
(1969) 06 KAR CK 0005
In the Karnataka High Court
Case No : Writ Petition No. 2607 of 1966

Dasappa (D.M.)

APPELLANT

Vs

Labour Court and Another

RESPONDENT

Date of Decision : 25-06-1969

Acts Referred:

Mysore Industrial Establishments (National and Festival Holidays) Act, 1963 — Section 3, 5, 5 (3)
Mysore Industrial establishments (National and Festival Holidays) Rules, 1964 — Rule 9

Citation : (1969) ILR (Kar) 261 : (1970) 1 LLJ 485 : (1969) 2 MysLJ 190

Hon'ble Judges : T.K. Tukol, J; Honnayya, J

Bench : Division Bench

Judgement

Tukol, J.—The petitioner who is a co-owner of Gargandur estate in Coorg district has filed this writ petition under Art. 226 of the Constitution for a writ of certiorari to quash the award by the labour court, Bangalore, on 29 June, 1966 in Reference No. 68 of 1965.

2. An industrial dispute arose between the management of the estate and the 58 workmen represented by respondent 2 regarding payment of wages for 3 May, 1964, the date on which the management had declared a festival holiday. Amongst the workmen of his establishment, some of the workmen were paid the wages for that day while the 58 persons were denied the wages for that day on the ground that they had not been in continuous service for a period of thirty days immediately preceding the said holiday. The workmen contended that all of them were permanent employees having put in years of service in the estate and were therefore entitled to payment of full wages for the festival holiday in question. By an order PLM 279 LLD 64, dated 28 October, 1965, the State Government made a reference of the dispute to the labour court setting out the following question for adjudication :

"Are all the permanent workers shown in the annexure of Gargandur estate, entitled for full wages on 3 May, 1964 declared as a festival holiday ?"

In the statement filed by the management before the labour court it was contended that the holiday in question had been declared on the representation made by the workers through their representatives and that only such workmen were entitled to wages for the holidays as had put in thirty days" continuous service preceding such holiday. They denied that the holiday had been declared unilaterally and pleaded that the claim of the 58 workmen for wages for that day was liable to be rejected.

3. The workmen, on the other hand, contended that the declaration of the holiday was made unilaterally without the consent of the workers and the concerned authorities of the Labour Department, that the 58 workmen were all permanent employees of the estate and that they were entitled to payment of full wages for the festival holiday in question.

4. It appears from the award that no oral or documentary evidence was adduced by the parties. The presiding officer of the labour court proceeded on the following assumptions mentioned in Para. 7 of the award :

"The facts are almost admitted. It is immaterial whether 3 May, 1964 was declared a festival holiday unilaterally or bilaterally and this point need not be discussed. The admitted fact is that the second party had declared 3 May, 1964 as a festival holiday. The further admitted fact is that all the 58 workmen mentioned in the annexure have been in service for some years in the second party estate. It may be that they have not put in thirty days of continuous work immediately before 3 May, 1964 ..."

With these assumptions, the labour court proceeded interpret the proviso to S. 5 of the Mysore Industrial Establishments (National and Festival Holidays) Act, 1963, and came to the conclusion that "continuous service" of thirty days as mentioned in the proviso could not be equated with continuous work of thirty days, that the word "service" connected the period during which a person was supposed to be in the employ of another and that the interpretation put on the proviso by the management was unacceptable. The Court concluded that as the 58 workmen had admittedly put in service of some years under the second party, they were entitled to get the full wages for 3 May, 1964 irrespective of the fact that they had or had not put in duty for thirty days continuously before the said day. In view of this finding, the award was passed directing the second party to pay the legitimate wages due to all the 58 workmen whose names appeared in the annexure to the reference, for 3 May, 1964.

5. It is the correctness of this award that is challenged by the management. The main ground on which the award is challenged is that the presiding officer of the labour court had committed a patent error in holding that the restriction contained in the proviso to S. 5 of the Mysore Industrial Establishments (National and Festival Holidays) Act, 1963 (hereinafter referred to as the Act), was not applicable to the permanent workmen. It is asserted that the 58 workmen had not completed the period of thirty days of continuous service immediately

preceding 3 May, 1964 and that their absence during the period was not such as was covered by the explanation to that proviso. It is further submitted that the labour court arrived at an erroneous conclusion, because it wholly ignored the effect of the explanation on the proviso. On the other hand, the learned advocate appearing for respondent 2 has submitted that the proviso and the explanation are not applicable to the 58 workmen who are permanent employees and are not employees "paid for the day" as contemplated by Sub-section (3).

6. The entire decision in this case rests on the interpretation of S. 5 of the Act. Before referring to that section, it is necessary to refer to S. 3 which provides for "grant of national and festival holidays." It lays down :

"Every employee shall be allowed in each calendar year a holiday of one whole day on 26 January and 15 August, and five other holidays each of one whole day for such festivals as the Inspector may, in consultation with the employer and the employees, specify in respect of any industrial establishment."

It is manifest from the provisions of this section that the five other holidays, which have to be declared as festival holidays for any establishment, have to be declared by the Inspector in consultation with the employer and the employees. In the present case, the employees have contended that neither they nor the consulted officer of the Labour Department was consulted before specifying 3 May, 1964 as a festival holiday. In order that a particular day may be specified as a holiday, it should be one granted or sanctioned under the Act and the requirements laid down in that section have to be satisfied. In the present case, the labour court has not gone into this question; but has simply assumed that the festival holiday was on specified in conformity with the provisions of S. 3. It is necessary to note in this context that in the statement filed by the second party before the labour court all that has been asserted is that the management agreed to give a holiday on 3 May, 1964 as per the request of the workers. There is no averment that the Inspector had specified the holiday as one for the establishment under S. 3 of the Act. In that view the holiday on 3 May, 1964 was not a "holiday" declared or specified under S. 3 of the Act. The contention of the workmen in the statement filed before the labour court that the management had no right to close the estate and deny them work and wages on 3 May, 1964 appears to reflect the correct position and as such the holiday cannot deprive the workmen of their wages for that day.

7. Coming to S. 5 of the Act, which deals with wages on a holiday allowed under S. 3, we think it necessary to reproduce the entire section :

"5. Wages. - (1) Notwithstanding any contract to the contrary, every employee shall be paid wages for each of the holidays allowed to him under S. 3.

(2) Where an employee works on any holiday allowed under 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 holiday allowed under 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 (1), or in lieu thereof, at the rate mentioned in that clause, and to avail himself of a substituted holiday with wages at that rate on any other day :

Provided that no such employee shall be entitled to be paid any wages for any of the holidays allowed under S. 3, other than 26 January and 15 August, if he has not completed a period of that days" continuous service immediately preceding such holiday.

Explanation. - For the purpose of the proviso, a weekly or any other holiday or authorized leave availed of by an employee shall be included in computing the period of thirty days mentioned therein."

The various sub-sections of this section deal with two categories of workmen in regard to payment of wages for each of the holidays allowed to him under S. 3 of the Act. Sub-section (1) contains a general proposition laying down that every employee shall be paid wages for each of the holidays, notwithstanding any contract to the contrary. The word "employee" as defined in S. 2(2) has no reference either to the permanent or temporary character of a person employed in an industrial establishment, the duration of appointment does not seem to enter into the consideration of the applicability of Sub-section (1). Sub-section (2) is also of general applicability and regulates the payment of wages on a holiday when an employee works on such day. It is unnecessary for the purpose of this writ petition to deal with the implications of this sub section.

8. The most important provision for the decision of this case is Sub-section (3) of S. 5. The sub-section opens with a non obstante clause "implying that the category of employees dealt with by that sub-section would not be governed by what has been stated in those two sub-sections." This sub-section provides for payment of wages for two categories of employees -

(1) an employee who is paid wages by the day, i.e., paid his wages at the end of each day as soon as he completes his work for the day;

(2) an employee who is paid at piece rates.

The latter category is intended to comprise employees who are allotted work to be performed at piece-rates. For these categories of employees Clause (i) of Sub-sec (3) lays down that such employee shall be paid wages only at the rate equivalent to the daily average of his wages to be calculated in the prescribed

manner. Rule 9 of the Mysore Industrial establishments (National and Festival Holidays) Rules, 1964, prescribes the manner in which the average wages of an employee for a holiday should be calculated. Clause (ii) of this sub-section is identical with Sub-section (2) in the sense that it provides for payment of wages for these categories of workmen, if they work on a holiday.

9. There is no difficulty so far. The dispute centers round the applicability of the proviso and the explanation to the categories covered by Sub-section (1) of S. (5). It is not the case of the management that the 58 workmen are employees who are paid wages by the day or at piece-rates. Therefore, the case of the workmen will not be covered by Sub section (3) of S. 5. The question then would be, whether the proviso would be applicable to Sub-section (1) also. We have quoted above the entire section and have italicized the word "such" occurring in the proviso. The cardinal rule of construction is to read the section as a whole along with the proviso and the explanation and construe all the provisions in the section harmoniously. But in the instant case, we have no doubt that the proviso is applicable only to Sub-section (3). The word "such" used therein makes the operation restricted. If it was the intention of the legislature that the proviso should cover the entire section, the word "such" would not have been used there; the proviso would have stated a categorical proposition by laying down "provided that no employee shall be entitled to be paid." The word "such" necessarily has reference to the two categories of employees referred to in Sub-section (3). The requirement of an employee satisfying the need of continuous service for thirty days immediately preceding the holiday would apply to such workers if they were to claim their right to wages for the holiday. There is no doubt that the explanation is only to the proviso, since there is explicit mention to that effect therein : "for the purpose of the proviso." Even the contents of explanation go to show that its sole object is to lay down a rule as to the calculation of the continuous period of thirty days of service as required by the proviso.

10. The labour court has come to the conclusion that continuous service of thirty days cannot be equated with continuous work for thirty days. We are unable to agree with this interpretation, since the proviso taken with the explanation leaves no doubt that the period of thirty days has reference to continuous work for thirty days. There is another ground which inclines us to this view. The last clause of the proviso, viz., "if he has not completed a period of thirty days," is also indicative of the fact that the word "service" used in the proviso is indicative of completed service for thirty days continuously preceding the holiday. How the period of thirty days has to be calculated is amplified by the explanation. In this view, we are of the opinion that the labour court was in error in construing the proviso. We would like to observe in conclusion that the labour court has failed to consider the various sub-sections of S. 5 and particularly Sub-section (3) and the words used in the explanation and the proviso.

11. The learned advocate for the petitioner has drawn our attention to the

decision of the Madras High Court in *Thiruchengode Mill Workers' Union v. Industrial Tribunal, Madras*, and another [1964 II L.L.J. 404], in which the point for decision was whether the day on which the workmen had struck work illegally could cause a break in the continuity of service within the meaning of the proviso. Though the provision of the Madras Act appear to be identical, we cannot derive much assistance from this decision as there is no indication of the class of employees who were claiming the benefit of S. 5. Besides, there is no detailed discussion of Sub-section (3) of S. 5 which appears to be very material for understanding the scope of the proviso.

12. The decision of the Supreme Court in *Jeewanlal (1929) Ltd., Calcutta Vs. Its Workmen*, was quoted to support the interpretation of the expression "continuous service." Their lordships were interpreting that expression in the context of the scheme of gratuity. We do not therefore think it necessary to refer to that decision as the expression has to be interpreted in the context of the words contained in the proviso to Sub-section (3) of S. 5.

13. In the result, even though we hold that the award of the labour court suffers from an error of law in basing its conclusions on a wrong interpretation of the proviso to S. 5 of the Act, we think that even on a correct interpretation of S. 5, as indicated by us above, the 58 workmen would be entitled to the relief granted to them by the labour court. Accordingly, the prayer for a writ of certiorari fails. The petition is dismissed. Parties to bear their costs.