

(1988) 08 BOM CK 0030
In the Bombay High Court
Case No : Writ Petition No. 44/86

Dharnidhar Rambhau Kathale and others	APPELLANT
Vs	
Second Labour Court and others	RESPONDENT

Date of Decision : 10-08-1988

Acts Referred:

Factories Act, 1948 — Section 51
Industrial Disputes Act, 1947 — Section 10, 33C(2)

Citation : (1989) 58 FLR 355 : (1989) 2 LLJ 140

Hon'ble Judges : M.M. Qazi, J

Bench : Single Bench

Judgement

1. The petitioners are the employees of the respondent No. 2 (for short "the respondent") and are working at the Thermal Power Station, Khaperkheda as Time-keepers. They moved the Labour Court under sub-section (2) of Section 33C of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") on 25th July 1984, contending that they are entitled to avail of the public holidays, local holidays, optional holidays and the holidays on account of 2nd and 4th Saturdays. They have essentially based their claim on the Circular No. ESTI III/Misc./6310 dated 22nd December, 1966 issued by the Bombay Head Office of the respondent. According to them, the respondent did not extend the benefits and privileges to them to which they are entitled in accordance with the circular, referred supra. The claim of the petitioners was contested by the respondent on various grounds, inter alia on the ground that the circular in question does not relate to the holidays. The respondent contended that the petitioners were given six paid holidays according to its rules and they are not entitled to any other holidays beyond that. The respondent further contended that the claim involved an industrial dispute which would not be adjudicated upon by the Labour Court u/s 33-C(2) of the Act and, therefore, the application was not tenable. The Labour Court dismissed the application. Hence the present petition.

2. The question that falls for consideration is the interpretation of the circular, referred supra. In order to appreciate the circular, it is better to reproduce the

same :

"The question as to whether the category of Telephone Operator attached to the Power Station should be treated as included in Appendix "A" for the purpose of leave etc. was engaging the attention of the Head Office for quite some time. It is seen that there are quite a few categories of posts that are common for both the administrative offices and Power Stations. Though the staff belonging to such categories such as Telephone Operators/Time keepers etc. are borne on the establishment of the Power Stations they are transferable outside on administrative grounds. It would, therefore, be anomalous to treat them as Appendix "A" employees for the purposes of leave and similar other service conditions while working in the Power Stations and to apply a different set of rules when they are transferred out.

In order to do away with this anomalous position, it has been decided that such categories should be governed by the rules applicable to staff outside Power Stations regarding leave etc. except in respect of working hours which will be the same as those of the Power station staff."

In my view, the above circular deals only with the question of leave and the matters analogous to it. It is difficult to agree with the petitioners that it deals with public holidays or holidays on account of 2nd and 4th Saturdays.

3. The establishment of the respondent consists of (1) Administrative Office; and (2) Power Stations. The petitioners are working at the Power Station. "Administrative Office" has been defined in Regulation 9(1) of the Maharashtra State Electricity Board Employees' Service Regulations, as follows :

"9. (1) "An Administrative Office" is an office of the Board concerned with administration, more particularly referred to as Head Office, Circle Office, Divisional Office and Sub Divisional Office, as distinct from the one engaged in power generation and transmission of power and as such excludes a Power Station and a sub Station".

There is no dispute that the nature of work required to be done by the employees working on the administrative side is different from the one which is required to be done by the employees working at the Power Stations. The duty hours of the two categories of employees are also different. the employees working at the Power Station have to work for 8 hours a day; the total weekly hours being 48, whereas the employees working on the administrative side have to work for 6 1/2 hours a day. There is no uniformity in respect of the holidays admissible to the employees working at the Power Stations and those working on the administrative side. If the petitioners are brought on par with the employees working on the administrative side, then it would not be in keeping with the provisions of the Factories Act, 1948. Mr. Deshpande in this connection has invited my attention to Section 51 and 54 of the Factories Act, 1948, which read as under :

"51. Weekly hours :- No adult worker shall be required or allowed to work in a factory for more than forty eight hours in any week."

"54. Daily hours :- Subject to the provisions of Section 51, no adult worker shall be required or allowed to work in a factory for more than nine hours in a day :

Provided that, subject to the previous approval of the Chief Inspector, the daily maximum specified in this Section may be exceeded in order to facilitate the change of shifts".

4. Mr. Deshpande has invited my attention to the decision reported in Management of the D.C.M. Chemical Works Vs. Their Workmen, The portion which is material for our purpose (p. 399) is reproduced below :

"So far as leave facilities are concerned, the tribunal has awarded that privilege leave should be granted as provided under the Factories Act. It has further provided that casual-cum-sick leave should be granted for twelve days in the year. We do not think that this award is in any way unreasonable. The tribunal has, however, gone on to deal with festival holidays, and that in our opinion, the tribunal had no jurisdiction to do. The reference was in these terms :

"Whether leave facilities should be increased, and if so, to what extent ?

"There was no reference with respect to holidays. The tribunal has, however, taken the view that holidays has covered within the words "leave facilities" used in the order of reference. We are of opinion that this view is incorrect. Holidays are entirely different from leave facilities. On a holiday the entire business is closed and no one works while leave facilities deal with leave for individuals workers while that business as a whole is running. We may, in this connection, refer to item 4 of Sch. III to the Industrial Disputes Act (14 of 1947), which is in these terms : "Leave with wages and holidays" This shows that holidays stand on a different footing altogether from leave with wages and a reference with respect to leave facilities cannot include a consideration of holidays. The tribunal's order with respect to holidays is set aside."

5. The above decision supports the contention of Mr. Deshpande that public holidays and holidays on 2nd and 4th Saturdays cannot be included in the words "leave etc". Public holidays cannot be said to be analogous to leave by any stretch of imagination. Careful perusal of the circular shows that the words "leave etc." used in the earlier part of the circular has been clarified as "leave and similar other service conditions". This would obviously mean that the circular refers to leave and such matters which are analogous to leave. Public holidays cannot be said to be a matters analogous to leave. The circular also shows that this facility "leave and similar other service conditions" is available only to the employees working at the Power Stations. The circular further shows that a different set of rules would apply when these employees are transferred out. It is obvious from the circular that it is issued in order to remove the anomalous positions, which exists between the employees working at the Power Stations

and outside in the matter of leave and other similar service conditions. Having regard to these facts, I am satisfied that the petition is without substance.

6. There is also substance in the contention of the respondent that the application u/s 33-C(2) of the Act is not maintainable. In order to appreciate this contention, it is necessary to reproduced Section 33-C(2) :

"(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 arise 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.

xx xx xx"

From the above provision it is clear that it can be invoked only by a workman who is entitled to receive only such benefits from his employer which is capable of being computed in terms of money. In the instant case, the vary entitlement of the petitioners is being disputed, and in my view rightly, and, therefore, there can be no question of entertaining the claim u/s 33-C(2) of the Act. The proceeding u/s 33-C(2) of the Act is generally in the nature of execution proceeding where the Labour Court calculates the amount of money due to a workman from his employer. It cannot arrogate to itself the functions of an industrial tribunal which alone is entitled to make adjudications. It is not possible to spell out their claim from the said circular. However, this does not tantamount to saying that the petitioners are prevented from approaching the Industrial Court under Sections 10 of the Act for adjudications of the industrial disputes, if they are so advised.

7. Lastly, Mr. Pillai contented that the respondent has been giving the benefits on the basis of the circular to other employees who are working at other Power Stations and, therefore, there is no reason as to why the petitioners who are working at the Thermal Power Stations. Khaperkheda, should be decided the said benefits. Para 2 of the affidavit dated 10th August 1986 filed by the respondent is a complete answer to this contention, which reads thus :

"2. respondent submits that at Bhusawal Power Stations payment was made under mistaken belief in lieu of public holidays. Such payments were made under bonafide erroneous belief that Time Keepers are to be given the benefits of second and fourth Saturdays and Public holidays under Board's Circulars dated 22nd December 1966 only for a short period between January 1972 to September, 1972. Public holidays and local holidays were granted to the Time Keepers from 1st January 1972 to 25th April 1978 under this mistaken belief. Expect for the period stated above, such payments have never been made and are not being made. Such wrong bonafide payments cannot carve out right to claim benefits of second and fourth Saturdays and public holidays."

Having regard to the above facts, the petition is devoid of substance and hence dismissed, with no order as to costs. Rule is discharged