
(2012) 07 BOM CK 0082
In the Bombay High Court
Case No : Writ Petition No. 888 of 2012

Omprakash Miglani

APPELLANT

Vs

Coal India Limited and Western Coalfields Ltd.

RESPONDENT

Date of Decision : 13-07-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 226
Mines Act, 1952 — Section 2[c), 2[h), 2[j), 2[k), 2[l)

Citation : (2012) 114 BOMLR 2579

Hon'ble Judges : S.C. Dharmadhikari, J; M.T. Joshi, J

Bench : Division Bench

Advocate : M.M. Sudame, for the Appellant; S.C. Mehadia, for the Respondent

Judgement

S.C. Dharmadhikari, J.—Rule. Shri S.C. Mehadia, learned Counsel appearing on behalf of the contesting respondents, waive service. As the pleadings are complete, by consent of the parties we proceed to dispose of the petition finally as directed in the order dated 27.02.2012. This Writ Petition under Article 226 of the Constitution of India questions refusal of the Western Coalfields Limited/Coal India Limited to pay encashment leave to the petitioner and the monetary component in terms thereof. What the petitioner has claimed in this Writ Petition is, the benefit of encashment of 219 days of Earned leave and 293 days of Half pay leave.

2. The facts which are not in dispute are as under :

On 03.03.1976, the petitioner joined the Nationalised Coal Sector as Assistant Welfare Officer (Trainee) in Western Coalfields Limited at Korba and continued there till 12.06.1984. Thereafter, he was posted from 14.06.1984 to 30.06.1989 at Nagpur as Personnel Officer, Western Coalfields Ltd. He was promoted on 30.05.1998 and worked as Personnel Manager at Western Coalfields Limited, Umrer area. Thereafter he came to be promoted on 28.05.2001 as a Deputy Chief Personnel Manager and posted at BCCL Head Quarters, Ranchi. Thereafter, he was posted as Deputy Chief Personnel Manager at W.C.L. Headquarters,

Nagpur from 02.05.2005 to 13.09.2006 and was promoted as Chief Manager at Coal India Headquarters from 14.09.2006 and worked there till 31.12.2007. Subsequently he was appointed as a Director (Personnel) Western Coalfields Ltd. for a period of 5 years w.e.f. 01.01.2008 in the pay-scale of Rs.65000-75000. What the petitioner has then done is to put in his papers, in as much as he tendered resignation as Director, (Personnel) W.C.L. The same was accepted w.e.f. 01.05.2011 A.N. and order in that behalf came to be issued on 01.07.2011. It is common ground that the resignation of the petitioner can be accepted subject to the approval of the President of India, which was conveyed to him.

3. It is on 24.08.2011, that the petitioner sought payment of leave encashment in respect of half pay leave balance at the time of his resignation, as per Rules and forwarded the computation (Annexure-9 Page 76). The petitioner states that he has been paid all the terminal and retiral benefits, save and except this earned leave and half pay leave benefit. The petitioner made a representation (Annexure-VII), which representation was never replied, nor the amount is released, as claimed. It is on this count, aggrieved by such inaction, the petitioner has approached this Court in writ jurisdiction.

4. Shri Sudame, learned Counsel appearing on behalf of the petitioner submits that the respondents have erred in law in not releasing the leave encashment for 219 days earned leave and 293 half pay leave. The petitioner is, therefore, justified in complaining that the action of the respondents violates the mandate of Articles 14 and 16 of the Constitution of India. The petitioner is an employee of Mines, as per the provisions of the Mines Act, 1952 and, therefore, is governed by Section 52 thereof.

5. The demand of petitioner to release his leave encashment is not only a right vested in him by virtue of the employment with the respondents, but it is also a statutory duty of the respondents. Thus Sections 52 and 53 of the Mines Act, are violated. An employee of the Mines who has been dismissed from service after departmental inquiry, is entitled to encashment of leave. It is the case of the petitioner that he has unblemished service record. He is entitled to encashment of leave. His resignation from the service has been accepted in accordance with the Rules. The respondents could not have relied upon Rule 12.4.1 of the Coal India Executives Leave Rules and Leave Encashment Rules, 2010 (hereinafter referred to as "the 2010 Rules" for short), framed by the Board of Directors of Coal India Limited for Executive cadre, as this is not a law. Both the respondents are an agency or instrumentality of the State and they cannot make any Rule or Regulation which would violate the mandate of Articles 14 and 16 of the Constitution of India. Once the Mines Act read with Article 21 of the Constitution creates a right in favour of the petitioner then, such right cannot be taken away and therefore, Rule 12.4.1 is void, if held to be applicable in this case. It is submitted that the field is already occupied by Mines Act and therefore, there is nothing left for making any Regulations and much less to the contrary.

6. Our attention is invited to Section 52 of the Mines Act and judgment of Hon'ble Supreme Court in the case of Jaswant Singh Gill.vrs. Bharat Coking Coal Ltd. and others reported in (2007) 1 SCC 663 and judgment of this Court in Writ Petition No. 3430/2010 - Pramod Gulabchand Baid.vrs. Coal India Limited, decided on 26.11.2010. For all these reasons it is submitted that the petition be allowed.

7. On the other hand Shri Mehadia, learned Counsel appearing on behalf of respondents invites our attention to the submissions filed on record. He contends that the petitioner cannot be termed as a person employed in a Mine, in accordance with Section 2[h] of the Mines Act, 1952. The petitioner was appointed by the Union of India as Director in the respondent no.2 Company. Clause 1.11 of his appointment order lays down that the petitioner shall be subjected to the leave rules of respondents. The leave rule specify that in case of resignation, an employee is not entitled for encashment of earned leave. Alternatively, it is submitted that the 2010 Rules makes better provision or enhance the facility in respect of leave than Section 52 of the Mines Act. That comparison is demonstrated in paragraph nos.5 to 7 of the submissions and it is contended that the employee cannot be permitted to chose some of the provisions of the Mines Act, 1952 as convenient to him and better provisions of the 2010 Rules. Thus, this is not a case where the petitioner had been treated unfairly, unreasonably, arbitrarily or is discriminated. There is no violation of Articles 14 and 16 of the Constitution. In Writ Petition No. 3430/2010 the above facts were not brought to the notice of this Court. In any event, that judgment must be restricted to a person employed in a Mine. The petitioner is not a person employed in Mine and does not derive any benefit from the said judgment. For all these reasons, it is submitted that the petition be dismissed.

8. Shri Sudame, learned Counsel in rejoinder submits that the contentions raised by Shri Mehadia, learned counsel are incorrect, because the petitioner was subject to both, the 2010 Rules and the Mines Act. The Director of a Company is employee of the company and the company is a distinct legal entity. It is owner under the Mines Act, wherein the Director is an employee. It is submitted by Shri Sudame, that this issue is decided by the Madhya Pradesh High Court in a judgment reported in case of State of Madhya Pradesh Vs. D.V. Parkhani and Others, . He therefore, submits that the petition deserves to be allowed. Once there is apparent conflict between the 2010 Rules and the Mines Act, in so far as person resigning from the service is concerned, then, the Mines Act should prevail over the 2010 Rules.

9. For properly appreciating the rival contentions, it must be noted that the petitioner was appointed on 01.08.2010 as Director (Personnel) and it was stated in his letter of appointment that he would be entitled to basic pay specified therein together with dearness allowance, annual increments, house rent allowance and other facilities. As far as leave is concerned, what has been stated is that he will remain subject to the leave rules of CPSE. It is then stated that the

Conduct, Discipline and Appeal Rules framed by the CPSE in respect of their non-workmen category of staff would mutatis mutandis apply to the petitioner with modification that the Disciplinary Authority in his case would be the President of India. What has been then stated is that in respect of any other item concerning the petitioner which is not covered by the preceding paragraphs of the appointment letter, he would be governed by the CPSE/Government Rules.

10. The 2010 Rules which have been brought into effect from 01.07.2010 states that they will apply to all whole time regular executives of the Coal India Limited and its subsidiaries. Executive is defined to mean the whole time regular Executive cadre. The word "Pay" is defined in Rule 3.4 to mean the amount drawn monthly as basic pay in the grade, dearness allowance, deputation pay, personal pay, special pay, non-practicing allowance as applicable to the post held by him. Rule 5 contains general conditions applicable for leave. The Executive in service of the Company will earn leave in accordance with the provisions of these Rules. The procedure for sanction of various types of leave, other than the casual leave has been set out and then what is indicated is, that every Executive shall be credited with earned leave in advance in two installments of 15 days each on the 1st day of January and July of every calendar year. Rule 7.3.5 says that earned leave can be accumulated upto 300 days. Rule 7.4 deals with half pay leave and sub-rules following therein read as under.

7.4. Half Pay Leave.

7.4.1. Every executive shall be credited with half pay leave in advance in two installments of 10 days each on the first day of January and July of every calendar year.

7.4.2. When an executive is appointed in the middle of the year, the leave shall be credited to the said leave account at the rate of 5/3 days for each completed calendar month of service which he is likely to render in the half year of the calendar year in which he is appointed.

The credit for the half year in which an executive is due to retire or resigns from the service shall be allowed at the rate of 5/3 days per completed calendar month upto the date of retirement or resignation.

When an executive is removed or dismissed from service or dies while in service, credit of half pay leave shall be allowed at the rate of 5/3 days per completed calendar month upto the end of the calendar month preceding the calendar month in which he is removed or dismissed from service or dies in service.

If in the case of an executive, the leave already availed of is more than the credit so due to him, necessary adjustment is to be made in respect of leave salary overdrawn.

7.4.3. The leave under this rule may be granted on medical certificate or on private affairs.

7.4.4. There is no limit for accumulation of half pay leave. However, the encashment limit as clause 12.5.1 will be 300 days only.

Then comes the Rule dealing with leave encashment (Rule 12.0). Rule 12.1 states that the encashment of earned leave and half pay leave will be allowed at the option of the executive, subject to the approval of the sanctioning authority competent to sanction the same. Rule 12.2 indicates extent of leave encashable and what is dealt with by Rule 12.3 is extent of encashment of earned leave. Rule 12.3.2 to 12.3.13 set out the procedure for encashment. Then comes Rule 12.4 which deals with encashment of earned leave on termination of service/retirement. Rule 12.4.1 therein reads as under.

12.4.1. On Resignation.

Leave at credit shall not be granted for encashment if an executive resigns from the service.

However, an executive who has resigned from the service can avail the benefit for the encashable portion of earned leave prior to the date of his actual quitting/release from service.

11. A bare perusal of this Rule would indicate that the leave at credit shall not be granted for encashment, if an executive resigns from the service, however, the executive who has resigned from the service can avail the benefits for encashment portion of the earned leave prior to the date of his actual quitting/release from service. Encashment of half pay leave is dealt with in Rule 12.5 and Rule 12.5.1 reads as under.

12.5.1. Encashment of half pay leave subject to maximum of 300 days of HPL at the credit of the executive is permissible on the following conditions :

- a) On separation from the company on attaining the age of superannuation;
- b) Death while in service.
- c) Permanent total disablement of an executive.
- d) On voluntary retirement before the date of superannuation but after attaining the age of 55 years.
- e) In case of cessation of service after attaining the age of 50 years or more provided the executive has put in a minimum of 20 years continuous service as a regular executive in the company and the cessation is not as a result of disciplinary action or leaving the service without approval of the Management.

12. Our attention is invited to the Mines Act, 1952 and particularly to Section 52 thereof. Section 52 deals with Annual leave with wages and sub-section [10] thereof reads as under :

52(10) 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 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].

Section 53 is also relied upon by Shri Sudame, learned counsel, and it reads as under.

53. Wages during leave period. For the leave allowed to a person employed in a mine u/s 52, he shall be paid at the rate equal to the daily average of his total full time earnings for the days on which he was employed during the month immediately preceding his leave, exclusive of any overtime wages and bonus but inclusive of any dearness allowance and compensation in cash including such compensation, if any, accruing through the free issue of food grains and other articles as persons employed in the mine may, for the time being, be entitled to.

13. The controversy before the Division Bench of this Court in Pramod Baid's case [supra], was whether the petitioner before the court was entitled for encashment, as he had been dismissed from services by way of a disciplinary action. The petitioner was working as Finance Manager in the executive cadre. A departmental inquiry was conducted into the charges and penalty of dismissal was levied. The petitioner asked for leave encashment of 220 days earned leave with full pay and 219 days half pay leave after deduction of coal mine's provident fund as per Section 52[8] of the Mines Act, 1952. However, that request was rejected on the ground that the leave encashment is not admissible to the employees whose services are terminated on disciplinary ground. Rule 7.2 was relied upon, namely, an executive governed under Coal India Service Rules, and whose services are terminated otherwise than on disciplinary ground, or who retires on superannuation, is allowed to encash the earned leave at his credit, subject to the maximum of 240 days, in terms of the scheme. Thus, this rule prohibits encashment of leave by Executive whose services are terminated on disciplinary ground. However, Section 52[10] of the Mines Act was relied upon and it was urged that Rule 7.2 is in direct contravention and contrary to the mandate of Mines Act, 1952. That argument seems to have been accepted by relying on Jaswantsingh Gill's case (supra), and it was held that Rule 7.2 of the Leave Encashment Scheme is arbitrary and violative of Article 14 of the Constitution of India in relation to a person employed in a Mine, as contemplated by Section 52[10] of the Mines Act read with Section 2[h] thereof.

14. Thus to appreciate the argument of Shri Sudame, by relying upon this judgment we cannot ignore the fact that the petitioner was appointed as Director (Personnel) and he resigned from services. The Mines Act, 1952 defines the term - " a person is said to be employed" in Section 2[h] as under :

2(h) a person is said to be "employed" in a mine who works as the manager or who works under appointment by the owner, agent or manager of the mine or with the knowledge of the manager, whether for wages or not...

15. There are two words referred to in this very definition namely "agent" and "owner". The word "owner" is defined in Section 2[i] as under.

2[l] "owner" when used in relation to a mine, means any person who is the immediate proprietor or lessee or occupier of the mine or of any part thereof and in the case of a mine the business whereof is being carried on by a liquidator or receiver, such liquidator or receiver, but, does not include a person who merely receives a royalty, rent or fine from the mine, or is merely the proprietor of the mine, subject to any lease, grant or licence for the working thereof, or is merely the owner of the soil and not interested in the minerals of the mine; but for the working of a mine or any part thereof shall be subject to this Act in like manner as if he were an owner, but not so as to exempt the owner from any liability.

Whereas the word "agent" is defined in Section 2[c] as under :

2[c] "agent" when used in relation to a mine, means every person, whether appointed as such or not, who, acting or purporting to act on behalf of the owner, takes part in the management, control, supervision or direction of the mine or of any part thereof.

16. Shri Mehadia, learned counsel relies upon Section 2[h], Clause [v] and [vii] and contends the petitioner can at the most be said to be employed in any office of the Mine. He submits that the office of the Mine is defined in Section 2[k], to mean a office at the surface of the Mine concerned. His contention is that the legislature has made a distinction between the mining operations, operations and services relating to the development of the mine, operating, servicing, maintaining or repairing any part of any machinery and operations within the premises of the Mine of loading for dispatch of material and in any office or services which are required to be provided within the premises of the Mine, excluding the residential area or any kind of work whatsoever which is preparatory or incidental to, or connected with, mining operations. He submits that this definition cannot be read in isolation and will have to be read with the term "mine" as appearing in Section 2[j], which means any excavation, where any operation for the purpose of searching for or obtaining minerals has been or is being carried out. He submits that the petitioner was not such an employee, and therefore, his case is not covered by the judgment delivered by the Division Bench. In any event, this judgment does not consider these provisions and they were not brought to its notice.

17. On the other hand it is contended by Shri Sudame, learned counsel for the petitioner that the definition of the term "person employed in mine" is self-explanatory and inclusive of a person engaged in ancillary work. He tries to trace appointment of the petitioner prior to his appointment as a Director, and submits that the petitioner started working and served in various capacities right upto the General Manager, which was in the Personal Department and thus an ancillary work of the mine. During this period he was subject to leave Rules of Coal India Limited as also subject to the Mines Act, 1952. The petitioner was appointed as a Director by Public Enterprises Selection Board with the approval and sanction of the President of India for a period of 5 years and he served from 01.01.2008 to 30.04.2011, when he tendered his resignation for personal reasons. As Director

he was subjected to WCL/CIL leave Rules and was paid salary and dues by WCL, therefore, Shri Sudame, learned counsel relies upon the position of Director of company under the scheme of Rules and Mines Act. He submits that the Director of Company is an employee and certainly not owner of the company.

18. What we find from reading of the entire material placed before us is, that once the petitioner has subjected himself to the terms of the appointment letter which specifically apply to him the leave Rules of the CPSE and his petition proceeds on the basis that the Coal India Executive Leave Rules, 2010 are a complete code in itself, providing for types of leave, calculation of leave, procedure for encashment etc. then, it is not open to him to urge that these rules are applicable to him in so far as they carve out an exception regarding encashment of half pay rules but not earned leave and that leave benefit is derived from Mines Act, 1952. What the petitioner does is to rely on these rules for the purpose of half pay leave as it is clearly beneficial to him. He is aware that half pay leave is admissible to him even if resigns from the service, even when he is removed or dismissed or dies in service, and credit of the same is permissible. In so far as the earned leave on termination of service/retirement is concerned, it is dealt with by specific rule namely 12.4. Rule 12.4.1 provides that leave at credit shall not be granted for encashment, if an executive resigns from service. However, an executive who has resigned from the service can avail the benefit of the encashable portion of earned leave prior to the date of his actual quitting/release from service.

19. In this case, we are not concerned with Rule 12.4.2. It is Rule 12.4.2 which can be said to be *pari-materia* with Rule 7.2 which was under consideration of the Division Bench. We must clarify that we are not concerned with a case of Termination on Disciplinary grounds, as here the petitioner has resigned from services. His services are not terminated on disciplinary grounds as in case of Pramod Baid (*supra*). Here the petitioner is not entitled to encashment of leave at credit, because he resigned from service, but he can avail the benefit of the encashable portion of the earned leave prior to the date of his actual quitting/release from service.

20. Therefore, we are of the opinion that the larger controversy as to whether this Rule is in conflict with Section 52 of the Mines Act, 1952 does not arise for determination and consideration. Here the petitioner is governed by the 2010 Rules, as is admitted by him, therefore, it is not permissible for him to rely on any judgment and urge that Rule 7.0 of the 2010 Rules is *pari-materia* with Rule 12.4. We do not find them to be *pari-materia*, because the later part of Rule 12.4 is not appearing in Rule 7.0. The later part of Rule 12.4.1. is reproduced by the petitioner himself at page no.5 of his writ petition and once this is not the subject matter in Pramod Baid's case (*supra*), then, we are of the opinion that there is no substance in the contentions of Shri Sudame, learned Counsel for petitioner that both the rules being *pari-materia*, his case will be covered by the judgment delivered in Pramod Baid's case. In such circumstances, we are of the view that

the learned counsel for the petitioner cannot derive any assistance from the ratio of the judgment in Pramod Baid's case or the view taken therein about conflict between Section 52 of the Mines Act and the 2010 Rules.

21. There is some substance in the contention of Shri Mehadia, learned counsel for respondents, that the petitioner's case would be governed by the leave rules and he cannot fall back on the leave rules whenever it is convenient to him and challenge the provisions therein, merely because they deprive him of some benefits or entitlement. By projecting a conflict between the same and the 2010 Rules, the petitioner is picking and choosing the provisions to his advantage and benefit, which we think is enough to deny him any relief in discretionary and equitable jurisdiction under Article 226 of the Constitution of India. The petitioner has always understood his case to be covered by the 2010 Rules and derived benefits thereunder. Once that is stated to be a complete code by the petitioner, then, to allege conflict between them and the Mines Act, 1952 and that too only in relation to benefit of earned leave, would clearly mean that the petitioner is wriggling out of the same. He is also backing out of the terms and conditions on which he was appointed as a Director in 2008. He has enjoyed the pay scale and perquisites, facilities and benefits thereof till date. It is now the Rules and the terms are questioned and that too for few monetary benefits. In *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*, page no.1126, the Hon'ble Supreme Court holds that the writ jurisdiction of High Court is not intended to facilitate avoidance of obligations voluntarily incurred. The obligations and the facilities in terms of the 2010 Rules, cannot be applied whenever it is convenient to the petitioner and brushed aside when he finds the compliance therewith inconvenient or not suitable.

22. Once the above view is taken, we are of the opinion that the petition succeeds only in part. The petitioner is entitled to the encashment of half pay leave in terms of the 2010 Rules and he must be granted the benefit thereof because those Rules do not deprive him of the said benefit on resignation but grant it by relying on minimal service of 20 continuous years, as a regular executive in the company. The petitioner's cessation of service is not a result of disciplinary action or leaving the service without approval of the management. Since the petitioner has ceased to be in service because of the resignation, which is approved, and is not subject to any disciplinary action, then, the petition deserves to be allowed, in so far as the claim for encashment of half pay leave is concerned. As a result of the above discussions, Rule is made absolute in terms of prayer clause (iii), but to the extent of 293 days half pay leave, which sum is computed by the petitioner at Rs. 6,74,280/-. Since the petitioner has ceased to be in service of the respondents w.e.f. 01.05.2011, the petitioner will be entitled to half pay leave as computed vide Annexure-IX from this date till the date of payment. The said amount will carry interest @ 8% p.a. from 01.05.2011 till its actual payment. Rule partly absolute as the Writ Petition is partly allowed in the aforesaid terms, with no order as to costs.