
(2020) 01 CHH CK 0029

In the Chhattisgarh High Court

Case No : Writ Petition No. 3111 Of 2005, Writ Petition (S) No. 2817 Of 2007

Rajesh Kumar Mishra And Anr

APPELLANT

Vs

General Manager, Central Electrical And Mechanical Workshop
And Ors

RESPONDENT

Date of Decision : 09-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 14
Mines Act, 1952 — Section 49, 50, 51, 52, 53, 54, 55, 56
Industrial Employment (Standing Order) Act, 1946 — Section 3, 4, 5, 6, 7, 8, 9, 10,
11, 12, 12(A), 13(A), 13(2)

Citation : (2020) 01 CHH CK 0029

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Single Bench

Advocate : K.N. Nande, Gary Mukhopadhyay, Abhishek Sinha, Vinod Deshmukh

Final Decision : Dismissed

Judgement

1. In WP No.3111 of 2005 petitioner - Rajesh Kumar Mishra claims direction to the respondents to grant 30 days Earned Leave annually in view of his entitlement in accordance with the rules.

2. In WPS No.2817 of 2007 also the petitioners' claim quashment of order dated 5-1-2007 passed by the South Eastern Coalfields Limited (for brevity 'the SECL') denying payment of 30 days annual leave with accumulation up to 90 days as per the old Certified Standing Orders with further prayer to direct the respondents to allow the petitioners to avail leave in terms of the Standing Orders of the Chirmiri Colliery.

3. The reliefs prayed in both the writ petitions are, thus, one and the same, therefore, both the matters shall be considered and decided by this common order.

4. Case of the petitioners, as projected in the writ petitions, is that they were

appointed on different posts in the Chirmiri Colliery after Nationalisation of the Coal Mines. Chirmiri Colliery was a private Colliery prior to Nationalisation in the year 1973. Immediately after Nationalisation the Coal company was known as Coal Mines Authority Limited and the employees who were working in the Chirmiri Colliery were absorbed as employees of the Coal Mines Authority Limited. Chirmiri Colliery being a private Colliery it has its own Standing Orders before Nationalisation, however, after Nationalisation of Coal Mines, Coal India Limited (for brevity 'the CIL') framed its service conditions to be made applicable in respect of the employees working under the CIL.

5. Claim of the petitioners is that even after taking over of the Chirmiri Colliery by the new management it continuously followed the Standing Orders of Chirmiri Colliery by writing letters dated 26/29-11-1978 (Annexure - P/3) and 1-7-1993 (Annexure - P/4). Petitioners would further contend that a Joint Bipartite Committee for the Coal Industry negotiated and entered into several agreements with the Government popularly called as 'the National Coal Wage Agreement' (for brevity 'the NCWA'). Joint Bipartite Committee also framed Certified Standing Orders in respect of all subsidiaries of CIL.

6. It is put forth by learned counsels for the petitioners that Clause 37.2 of the Certified Standing Order (Annexure - P/5) provides that these Standing Orders will not in any way curtail or adversely affect better privileges enjoyed by the existing workmen in any colliery/establishment. Thus, protecting the better leave facilities enjoyed by the petitioners. Section 49 of the Mines Act, 1952 (for brevity 'the Mines Act, 1952') also protects the quantum of leave, which the petitioners were availing with the Chirmiri Colliery.

7. On the above facts, Shri K.N. Nande & Shri Gary Mukhopadhyay, learned counsel appearing for the respective petitioners, would contend that the SECL has no jurisdiction to reduce the quantum of Earned Leave contrary to the Rules applicable to the petitioners.

8. Shri K.N. Nande, learned counsel, would refer to the Last Payment Certificate (LPC) issued by Chirmiri Area (Annexure - P/1 to WP No.3111 of 2005) mentioning petitioner's entitlement for 30 days Earned Leave as per the Standing Order of Chirmiri Colliery. Shri Nande would also refer to several other documents including several representations filed by the petitioner - Rajesh Kumar Mishra.

9. Shri Abhishek Sinha & Shri Vinod Deshmukh, learned counsel appearing for the SECL, per contra, would contend that even if the petitioners were allowed 30 days EL in a year when they were working in the Chirmiri Colliery the same could not continue in view of the express provisions contained in the NCWA. The petitioners were not appointed under the private Collieries, but they are appointed after Nationalisation of Coal Mines under the Colliery/ establishment of WCL, the predecessor of SECL. Merely because by oversight some officers of SECL allowed extra leave to the petitioners applying the old Standing Orders, the

same would not confer any right to earn that quantum of leave creating anomaly.

10. Petitioners' claim is based on clause 12 of the Standing Order for Chirmiri Colliery Company Limited (Annexure - P/12 filed with rejoinder in WP No.3111 of 2005), which reads thus :

12. All employees, who have completed a calendar year's service shall be allowed, during the subsequent calendar year, leave with wages as under :

Monthly paid employee :

a) 30 days annual leave with accumulation upto 90 days

b) 15 days sick leave

c) 10 days casual leave

Other Employees : Leave as per provisions of the Mines Act.

Note :- The provisions of the Mines Act will be applicable to the monthly paid employees excepting those relating to the quantum and accumulation of leave.

11. The seminal issue for consideration is -

Whether petitioners will be governed by the Standing Orders of a private Colliery when their appointment is after Nationalisation when there was no existence of the private Colliery ?

12. In order to decide the issue it would be apt to refer to few provisions to which both the parties have referred in course of argument.

13. Section 49 of the Mines Act, 1952 provides thus :

49. Application of Chapter.--The provisions of this Chapter shall not operate to the prejudice of any right to which a person employed in a mine may be entitled under any other law or under the terms of any award, agreement or contract of service.

Provided that if such award, agreement or contract of service, provides for a longer annual leave with wages than that provided in this Chapter, the quantum of leave, which the person employed shall be entitled to, shall be in accordance with such award, agreement or contract of service, but leave shall be regulated in accordance with the provisions of section 50 to 56 (both inclusive) with respect to matters not provided for in such award, agreement or contract of service."

14. Section 12-A of the Industrial Employment (Standing Orders) Act, 1946 (for brevity 'the Act, 1946') reads thus :

12-A. Temporary application of model standing orders.--(1) Notwithstanding anything contained in sections 3 to 12, for the period commencing on the date on which this Act becomes applicable to an industrial establishment and ending

with the date on which the standing orders as finally certified under this Act come into operation under section 7 in that establishment, the prescribed model standing orders shall be deemed to be adopted in that establishment, and the provisions of section 9, sub-section (2) of section 13 and section 13-A shall apply to such model standing orders as they apply to the standing orders so certified.

(2) Nothing contained in sub-section (1) shall apply to an industrial establishment in respect of which the appropriate Government is the Government of the State of Gujarat or the Government of the State of Maharashtra.

15. Clause 6.0 to 6.4.0 of the NCWA provides thus :

6.0 ANNUAL LEAVE WITH WAGES

6.1.0 Annual leave with wages will be continued to be governed by the provisions of the Mines Act, 1952.

Note:

For the purpose of computation of attendance for determining the eligibility for earned leave, all authorised paid leave (Sick Leave with full pay, Casual leave with pay, Maternity leave with pay, days of absence on account of injury arising out of employment or on account of occupational disease with pay, as well as paid holidays) would be included. These paid leave would, however, not earn any further leave.

6.2.0 The prevalent practices in respect of Earned Leave, Casual and paid festival holidays will, however, continue if more favorable.

6.3.0 Accumulation of Earned Leave/annual Leave with Wages.

The existing provisions relating to the accumulation of Earned Leave/Annual Leave will be 120 days prospectively.

6.4.0 Encashment of Earned Leave.

The workmen will be entitled to get encashment of earned leave at the rate of 15 days per year. On discontinuation of service due to death, retirement, superannuation, VRS etc. the balance leave or 120 days whichever is less will be allowed for encashment.

16. The main thrust of the petitioners' argument is based on clauses 12.1 & 37.2 of the Certified Standing Orders of the SECL, which, according to the petitioners, protects larger quantum of leave enjoyed by a workman in terms of his contract of service, whereas, according to the respondent- SECL, the petitioners having been appointed after nationalization and not enjoying larger quantum of leave in terms of contract of their service, their leave etc. would be governed under clause 12.1 of the Certified Standing Orders of the SECL read with clause 6.4.0 of the NCWA.

17. In order to decide the controversy it is to be seen that what is protected under clause 12.1 read with 37.2 of the Certified Standing Orders of the SECL is the larger quantum of leave enjoyed by a workman in terms of his contract of service. Petitioners have not filed their order of appointment to demonstrate that their contract of service made them admissible 30 days Earned Leave in a year. The respondent SECL has filed sample appointment order issued in favour of Sagar Adhiikari (petitioner No.5 in WPS No.2817 of 2007). Condition No.2 of the appointment order provides that the appointee's service will be governed by the Certified Standing Orders as applicable to the Collieries of Western Coalfields Limited and will be governed by the terms and conditions of services as per the Wage Board Recommendations as accepted by the Government of India. By virtue of this clause, the Standing Orders of the Western Coalfields Limited would apply to the petitioners rather than the Standing Order for Chirmiri Colliery Company Limited.

18. It is not argued in any of the petition that under the Standing Orders of the Western Coalfields Limited the petitioners were entitled for 30 days earned leave. Even under Section 49 of the Mines Act, 1952 more beneficial facility including Earned Leave would be admissible when the workman is entitled to such facility under the terms of any award, agreement or contract of service. The award in form of NCWA provides for earned leave for 15 days in clause 6.4.0. As earlier discussed, the contract of service of the petitioners does not provide for 30 days earned leave or applicability of the Standing Order for Chirmiri Colliery Company Limited. Thus, in absence of any express clause in any award, agreement or contract of service entitling the petitioners to earn 30 days earned leave; the respondent has rightly passed an order that the petitioners are not entitled for 30 days earned leave, because clause 6.4.0 of the NCWA, which has statutory force, would apply to the petitioners.

19. Even otherwise, allowing more beneficial earned leave to a workman who has been appointed after nationalization would create two classes of workman for the purpose of grant of earned leave, which would be in violation of Article 14 of the Constitution of India. Their entitlement to a better leave facility could be saved under a valid classification carved in the rules providing that the petitioners are covered to get more beneficial leave facility under the terms of any award, agreement or contract of service, however, once it is found that there is no such award, agreement or contract of service in their favour, allowing better leave facility merely because at some point of time in the past they were allowed such facility by mistake applying the Standing Order for Chirmiri Colliery Company Limited, would be wholly improper and illegal being hit by Article 14 of the Constitution of India.

20. As a sequel, both the writ petitions, being devoid of merit, are liable to be and are hereby dismissed, leaving the parties to bear their own cost(s).