

(2004) 02 MP CK 0069
In the Madhya Pradesh High Court
Case No : W.P.S. No. 1221 of 2003

Chief General Manager, SECL and Others	APPELLANT
Vs	
Balbir Prasad Pal and Another	RESPONDENT

Date of Decision : 04-02-2004

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)
Mines Act, 1952 — Section 52, 52(1), 52(10), 52(2), 52(3)

Citation : (2005) 1 JLJ 69 : (2004) 3 MPLJ 519

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : Vivek Rusia, for the Appellant; Malti Dadaria, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Mishra, J.

In these nine writ petitions Petitioner/South Eastern Coalfields Ltd. and Ors. have assailed the awards passed by the Labour Court, Shahdol Labour Court has directed encashment of earned leave which was accumulated by the workman.

The facts are being illustrated from WPS No. 1221/2003. It is averred in the petition that South Eastern Coal Fields Ltd. is a company registered under the Companies Act and is subsidiary of Coal India Ltd. Workman Shri Balbir Prasad Pal filed an application u/s 33C(2) of Industrial Disputes Act, 1947 (hereinafter referred to as "ID Act") claiming an amount of Rs. 24,867/- on account of "70 days" earned leave encashment. He worked as Sr. Loading Supdt. in Amali Colliery and retired with effect from 1.1.1999 after attaining the age of superannuation. Workman claimed that he was entitled for 15 days" earned leave yearly, accordingly 70 days" leave has been accumulated which he could not avail, therefore, he is entitled for payment of Rs. 24,867/-. In the application (P-1) filed before the Labour Court it was stated that the total period accrued on account of earned leave was 70 days and application was made to avail the leave

but it was not sanctioned hence could not be utilized.

A reply (P-2) was filed by the SECL before the Labour Court. The accrual of earned leave as claimed by the applicant/workman was not disputed, however, it was submitted that on 28.10.1999 he was advised to avail the accrued earned leave which was not availed. Oral advice was rendered to avail the earned leave but workman did not utilize it. Statement (P-3) has been filed by the Petitioner. A perusal of the statement shows that total leave due as on 1.1.1998 was 56 days and in 1998 14 days leave had accrued. It is averred in the petition that Labour Court has allowed the claim as per award (P-5) dated 30th June, 2003. It is further averred that in the year 2000 Labour Court has decided four cases of leave encashment against which four writ petitions were filed before this Court, the writ petitions were dismissed in limine. Against the order of dismissal, SLP was preferred before the Apex Court. The Apex Court has opined that though interesting question of law is involved as to interpretation of Section 52 of the Mines Act, but since it is a case of four individuals hence there is no necessity to examine the same. It is submitted that now the Labour Court has decided nine cases in which these writ petitions have been filed. Thus, it has become necessary to decide applicability of Section 52(10) of Mines Act, 1952. The Petitioner has challenged the award on the ground that Labour Court has acted mechanically, provision of Section 33C(2) of the ID Act is in the nature of execution proceedings, Labour Court cannot decide the claim under this provision. Thus, the award is liable to be set aside. The National Coal Wage Agreement VI is applicable to the employees, their service conditions are governed under the agreement between the Union of India and the Management. Clause 12.3.1 deals with leave encashment which provides that workman will be entitled to get encashment of earned leave @ 15 days per year. This benefit was made applicable for the first time in National Coal Wage Agreement VI. That benefit was not available to the employees from the date of signing of the memorandum of understanding dated 23.12.2000 as apparent from memorandum (P-6). In the present case the workman has retired on 1.1.1999, therefore, the benefit of leave encashment as per National Coal Wage Agreement VI is not available. It is further submitted by the Petitioner that from January, 1998 to January, 1999 employee did not avail the leave which was available to him to get overtime. He has worked even on Sundays. When Respondent-workman has failed to avail the benefit of earned leave after retirement, he cannot claim its encashment. Workman was aware about the credit of earned leave in the account. On 6.7.1998 Sub-Area Manager has informed the workman that he was going to retire with effect from 1.1.1999 on attaining the age of 60 years, he was advised to avail earned leave at his credit, the number of leaves available were also informed, having failed to avail the leave workman cannot claim its encashment.

A return has been filed by Respondent No. 1-workman. It is contended in the return that quantum of leave due was not disputed. Provision of Section 33C(2) of ID Act is applicable. Computation has been made in terms of Section 52 of the

Mines Act. National Coal Wage Agreement was made applicable with effect from 1.7.1996 to 30.6.2001, though it was signed on 23.12.2000. Retirement was made when National Coal Wage Agreement VI was in force. Vth agreement expired on 30th June, 1996. Employees who have retired in the intervening period from 1.7.1996 to 30th June, 2001 are governed by the provisions of Mines Act as well as provision of National Coal Wage Agreement VI (R-1/1). Clause 6 of the agreement makes the provision of annual leave with wages. Clause 6.1 lays down that annual leave with wages will be continued to be governed by the provisions of Mines Act, 1952. Clause 6.2 of the agreement provides that prevalent practice in respect of earned leave, casual and paid festival holidays will, however, continue if more favourable. Clause 6.3.0 deals with the provision of accumulation/earned leave/annual leave with wages. It is provided therein that existing provision relating to accumulation of earned leave/annual leave will be upto 100 days. Management cannot take advantage of Clause 12.3.1 of Chapter XII which deals with the general provision of encashment of earned leave. Management cannot act arbitrarily, thus, award passed is proper, no interference is called for in these writ petitions. In certain other cases, the employer has accepted the award passed by the Labour Court without challenging it before this Court. In case of Dwarika Prasad Rai amount has been paid. Petitioners cannot pick and choose.

In all the writ petitions workman has retired before signing of the agreement, agreement was signed on 23.12.2000. Amount of accumulated leave has also not been disputed.

Shri Vivek Rusia, learned Counsel appearing for Petitioners has submitted that as per 1st proviso to Sub-section (4) of Section 52 of the Mines Act accumulated leave shall not at any one time exceed thirty days in all. He has further submitted that computation of earned leave has to be done under Sub-section (1) of Section 52 of the Mines Act and as per Sub-section (10) of Section 52 of the Mines Act in the event of superannuation an employee is entitled to wages in lieu of leave due to him calculated at the rate specified in Sub-section (1). He has further submitted that calculation made by the employer was proper. Evidence is required for deciding the question whether an employee has applied for leave with wages but has not been given such leave in accordance with Sub-section (6) shall be entitled to carry forward the leave. Thus, the matter could not have been adjudicated within the ken of Section 33C(2) of ID Act.

Ms. M. Dadaria, learned Counsel appearing for employee- Respondent No. 1 in all the writ petitions has contended that quantum of leave is not disputed and the witness examined on behalf of the employer had admitted the fact of accumulation/quantum of leave. She has placed reliance on National Coal Wage Agreement VI and also the provision of Section 52 of the Mines Act and contended that once the leave had accrued and accumulated above 30 days, it has to be presumed that leave had accumulated in accordance with the provisions of the Act. The provision of Section 33C(2) is clearly attracted in the

case and Labour Court has rightly granted the relief to the employees hence no interference is called for in this writ petition.

The main submission has been raised by learned Counsel for Petitioners about the interpretation of Section 52 of the Mines Act, 1952. Petitioners' counsel has not disputed that an employee who retires after the date of signing of the National Coal Wage Agreement VI on 23.12.2000 is entitled for encashment of maximum of 100 days of earned leave.

Matter came up before this Court on earlier occasion in W.P. No. 1896/2000 where the leave encashment was ordered by the Labour Court along with interest at the rate of 12% per annum and the cost of the proceeding. An application was filed u/s 33C(2) of the ID Act. The Labour Court after referring to the provisions of Section 52(10) of Mines Act, 1952 observed that employer had not produced any record to controvert that said relief was not due at the time of superannuation of Respondent/employee has directed payment of wages in lieu of leave. This Court has dismissed the writ petition in limine. The order was not interfered with by the Apex Court in SLP No. 18089/2000, though the Apex Court has observed that an interesting question of law has been raised as to interpretation of Section 52 of the Mines Act, 1952, it is unnecessary to examine the same in these cases as matter pertains to four individuals, SLP was dismissed.

The main submission raised by learned Counsel for Petitioner is based on Section 52 of the Mines Act. Section 52 of the Mines Act is quoted below:

52. Annual leave with wages--(1) Every person employed in a mine who has completed a calendar year's service therein shall be allowed, during the subsequent calendar year, leave with wages, calculated

(a) in the case of a person employed below ground, at the rate of one day for every (fifteen days) of work performed by him, and

(b) in any other case, at the rate of one day for every twenty days of work performed by him.

(2) A calendar year's service referred to in Sub-section (1) shall be deemed to have been completed

(a) in the case of a person employed below ground in a mine, if he has during the calendar year put in not less than one hundred and ninety attendances at the mine; and

(b) in the case of any other person, if he has during the calendar year put in not less than two hundred and forty attendances at the mine.

Explanation - For the purpose of this Sub-section

(a) any days of lay-off by agreement or contract or as permissible under the standing order;

(b) in the case of a female employee, maternity leave for any number of days not exceeding twelve weeks; and

(c) the leave earned in the year prior to that in which the leave is enjoyed; shall be deemed to be the days on which the employee has worked in a mine for the purpose of computation of the attendances, but he shall not earn leave for these days.

A person whose service commences otherwise than on the first day of January shall be entitled to leave with wages in the subsequent calendar year at the rates specified in Sub-section (1), if

(a) in the case of a person employed below ground in a mine, he has put in attendances for not less than one-half of the total number of days during the remainder of the calendar year; and

(b) in any other case, he has put in attendances for not less than two-thirds of the total number of days during the remainder of the calendar year.

Any leave not taken by a person to which he is entitled in any one calendar year under Sub-section (1) or Sub-section (3) shall be added to the leave to be allowed to him under Sub-section (1) during the succeeding calendar year;

Provided that the total number of days of leave which may be accumulated by any such person shall not at any one time exceed thirty days in all;

Provided further that any such person who has applied for leave with wages but has not been given such leave in accordance with Sub-section (6) shall be entitled to carry forward the unavailed leave without any limit.

Any such person may apply in writing to the manager of the mine not less than fifteen days before the day on which he wishes his leave to begin, for all leave or any portion thereof then allowable to him under Sub-sections (1), (3) and (4).

Provided that the number of times in which leave may be taken during any one calendar year shall not exceed three.

An application for such leave made in accordance with Sub-section (5) shall not be refused unless the authority empowered to grant the leave is of opinion that owing to the exigencies of the situation the leave should be refused.

If a person employed in a mine wants to avail himself of the leave with wages due to him to cover a period of illness, he shall be granted such leave even if the application for leave is not made within the time specified in Sub-section (5).

If the employment of a person employed in a mine is terminated by the owner, agent or manager of the mine before he has taken the entire leave to which he is entitled up to the day of termination of his employment, or if such person having applied for and having not been granted such leave, quits his employment before he has taken the leave, the owner, agent or manager of the mine shall pay him the amount payable u/s 53, in respect of the leave not taken, and such payment

shall be made, where the employment of the person is terminated by the owner, agent or manager, before the expiry of the second working day after such termination, and where a person himself quits his employment, on or before the next pay day.

The unavailed leave of a person employed in a mine shall not be taken into consideration in computing the period of any notice required to be given before the termination of his employment.

Where a person employed in a mine is discharged or dismissed from service or quits his employment or is superannuated or dies while in service, as the case may be, shall be entitled to wages in lieu of leave due to him calculated at the rate specified in Sub-section (1), if

(a) in the case of a person employed below ground in a mine, he has put in attendance for not less than one-half of the total number of days from the date of his employment to the date of his discharge or dismissal or quitting of employment or superannuation or death, and

(b) in any other case, he has put in attendance for not less than two-thirds of the total number of days from the date of his employment to the date of his discharge or dismissal or quitting of employment or superannuation or death, and payment of such wages shall be made by the owner, agent or manager of the mine at the rate specified in Section 53, where the person is discharged or dismissed from service or quits employment or is superannuated, before the expiry of the second working day after such discharge, dismissal, quitting of employment or superannuation, as the case may be, and where the person employed dies while in service, within a period of two months of his death.

Explanation - For the purpose of (Sub-sections (1), (3) and (10)), any fraction of leave of half a day or more shall be treated as one full day and fraction of less than half a day shall be omitted.

The submission of learned Counsel for Petitioner is that computation has to be done under Sub-section (1) and payment of the earned leave has to be made in the event of superannuation under Sub-section (1) of Section 52 of the Mines Act. Thus, Sub-section (4) has no role to play. He has further submitted that as per 1st proviso to Sub-section (4) of Section 52 total accumulation of leave shall not at any one time exceed thirty days in all. He has further submitted that for making out a case under IInd proviso of Sub-section (4) of Section 52, it has to be established that such a person has applied for leave with wages but has not been given such leave in accordance with Sub-section (6) shall be entitled to carry forward the unavailed leave without any limit. Thus, whatever amount due was paid.

A bare reading of provision of Section 52 makes it clear that Sub-section (1) of Section 52 has provided that every person employed in a mine who has completed a calendar year's service therein, shall be allowed, the leave with

wages which are to be calculated on the basis of provision made in Clause (a) and Clause (b). A calendar year's service has been clarified in Sub-section (2) of Section 52 of the Mines Act. A person whose service commences otherwise than on the first day of January shall be entitled to leave with wages as provided in Sub-section (3) of Section 52 read with Sub-section (1) of Section 52. Sub-section (4) of Section 52 provides that any leave not taken by a person to which he is entitled in any one calendar year under Sub-section (1) or Sub-section (3) shall be added to the leave to be allowed to him under Sub-section (1) during the succeeding calendar year. The 1st proviso of Sub-section (4) of Section 52 has put a rider on accumulation of leave exceeding thirty days in all. However, IInd proviso makes it clear that any such person who has applied for leave with wages but has not been given such leave in accordance with Sub-section (6) of Section 52 shall be entitled to carry forward the unavailed leave without any limit. Sub-section (10) of Section 52 provides that an employee in case of superannuation, he or his heirs or his nominee, as the case may be, shall be entitled to wages in lieu of leave due to him calculated at the rate specified in Sub-section (1) and payment has to be made at the rate specified in Section 53 of the Mines Act. I find the submission raised by learned Counsel for Petitioner that Sub-section (4) of Section 52 is not attracted while making the payment under Sub-section (10) of Section 52 of payment of wages in lieu of leave due is not acceptable. Sub-section (4) of Section 52 of Mines Act clearly provides that any leave not taken by a person has to be added under Sub-section (1) and IInd proviso of Sub-section (4) of Section 52 makes the unavailed leave without any limit in case leave was applied for, has not been given such leave in accordance with Sub-section (6) of Section 52, shall carry forward. Sub-section (6) of Section 52 provides that owing to exigency of the situation leave can be refused in case application has been submitted in terms of Sub-section (5) of Section 52 of the Mines Act. Thus, in my opinion the calculation of accumulated earned leave has to be made considering the IInd proviso of Sub-section (4) of Section 52 of the Mines Act and it comes into play with determining the leave which has to be treated as leave with wages under Sub-section (1) of Section 52.

On facts, the accumulation of leave to the extent claimed by the employees was not disputed before the Labour Court, thus, the payment which has been ordered is in terms of Section 52(1), 52(4) and 52(10) of the Mines Act, 1952.

Once the quantum of leave accumulated has not been disputed, it follows that leave has accrued in accordance with the provision of Section 52 and there is clearly an averment made in the application that leave was applied for and was refused which was not denied in the reply. However, after accumulation of the leave when order of retirement was passed the employees were advised to avail the leave which had accrued. In my opinion, when once the leave had accrued, in accordance with provision of Section 52 of the Mines Act, employees could not have been compelled to avail it once it has accumulated. It ought to have been granted when they had applied for it and in case it has not been granted and once it has accumulated, employer is bound to make the payment of the

accumulated leave with wages. In the account of each of employees quantum of accumulated leave has not been disputed and the witness examined by Petitioner has stated that leave claimed by the employees had accumulated in their account.

Coming to the submission raised with respect to the National Coal Wage Agreement VI (R-1/1) filed by the Respondents. It is clear that National Coal Wage Agreement VI in question is effective with effect from 1.7.1996 to 30th June, 2001. The agreement shall cover all categories of employees in the Coal Industry and the scope of agreement as provided in Clause 1.3 covers the wage structure including Dearness allowance, fitment in the revised scale of pay, pension, fringe benefits, service conditions and other allied matters. Clause 6.0 deals with annual leave with wages. Clause 6.1.0 provides that annual leave with wages will be continued to be governed by the provisions of the Mines Act, 1952. It is provided in Clause 6.2.0 that the prevalent practices in respect of Earned leave, casual and paid festival holidays will, however, continue if more favourable. It is provided in Clause 6.3.0 that existing provisions relating to the accumulation of earned leave/annual leave will be upto 100 days. Clause 1.1, 1.3, 6.1.0, 6.2.0 and 6.3.0 of the National Coal Wage Agreement VI are quoted below:

1.1 This Agreement shall be called the National Coal Wage Agreement VI From 1.7.1996 to 30.6.2001.

3. The scope of agreement covers the wage structure including Dearness allowance, fitment in the revised scale of pay, pension, fringe benefits, service conditions and other allied matters including welfare/safety measures as contained in the different Chapters of this Agreement.

1.0 Annual leave with wages will be continued to be governed by the provisions of the Mines Act, 1952.

2.0 The prevalent practices in respect of Earned Leave, Casual and Paid I-, tival holidays will, however, continue if more favourable.

3.0 Accumulation of Earned Leave/Annual Leave with Wages The existing provisions relating to the accumulation of Earned Leave/Annual Leave will be upto 100 days.

Encashment of earned leave has been dealt with under Clause 12.3.1 and encashment of earned leave is allowed at the rate of 15 days per year or 100 days whichever is less "from the week ending from the date of signing of the agreement." Agreement was signed on 23.12.2000, thus, employees who have retired before signing of agreement can claim on the basis of the provision u/s 52 of the Mines Act. As Petitioners have retired before the date of signing the agreement in my opinion the payment has been rightly ordered in terms of Section 52 of the Mines Act, 1952.

Coming to the next submission that provision of Section 33C(2) of ID Act could not have been invoked by the workman. Sub-section (2) of Section 33C(2) of ID

Act is quoted below:

33-C. Recovery of money due from an employer

(1)...

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government (within a period not exceeding three months)

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.

It is clear that when benefit is capable being computed in terms of money and if any question arises as to amount of money due or as to the amount at which such benefit should be computed, then question can be decided by the Labour Court. In the instant cases, quantum of accumulation of leave was not disputed, other relevant facts were also not traversed as to submitting the application and non-grant of leave and once there was accumulation of earned leave beyond thirty days of period to the credit of an employee, it has to be held that employee was entitled to the leave in question that is why it has been credited to his account, particularly when it was not disputed that person has applied for leave but was not granted such leave, person can carry forward without any limit.

Resultantly I find that no ground is made out to make an interference in these writ petitions. Writ petitions are dismissed. Parties to bear their own costs as incurred.