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**(1982) 02 AHC CK 0042**  
**In the Allahabad High Court**

I.E.L. Employees Union

APPELLANT

Vs

Indian Explosives Limited

RESPONDENT

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**Date of Decision :** 23-02-1982

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Factories Act, 1948 — Section 49, 79  
Industrial Disputes Act, 1947 — Section 10, 25F, 9A

**Citation :** (1983) 2 LLJ 100

**Hon'ble Judges :** V.K. Mehrotra, J

**Bench :** Single Bench

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## Judgement

V.K. Mehrotra, J.—These two petitions under Article 226 of the Constitution are by workmen of M/s. Indian Explosives Limited, Kanpur and M/s. Camphor and Allied Products Ltd., Bareilly which are companies registered under the Companies Act. The primary relief sought by the petitioners is for a writ, order or direction in the nature of mandamus or any other suitable direction commanding the respondent companies to grant to its workers what has been described as compensatory off as before and not to deprive them of it in view of the amendment made in Rule 86 of the U.P. Factories Rules 1950. The State of Uttar Pradesh as well as the Chief Inspector of Factories (Inspector of Factories, in charge Bareilly Region in writ petition No. 3988 of 1976) have also been impleacted as respondents and it has been prayed that the latter be restrained from giving approval to the respondent companies for the mode in which they were implementing the aforesaid amended rule.

First, the facts:

2. The Government of the State of Uttar Pradesh, framed the Uttar Pradesh Factorjes Rules 1950 (briefly, the Rules), in exercise of powers under Ss.64 and 112 of the Factories Act, 1948, (briefly the Act). The condition u/s exempting from applicability of some of the provisions of the Act was granted to continuous process factories and wood products factories, are mentioned in Rules 86 and 87

respectively. Condition No. (iii) of Rule 86 and condition No. (i) of Rule 87 prior to the amendment of the rules by the U.P. Factories (First Amendment) Rules, 1976 (hereinafter the amended Rules), inter alia, provided that where it became necessary to employ a shift worker for both more than eight hours in any day to work whole or part of the subsequent shift, a compensatory period of rest with wages would be given in addition to over-time payment in accordance with the provisions of Section 59 but it would not be given on a festival or weekly holiday to which the worker was otherwise entitled. The case of the petitioners is that whenever a workman was asked in emergency to work for another shift in continuation of the shift in which he was working the employer was liable (a) to pay him for overtime work at double the rate of normal wages in accordance with Section 59 of the Act (b) to give compensatory off to the workman for the eight hours work done which meant that the workman was to get one day's rest in lieu of eight hours additional work and being a monthly paid worker this off day for him used to be holiday with pay and in case the additional eight hours work was to be done by the workman on a holiday or on his weekly off day, the compensatory off day was not to be given to him on the subsequent holiday or weekly off day but in addition thereto so that the compensatory off was with wages.

3. Under the amended Rules, the aforesaid condition No. (iii) of Rule 86 and No. (i) of Rule 87 the necessity to provide compensatory period of rest became confined to a case where the subsequent shift or any part thereof during which a shift worker was employed for more than eight hours in any day to enable him to work whole or part of the subsequent shift, fell on a weekly holiday. The result of the amendment according to the petitioners is that the workmen are being deprived of compensatory off in case they are required to do additional work on those days which are neither the weekly off day nor a holiday and they are being deprived of their wages in case they are required to do additional work on holidays or on weekly off days. They are thus being deprived of the compensatory off day with wages as was being enjoyed by them prior to the enforcement of the Amended Rules. The companies are taking additional work from them in addition to eight hours work but making payment to them only for overtime work.

The legal stand:

4. The grant of compensatory off in the terms aforesaid had become the customary right of the workmen, as a condition of their service, which could not be withdrawn by the respondent companies unilaterally without notice u/s 4-I of the U.P. Industrial Disputes Act. No such notice was given to the workmen before making the change in the condition of their service. Approval for effecting the change was illegally accorded by the Inspector of Factories.

The Companies' stand:

5. Compensatory off of the nature put forward by the petitioners was being given

to the workmen in terms of the law then applicable and not by way of any customary right as alleged. The amended rules do not contemplate it. The companies are only following the law and have not withdrawn any customary right of the workmen nor have they brought about any change in their conditions of service. No notice u/s 4-I of the U.P. Industrial Disputes Act was, therefore, to be given by them to the workmen.

6. No writ could go to a company incorporated under the Companies Act. In any case, the petitioners ought to have agitated the matter through industrial adjudication. The petitions deserved dismissal on the ground that the petitioners had an equally efficacious and alternative remedy available to them.

And now the legal position:

7. Section 4-I of the U.P. Industrial Disputes Act is in these terms.

4-I Notice of change. No employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Third Schedule, shall effect such change-

(a) without giving to workmen likely to be affected by such change, a notice in the prescribed manner of the nature of the change proposed to be effected or

(b) within twenty one days of giving such notice.

Provided that no notice shall be required for effecting any such change -

(i) where the change is effected in pursuance of any settlement, award or decision of the Appellate Tribunal constituted under the Industrial Disputes (Appellate) Tribunal Act, 1950; or

(ii) where the change is likely to affect workmen who are persons to whom the Fundamental and Supplementary Rules, Civil Service (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Civil Service Regulation or any other rules or regulations that may be notified in this behalf by the State Government in the official gazette, apply."

What strikes at once is that notice is contemplated where an employer proposes to effect a change in the conditions of service in regard to a matter specified in the Third Schedule to the Act. Compensatory and other allowances, hours of work and rest intervals, leave with wages and holidays and withdrawal of any customary concession or privilege or change in usage" are amongst the matters included in that Schedule,

8. In *Tata Iron and Steel Co. Ltd. Vs. The Workmen and Others*, the Supreme Court, was called upon to consider the question whether it was necessary to give notice u/s 9A of the Central Industrial Disputes Act (to which corresponds Section 4-I) for changing the weekly rest day to some other day, instead of Sunday, on account of item No. 8 of the Fourth Schedule to that Act which dealt with withdrawal of customary concession or privilege or change in usage. The

Supreme Court observed that it seemed to be a plausible argument to urge that fixation of Sunday as weekly rest days is founded on usage and/or is treated as a customary privilege and any change in such weekly holidays would fall within the expressions "change in usage" or "customary privilege". It held that the appellant having effected the change in the weekly days of rest without complying with Section 9A read with the Fourth Schedule, the change must be held to be ineffective. It upheld the dismissal of the writ petitions of the appellants by the High Court of Patna assailing the declaration made by the Regional Labour Commissioner (Central) Dhanbad that in refusing to turn up for work after the unilateral change by the company in the weekly rest day, the workmen did not act illegally,

9. In *The Management of Indian Oil Corporation Ltd. Vs. Its Workmen*, a Constitution Bench of the Supreme Court took the view that the appellant Corporation acted illegally in withdrawing unilaterally and without giving notice u/s 9A of the Central Industrial Disputes Act the Assam compensatory allowance to its workmen. It upheld an award to that effect by the Industrial Tribunal, Gauhati on a reference made to it by the Government of Assam. The Supreme Court noticed that the Tribunal had found very clearly that the act of the appellant Corporation in granting the Assam compensatory allowance was an independent one and made out of its own volition though the circulars of the Central Government about it may have been one of the factors that swayed the decision of the management. It found that the grant of compensatory allowance was an implied condition of service and that by withdrawing that allowance the employer sought to effect a change which adversely and materially affected the service conditions of the workmen. It ruled that if the appellant Corporation wanted to withdraw the Assam compensatory allowance, it should have given notice to the workmen, negotiated the matter with them and arrived at some settlement instead of withdrawing the compensatory allowance overnight. Since Section 9A of the Central Industrial Disputes Act was applicable, its non-compliance resulted in serious dispute between the parties so as to give jurisdiction to the Tribunal to give the award.

10. In *Rai Bahadur Diwan Badri Das Vs. The Industrial Tribunal, Punjab*, the appellants who were trustees of the Tribune press and paper, Ambala had divided their employees into two categories for purposes of leave before July 1, 1956. They framed a new rule with respect to earned leave substantially altering the position in respect of leave on July 1, 1956. The earlier category of Lino Operators and rest of the workmen in the Press Section was abolished and the workmen were divided into two categories being those workers who were employed on or before July 1, 1956 and those who were employed after that date. In respect of the former, the earlier facility of 30 days leave with wages was retained. In respect of the latter, a provision was made that they would be entitled to the statutory minimum of 20 days of earned leave in accordance with Section 79 of the Factories Act 1948 which provides that every worker who has worked for a period of 240 days or more in a calendar year shall be given at least

one day's leave for every 20 days of service. The workmen, amongst other, raised a demand that the employees in the Press Section should uniformly be permitted 30 days of earned leave with full wages without any discrimination. Attempts at conciliation having failed, a reference was made by the Punjab Government to the Industrial Tribunal for adjudication u/s 10 of the Central Industrial Disputes Act. The Tribunal held that all the workmen of the Press Section were entitled to 30 days of earned leave without any distinction as to whether they had joined before or after July 1, 1956. The validity of the award was questioned before the Supreme Court which upheld that award by dismissing the appeal against it.

11. The rule that emerges from these decisions is that a change in the conditions of service must be brought about by the employer albeit with a view to conform to a provision of law, which adversely affects the workmen in relation to a pre-existing condition of service which was being enjoyed by them, inter alia, by way of usage or customary privilege. Further, where such a change is made in a condition of service without complying with the statutory provision necessary to follow, a justiciable issue arises between the parties which can be gone into by an appropriate forum envisaged for disposal of such disputes.

12. The U.P. Industrial Disputes Act, 1947, like the Industrial Disputes Act, 1947 is devoted wholly to investigation & settlement of industrial disputes. It affords the forum for adjudication of a dispute relating to a unilateral change in a condition of service made without observance of the statutory pre-requisite for it, I am fortified in my view by the decision of a Division Bench of Lucknow Bench of this Court in *Union of India v. Kali Charan* (1978) 37 LR 232. In that case a retrenchment notice was served upon a workman and its validity was challenged amongst others, on the ground that no retrenchment compensation having been paid in terms of Section 25F of the Industrial Disputes Act, the notice deserved to be quashed. The Bench took the view that in spite of there being non compliance with the provisions of Section 25F, the quashing of the notice by the learned single Judge, who heard the matter in a writ petition in the first instance, was not justified for the petition was not maintainable inasmuch as, alternative remedy available to the petitioner had not been exhausted. The Bench observed thus:

...The point in issue is concluded by a decision of a Division Bench of this Court in Special Appeal No. 29 of 1975. The Divisional Engineer, Headquarters, Northern Railway, Lucknow v. *Durgesh Kumar* decided on 27th April, 1976. After reviewing the entire law on the point the Division Bench in that Special Appeal had observed that since the right to be enforced by the petitioner is a right created under the Act, the remedy for its enforcement is by way of raising an industrial dispute which the appropriate Government has the power to refer u/s 10(1) of the Act to the Labour Court or the Tribunal as the case may be....

13. *J.K. Rayon Workers' Union Vs. J.K. Rayon Co. Ltd.*, was a case wherein the respondent company gave a notice u/s 4-I of the U.P. Industrial Disputes Act

proposing change in the terms of a settlement between it and the workmen providing for payment of dearfood allowance and of milk allowance to those workmen who were not entitled to them prior to the date of the settlement. The proposed change was that the company would not pay the dearfood allowance as required under the settlement and would discontinue the payment of milk allowance as provided under it. The trade union representing the workmen approached this Court through a writ petition praying that the notice be quashed and the company be commanded through a writ of mandamus or in other direction not to give effect to it and to withdraw the same. The basic ground upon which the petition was founded was that this settlement was to be operative till December 3, 1976 and the company had no jurisdiction to issue the notice before the expiry of that settlement. It was pleaded that the powers vested in an employer u/s 4-I could not be exercised in a manner which would render a settlement entered into between the parties ineffective. B.N. Sapru, J., who decided that case, observed so.

Section 6B provides that settlement which has been registered shall be binding on the parties.....It is obvious that there is a statutory duty to comply with the terms of a settlement in the same manner as it would be obligatory on the workmen and the employees to abide by the award of an Industrial Tribunal or a Labour Court. It is argued on behalf of the respondent that if the petitioner were dissatisfied with the notice of change given u/s 4-I of the Act, they could raise an industrial dispute and the State Government could be moved to refer it for adjudication. The petitioners do not deny that the matter could be agitated by means of an industrial adjudication. Moreover I cannot ignore the fact that unless this Court had intervened by means of an interim order dated 23.1.1976. by which it stayed the notice issued by the company on 7.1.1976, the allowances would have been withdrawn, and the employees would have been left to resort to long drawn proceedings under the Industrial Disputes Act. It is also necessary to clarify the effect and scope of Section 4-I of the U.P. Industrial Disputes Act in cases where a settlement has been arrived at between the parties, u/s 6B of the U.P. Industrial Disputes Act. Thus, I do not think, the instant case is unfit one in which the petitioner should be denied a writ of mandamus on the ground that an alternative remedy exists.

14. It is clear that there was voluntary obligation undertaken by the company under its settlement with the workmen which it was seeking to avoid before the expiry of the period of settlement. This court directed the company not to act on the notice of change issued by it and to continue to pay dearfood allowance and milk allowance to its workmen in accordance with the terms of the settlement.

15. In *Synthetics & Chemicals Ltd v. G.C.Kumar* (1972) 25 L R 146 a Division Bench upheld the direction made by a single Judge of this Court to the appellant company not to give effect to the order dated April 17, 1964 discharging the respondent G.C. Kumar from service as a Labour Welfare Officer in its Industrial Relation Personnel Department. After noticing the relevant provisions of Factories

Act and the U.P. Factories Welfare Officers" Rules, 1955 made by the State Government under the Act, the Division Bench said:

These provisions show that the post of the, Labour Welfare Officer is an office created by the Act. The office is of a permanent character. It is a substantive office. It is not an office held at mere will. The officer can be discharged only for some cause and with the written concurrence of the Labour Commissioner and after hearing. His duties are of a public nature because they affect the interest of a large number of workers employed in the factory. In the discharge pf his duties he has to deal with persons not concerned with the factory. Accordingly, the office of the Labour Welfare Officer is a public office and a writ of the nature of mandamus can issue to the appellant to restore G.C. Kumar to his office. It necessarily follows that the appellant owns a duty of public nature to restore him to his office. The duty arises from Section 49 of the Act and the Factories Welfare Officers" Rules. Counsel for the appellant has relied on certain cases in support of his argument that a mandamus has never issued to a trading corporation.....But all these cases are patently distinguishable for in none of them there was cast on the private individual or corporation a duty by a statute, nor was the office a public office.

16. Neither on facts nor on the principles laid down in them, are the decision of this Court in the last two cases above mentioned of any assistance to the petitioners.

The Conclusion.

17. The employers have been following the statutory rule which once ordained them to provide compensatory off day to the workmen but does not do so now. The action of the employers in extending the facility of compensatory off day was not volitional nor in its withdrawal. The grant by the employers of that off day has not been proved to be in the nature of a customary concession or privilege or by way of usage in these proceedings. Parties are seriously at issue on this question. The petitioners can, therefore, not justifiably, claim a direction from this Court to their employers in that regard in these petitions. On the stand taken by them, the other two respondents too are not liable to be commanded in the manner prayed for by the petitioners.

The Consequences

18. Both the petitions fail and are dismissed. But without any order as to costs.