
(1978) 11 MAD CK 0050
In the Madras High Court

Madurai Coats Ltd.

APPELLANT

Vs

The Inspector of Factories and Others

RESPONDENT

Date of Decision : 16-11-1978

Acts Referred:

Tamil Nadu Industrial Establishments (National and Festival Holidays) Act, 1958 —
Section 5(1)

Citation : (1980) 93 LW 104 : (1980) 2 MLJ 62

Hon'ble Judges : Ramanujam, J

Bench : Division Bench

Judgement

Ramanujam, J.—An interesting question that arises for consideration in this writ petition is whether an employer is bound to pay wages to his employees for national and festival holidays which fall within a period during which the employees were on strike. Koshal, J. (as he then was) has in an earlier case in Vasudevan, R.M.S. Union v. Lotus Mills Ltd. (1977) II L.L.J. 433 : (1978) L.I.C. 656 : 52 F.J.R. 127 : 36 Fac. L.R. 409, held that the employer cannot escape his obligation to pay wages to his workmen for national and festival holidays even if those holidays occurred during a period when the workmen were on strike. When the said judgment was relied on by the respondent herein before Natarajan, J. when this case came up before him, the learned Judge was unable to share the view expressed by Koshal, J. and, therefore, referred the case to a Division Bench. That is how the matter has come before us.

2. The facts of the case may be briefly set out. The petitioner is a well-known company, hereinafter referred to as the Management, engaged in the manufacture of textile goods at Madurai, Ambasamudram and Tuticorin. A dispute arose between the management and its employees regarding the payment of bonus for the year 1974-75 and that led to the workmen going on strike from 22nd January, 1976. The strike was however, terminated on 6th February, 1976, on the intervention of the Commissioner of Labour, Madras. At that stage an agreement was reached between the company and its workmen and one of the terms of the agreement was that the management was not bound

to pay any wages for the period of strike. In pursuance of the said agreement, the workmen resumed duty on 6th February, 1976. On 13th February, 1976 one of the Unions of workmen wrote to the management stating that the management was statutorily obliged to pay wages to the workmen for the Republic Day, 26th January, 1976, which is a national holiday, and as such the management should distribute wages to the workmen for that day. The Management refuted the claim and pointed out that as the workmen were on illegal strike at the relevant time, it was not obliged to pay wages for the national holiday. The claim of the workmen was subsequently taken up by the respondent, and by the impugned communication he informed the management that it was bound to pay the wages for the national holiday as claimed by the workmen in view of Section 5(1) of the Tamil Nadu Industrial Establishments (National and Festival Holidays) Act, 1958, hereinafter referred to as the Act. It is to quash that order the Management has come up before this Court.

3. When this matter was originally heard by Natarajan, J., he directed notice to the workmen through their Union inasmuch as they will be really affected by quashing of the respondent's order, and accordingly notice was given to the Union on behalf of the workmen. Thus the workmen also were given an opportunity to sustain the impugned order of the respondent which is in their favour. According to the respondent as well as the Union, irrespective of the workmen being on strike or not, the management is bound to pay wages to its employees for the national and festival holidays in view of Section 5(1) of the Act.

4 Thus the controversy between the parties is as to the true interpretation of Section 5 of the Act. For interpreting Section 5 it is necessary to determine the scope and objects of the Act. The Act has been enacted to provide for the grant of national and festival holidays to the workmen in the State of Tamil Nadu. Section 3 of the Act provides for the grant of national and festival holidays to the workmen and it is as follows:

Every employee shall be allowed in each calendar year a holiday of one whole day on the 26th January, the first May, the 15th August and the second October 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

5. Section 4 directs every employer to send to the Inspector concerned and display in the premises a statement showing the holidays allowed in each calendar year u/s 3 in such form within such time and such manner as may be prescribed. Section 5 so far as it is relevant is set out below--

Section 5 Wages:

1. Notwithstanding any contract to the contrary, every employee shall be paid wages for each of the holidays allowed to him u/s 3;
2. (a) Notwithstanding anything contained in Section 3 any employee may be

required by the employer to work on any holiday allowed under that section if the employer has, not less than 24 hours before such holidays--

(i) served in the prescribed manner on the employee a notice in writing requiring him to work as aforesaid; and

(ii) sent to the inspector having jurisdiction over the area in which the industrial establishment is situated and displayed in the premises of the Industrial establishment a copy of such notice,

(b) Where an employee works on any holiday allowed u/s 3, he shall, at his option, be entitled to--(i) twice the wages; or (ii) wages for such day and to avail himself of a substituted holiday with wages on one of the three days immediately before or after the day on which he so works...

Section 8 provides for penalties and it says that any employer who contravenes any of the provisions of Section 3 or 5 shall be punishable with fine,

6. The scope of Section 3 and Section 5 above extracted came up for consideration before Koshal, J. (as he then was, in *Vasudevan, R.M.S. Union Vs. Lotus Mills Ltd. and Another*, more or less on identical facts. In that case, the workers were on strike between 1st January, 1966 and 3rd February, 1966 and in between the strike period, 15th January, 1966, a declared festival holiday and 26th January, 1966, a national holiday had occurred. The workers demanded payment of wages for those two days and the management refused to recognise the same. The Additional Commissioner for Workmen's Compensation upheld the management's contention that wages are not payable for the said two days. Thereupon the workmen filed a writ petition before this Court. Koshal, J., sustained the claim of the workmen and held that Sections 3 and 5(1) of the Act are absolute in their terms and as such, the management cannot escape its obligation to pay wages to its workmen for national and festival holidays even if those holidays occurred during a period when the workmen were on strike. The learned Judge further held that Sub-section (2) of Section 5 does not impinge upon Sections 3 and Section 5(1) as it merely enables the management to call upon the workmen to come and work on national and festival holidays at the special rate of wages provided therefore in the Act. Natarajan, J., before whom the said decision of Koshal, J. was relied on was however of the view Sections 3 and 5(1) are out absolute and unconditional as it is linked up with the right of the management to call upon the workmen to come and work on the national and festival holidays, and that as the management had no opportunity to exercise the right conferred on it u/s 5(2), for calling upon the workmen to come and work on the national festival holidays, on account of the workmen having gone on strike, the workmen are not entitled to ask for payment of wages for those holidays which had occurred within the period of the strike. The reasoning of Natarajan, J. is as follows--

It appears to me that Sub-section (1) and Sub-section (2) of Section 5 operate on different planes and, as such, their respective scopes should not be confused.

As already stated, Section 5(1) contains an interdiction on employers trying to deprive their employees of the benefit conferred by the Act by entering into specific contracts with the workers. On the other hand, Sub-section (2) deals with an entirely different situation. The manner in which it has been worded shows that to a limited extent it has overriding force on Section 3 and that is, in spite of an employee being statutorily obliged to give paid holidays to his workers on national and festival holidays, he is yet conferred a right to call upon some or more of the workers to come and do work on these holidays by giving the workers suitable notice thereof and by giving them compensatory wages for working on the holidays. To that extent a right has been conferred on the employer u/s 5(2) (c) to call upon his workers to come and do work even on a national or festival holiday. A corresponding obligation must be deemed to have been cast upon the workers and that is, they should be available for employer to serve notice on them to come and do work on a holiday.

The difference in the approach made by the two learned Judges consists in this : Koshal, J. proceeds on the basis that Sections 3 and 5(1) operate independently without reference to Section 5(2) and as such, even if the management had no opportunity to call upon the workmen to come and work on national and festival holidays as provided for in Section 5(2). they are bound to declare the national and festival holidays u/s 3 and pay wages for those days to the workmen as per Section 5(1). Natarajan, J. has taken a contrary view that Sections 3 and 5(1) conferring benefits on the workmen cannot be taken to be independent of Section 5(2) which confers a special right on the Management to call upon the workmen to come and do work on national and festival holidays declared u/s 3 and that so long as that right of the management could not be exercised as the workmen were on strike on these days, the benefit conferred u/s 5(1) cannot be enforced by the workmen. The question is which of the two views is in accord with the provisions of the Act.

7. Section 3 gives a mandate to the employers to allow its employee in each calendar year a holiday on 26th January, 1st May, 15th August and 2nd October and five other holidays for such festivals as the Inspector may in consultation with the employer and the employees, specify in respect of any industrial establishment. Section 4 also directs the employer to send to the Inspector and to display a state neat showing the holidays allowed in each calendar year u/s 3 in the prescribed manner. Rule 5 of the National and Festival Holidays Rules, 1959 provides that the statement referred to in Section 4 shall be sent to the Inspector before the commencement of each calendar year in which the national holidays are to be allowed and to exhibit the same simultaneously in a prominent place in the establishment. This shows that even at the commencement of the calendar year the national and festival holidays allowed in that year have to be notified. That means whether the national or festival holidays fall during a strike period or not. the workers are entitled to have those days as declared holidays. Once that position is reached Section 5(1) straight away comes into operation. Section 5(1) says that notwithstanding any contract to the contrary, every

employer shall be paid wages for each of the holidays allowed to him u/s 3. This section does not make its operation conditional on the holidays falling outside the period of strike; nor does it say that its operation is subject to Section 5(2). It is true Section 5(2) gives an employer a special right to require an employee to work on any holiday allowed u/s 3 on service of a notice of not less than 24 hours on the concerned employee required to work as aforesaid, and Sub-section (3) provides that if an employee works during the holidays allowed u/s 3 he has to be paid wages at twice the rate or in lieu thereof pay the normal rate of wages and grant a substituted holiday with wages on any one of the three days immediately before or after the day he has worked. Section 5(2) is enacted to confer a special right on the employer which he will not otherwise have having regard to Section 3, under which the employee has to be allowed the specified number of national and festival holidays. This special right of the management to require the employees to work on holidays allowed u/s 3 cannot override the benefit given to the employees u/s 5. That Section 5(1) is independent of Section 5(2) is clear from Sub-section (3) which provides for different rates of wages payable to an employee under Sub-sections (1) and (2). Sub-section (3) says that 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 holidays allowed u/s 3 at two different rates : (1) if he is not called upon to work on the holidays referred to in Section 3, he has to be paid at the rate equivalent to the daily average of his wages calculated in the prescribed manner, and (2) if he works on any such holiday, he has to be paid at twice that rate. Sub-section (3) also does not indicate that an employee should make himself available for work on a holiday allowed u/s 3 so as to enable him to claim wages under Clause (i) of Sub-section (3). The proviso to Sub-section (3) appears to make a distinction between national holidays and festival holidays. For getting wages for national holidays a minimum qualifying service is not necessary while in respect of festival holidays a minimum qualifying service of 30 days within a continuous period of 90 days immediately preceding such holiday is necessary. This proviso also indicates that national holidays should be paid holidays for all workmen irrespective of the period of service of the employee under the Management. It is not, therefore, possible to accept the contention urged on behalf of the management that the right conferred on the workmen u/s 5(1) of the Act to receive wages on national and festival holidays is linked up with the right of the management to call upon the workmen to come and work on those days and if an opportunity to exercise such a right is not available to the Management on account of the workmen going on strike, the workmen are not entitled to ask for payment of wages for these holidays which had occurred during the period of strike. That contention overlooks Sub-section (3) of Section 5 according to which notwithstanding anything contained in Sub-section (2) the employee shall be entitled to be paid wages for any holiday allowed u/s 3 only at a rate equivalent to the average of his daily wages calculated in the prescribed manner. This is apart from the admitted position that Section 5(1) is not made subject to Section 5(2) so that it can be said that an employee for claiming

wages for the holidays allowed u/s 3 must prove that he was available for and willing to work during the holidays if required by the Management. We are inclined, therefore, to agree with the view taken by Koshal, J. that as Section 5(1) does not say in so many words that wages shall be payable for holidays only in the event of his being willing to work on such a holiday, and that the operation of that section cannot be restricted only to those employees who were available and willing to work during the holidays if they were required to do so by the Management. Therefore, the contention of the Management that Section 5(1) directs the payment of wages for the holidays allowed u/s 3 to every employee in a normal situation and not an extraordinary situation such as during the period of strike and that the rights of the workmen to claim wages for the holidays allowed u/s 3 is co-extensive with the right of the management to call upon the workers to come and work on such holidays is not tenable at all.

8. With respect, we are unable to agree with Natarajan, J. when he says that Section 5(2) has an overriding force on Sections 3 and 5(1), that where an employer who is statutorily obliged to pay wages to its employees on national and festival holidays has been conferred a right u/s 5(2)(a) to require the employee to come and do work on those holidays, such a right normally imposes a corresponding obligation upon the employees to be available for the employer to serve notice on them to come and work on those holidays, that the employees cannot say that they are not bound to make themselves available for work during the holidays but nonetheless claim wages for the holidays and that therefore, if a worker is on strike the employer has been deprived of the opportunity of serving notice on the worker requiring him to come and work on a national or festival holiday, there is no liability on the part of the employer to pay wages for the holidays. In our view, such a construction of Section 5(2) is not possible as that section does not prescribe that if an employee is not available or is unwilling to work he would lose his ordinary wages for the holidays allowed u/s 3. It is true Section 5(2) confers a special right on the Management which is somewhat inconsistent with Section 3 and Section 5(1) which conferred two benefits on the employees, (1) not to work on a holiday and (2) get wages from the Management for those holidays. If the right conferred on the Management u/s 5(2) is intended to override the right given to the employees under Sections 3 and 5(1), the Legislature would have specifically said so by giving an overriding effect to Section 5(2). But, so long as Section 5(2) does not specifically override Sections 3 and 5(1), it is not possible for us to say that Sections 3 and 5(1) are subject to Section 5(2). The rights conferred on the Management u/s 5(2) and the right conferred on employees under Sections 3 and 5(1) should be taken to be independent of each other it is not as if during the period of strike the employer and employee relationship has ceased to exist or is suspended. The contract of service continues even during the period of strike. Therefore, even though the employees were on strike, they continued to enjoy the benefits of the Act.

9. In this view of the matter, we have to hold that the employees are entitled to

be paid wages for the national holiday on 26th January, 1976. Since the workmen have been heard through their Union, at the time of the hearing of the writ petition, the Union will be impleaded as the second respondent. In the result, the writ petition fails and is dismissed but without costs.

10. Order dated 16th November, 1979, Ramanujam. J :--The petitioner seeks leave of this Court to file appeal to the Supreme Court against the decision rendered in this case, on the ground that the issue arising in this case is not covered by any decision of the Supreme Court or of any other High Court, and that, therefore, an authoritative pronouncement of the Supreme Court is warranted on the question of law raised in this case. Having regard to the fact that there is no decided case on the point in question by the Supreme Court or of any other High Court and the impact of the decision on all the managements in general, we consider that this is a fit case for grant of leave to appeal to the Supreme Court, for having an authoritative decision of the Supreme Court on the question of law involved. Hence leave is granted.