. Application of Chapter.--(1) The provisions of this Chapter 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:

Provided that when such award, agreement or contract of service provides for a longer annual leave with wages than provided in this Chapter, the workers shall be entitled only to such longer annual leave.

(2) The provisions of this Chapter shall not apply to workers in any workshop of any railway administered by the Government, who are governed by leave rules approved by the Central Government, the award is included while u/s 14 of the Act, the award is not included. The appellants could certainly succeed if u/s 14 the Legislature had, in addition to other words, included "award" also. The result is that the Industrial Tribunal could not decide the matter against the statutory provisions of Section 4 of the Act which clearly provides that a worker is allowed sick leave to the extent of 14 days. In this view of the matter, we find no ground to differ from the view taken by the learned single Judge on this aspect of the matter.

departs from Section 14 of the Act inasmuch as u/s 78 of the Factories Act, even the award is included while u/s 14 of the Act, the award is not included. The appellants could certainly succeed if u/s 14 the Legislature had, in addition to other words, included "award" also. The result is that the Industrial Tribunal could not decide the matter against the statutory provisions of Section 4 of the Act which clearly provides that a worker is allowed sick leave to the extent of 14 days. In this view of the matter, we find no ground to differ from the view taken by the learned single Judge on this aspect of the matter.

5. For the reasons recorded above, this appeal fails and is dismissed with costs.