
(1962) 08 BOM CK 0001

In the Bombay High Court

Case No : Special Civil Application No. 110 of 1962

Ramkrishna Ramnath Bidi Factory, Kamptee

APPELLANT

Vs

Small Causes Court, Nagpur

RESPONDENT

Date of Decision : 22-08-1962

Acts Referred:

Factories Act, 1948 — Section 2, 30, 61, 79, 79(1)

Citation : (1962) 08 BOM CK 0001

Hon'ble Judges : S.P. Kotval, J; L.M. Paranjpe, J

Bench : Division Bench

Judgement

Kotval, J.—This petition under Art. 227 of the Constitution of India arises out of proceedings taken by respondent 2, Chandan, son of Bhika, a bidi-roller, for payment of his leave wages under S. 15 of the Payment of Wages Act. The present petitioner, the manager, Ramkrishna Ramnath Bidi Factory, Kamptee, is his employer. The worker alleged that he had been working in the factory of the petitioner for over 240 days and that he was accordingly entitled to leave with wages under S. 79 of the Factories Act for the period of fifteen days from 3 April, 1961 to 17 April, 1961, but that those wages had not been paid. According to the worker, his daily average whole-time earnings were Rs. 2.75 and he, therefore claimed a total of Rs. 41.25. The Authority under the payment of Wages Act has granted the worker's application but has held that he is entitled to compute the leave wages on the basis of a daily average earning of Rs. 2.04 and the employment has filed the present petition challenging that order.

2. The employer had, in answer to the application under S. 15 of the Payment of Wages Act, raised a number of contentions with which we are not concerned in this petition, but substantially Mr. Phadke appearing on behalf of the petitioner has raised two important points. The first is whether a bidi-roller like respondent 2 is entitled to the leave wages at all and secondly, if he is entitled, whether he can claim wages beyond the period of two years. Having heard counsel for both the sides, we think that the answer to the first contention must be in favour of

the petitioner, namely, that the worker, respondent 2, is not entitled to claim leave wages at all for reasons which we shall presently state and, therefore, it is unnecessary to decide the second point raised by Mr. Phadke.

3. The provision of law under which the claim was made before the Payment of Wages Authority is S. 79(1) read with S. 80. Section 79(1) provides as follows :

"Every worker who has worked for a period of 240 days or more in a factory during a calendar year shall be allowed during the subsequent calendar year leave with wages for a number of days calculated at the rate of -

(i) if an adult, one day for every twenty days of work performed by him during the previous calendar year;

(ii) if a child, one day for every fifteen days of work performed by him during the previous calendar year.

Explanation 1. - For the purpose of this sub-section -

(a) any days of lay-off, by agreement or contract or as permissible under the standing orders;

(b) in the case of a female worker, maternity leave for any number of days not exceeding twelve weeks; and

(c) the leave earned in the year prior to that in which the leave is enjoyed;

shall be deemed to be days on which the worker has worked in a factory for the purpose of computation of the period of 240 days or more, but he shall not earn leave for these days.

Explanation 2. - The leave admissible under this sub-section shall be exclusive of all holidays whether occurring during or at either end of the period of leave."

4. Section 80, sub-section (1), shows how the wages during the leave period are to be computed and S. 80, Sub-section (1), provides as follows : "For the leave allowed to him under S. 79 a worker shall be paid at a rate equal to the daily average of his total full-time earnings for the days on which he worked during the month immediately proceeding his leave exclusive of any overtime and bonus but inclusive of dearness allowance and the cash equivalent of the advantage accruing through the concessional sale to the worker of foodgrains and other articles."

5. The contention on behalf of the employer in this case has been that, having regard to the peculiar terms and conditions of work of respondent 2, it is in the first place impossible to say that he is a worker at all, and even assuming that he is a worker within the meaning of the Factories Act, it is impossible to compute the wages as prescribed by S. 80 having regard to the peculiar terms upon which the employee was engaged. Before we proceed to discuss the provisions of Ss. 79 and 80 and some of the decisions bearing on these sections which have purported to interpret the sections, it would be useful to recount the facts as

found by the Payment of Wages Authority. Before the Payment of Wages Authority, two persons had given evidence, namely, Govinda Parashram and Pundlik Durga and upon a consideration of their evidence, the Authority accepted as proved the following circumstances :

(1) The workers sit in the factory and attend work between 8 a.m. and 12 noon. During this period the workers are issued tobacco.

(2) The issue of tobacco stops after the bell is rung at 12 noon.

It is not clear whether the work of rolling bidis commences immediately after the issue of tobacco or whether the work of rolling bidis only commences after the bell is running at 12 noon indicating that the work of issue of tobacco is closed. We may here merely mention by way of an explanation the manner in which the bidis are manufactured just in order to enable the facts found to be understood. We have had occasion previously to review the entire method of manufacture of bidis and the system employed in the bidi industry in this area, in our decision in *Bidi Leaves and Tobacco Merchants' Association v. State of Bombay* 1959 2 L.L.J. 286. The bidi is composed of the outer leaf and the leaf most frequently used is the tendu leaf. The leaf is first prepared by removing its stem and can only be used while it is in a green state. After the leaf is prepared, a certain quantity of tobacco and thread is doled out to the worker by the employer or other person on his behalf. The worker places a small quantity of tobacco into each tendu leaf and wraps it up into a conical shape. At one end he ties a piece of string to hold the green leaf together. In the course of a few days after the manufacture, the outer leaf dries up and thereafter is held in position because it has dried up in that position. It is the employer who gives all the material, namely, the tendu leaf, the tobacco and a string.

(3) The next circumstance which has been found by the Authority is that the worker is not allowed to take the tobacco home for rolling the bidis though it was urged by Mr. Phadke that it has been established that in certain circumstances the worker may take the tobacco home with the permission of the employer. Nothing much, however, turns up on that exceptional case.

(4) An average worker spends about three hours in cutting the leaves of a thousand bidis and on an average, workers roll between 800 to 1,200 bidis per day. In every 1,000 bidis, some bidis are sub-standard, and if a worker rolls a lesser number of bidis than the average and if the number is less by 100 or 200 bidis, then ordinarily the person supervising on behalf of the employer does not take exception. But if the number happens to be much less, then upon the evidence adduced before the Authority, the workers are "threatened that the quantity of tobacco issued to them will be reduced."

(5) In the number of bidis manufactured, there must necessarily be some bidis which are sub-standard and such bidis the manager or other person on behalf of the employer destroys. As to when this selection for purpose of destroying is made, the evidence was conflicting, one worker saying that it is done

immediately while the work is in progress and another saying that it is done after all the work is finished and submitted for inspection. Once again, nothing turns upon this conflict in the evidence. There is also a conflict in the evidence as to the person to whom the tobacco is issued. The witnesses on behalf of the workers denied that the tobacco is issued to the representative of the workers whereas a witness, one Namdeo examined on behalf of the employer, stated that the tobacco is issued to the workers' representatives. Once again, nothing turns upon this conflict in the evidence.

(6) After the work of rolling is over, the workers deliver the bidis for the employer's inspection and for that purpose they stand in a line referred to as "pallis" and the work of each, in turn, is inspected. The work of delivering bidis starts at about 6 p.m. and it some times goes on till 8-30 p.m. or 9 p.m.

(7) The factory commences work at 8 a.m. and continues till 12 noon. That is the time during which the distribution of material goes on. Then the factory works till 6 p.m. when the return of manufactured bidis starts. A considerable time is apparently taken in delivery of the bidis because the persons appointed to take delivery are few in number and the workers are many.

(8) The Payment of Wages Authority has held that in its option "the working hours are the hours during which time the workers are actually winding the bidis." There is no definite time fixed for attendance of workers and the maximum hours of work are also indefinite but are between 6 to 8 hours each day. Workers go in and out at their will to take tea or pan and there is no recess. An attempt was made to introduce a period of recess but it did not succeed.

(9) There are standing orders applying to the workers of the factory and the workers are not allowed leave indefinitely. They have to apply for leave if they are absent for three or four days. If they do not apply for leave and remain absent, they are liable to be chargesheeted and tried for misconduct under the standing orders.

(10) Workers are paid at the rate of Rs. 1-11-0 per thousand bidis.

6. Upon these findings, the Payment of Wages Authority came to the conclusion "that the evidence clearly shows that there are no fixed hours of work for bidi winders (bidi-rollers)."

7. Now, both Ss. 79 and 80 of the Factories Act apply to, and can be taken advantage of only by, a "worker." A worker has been defined in S. 2(l) to mean

". . . a person employed, directly or through any agency, whether for wages or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process."

8. There is no definition in the Factories Act of "employer or employee" as is to

be found in many other industrial legislations. But "manufacturing process" has been defined. It is not necessary to consider that definition for the purpose of the point raised before us. It will be noticed that the definition in S. 2(l) does not have regard to the period of time for which a person works or the terms or conditions of employment except that it does deal with the question of the agency through or by whom a person is employed and the purpose for which he is employed, that is to say, the kind or class of work which he does.

9. The question raised in this petition is more fundamental than the definition itself. What is urged in this petition is that, upon the facts found, the very relationship of master and servant had not come into being and that the relationship actually found, cannot make respondent 2, a servant of the petitioner at all, and in this respect a number of decisions were relied upon on one or the other side. Mr. Phadke referred to the latest decision of their lordships of the Supreme Court in Shankar Balaji Waje Vs. State of Maharashtra, whereas Mr. Kukde referred to a slightly earlier decision in Birdhichand v. First Civil Judge 1961 2 L.L.J. 86 which decision approved a decision of this Court in State v. Shankar 1961 2 L.L.J. 8. Both Mr. Phadke and Mr. Kukde also referred to an earlier decision of the Supreme Court in Chintaman Rao and Another Vs. The State of Madhya Pradesh, . In that decision, the Supreme Court was also concerned with determining the nature of the relationship between the worker and the employer but there worker was of a completely different category. In that case, the point taken was different. In that case, there were appointed by the management independent contractors known as sattedars through whom the material for the manufacture of bidis used to be doled out to workers and the question there was whether having regard to the practice of getting the bidis manufactured through the instrumentality of the sattedars the worker, who actually manufacture the bidis, was a worker of the owner of the factory or a worker only of the sattedar. In other words, the question was whether there was privity of contract between the owner of the factory and the worker who manufactured the bidis or whether the privity of contract was only between the sattedars and the worker who manufactured the bidis. That is neither the question here nor are those the facts here.

10. Both Mr. Phadke and Mr. Kukde relied upon the general statement as to the law governing the question "who is a servant" and that was succinctly stated, we say with all respect, by Mr. Justice Subba Rao who delivered the judgment on behalf of the Court in the following terms (p. 256) :

". . . The concept of employment involves three ingredients (1) employer,
(2) employee, and
(3) the contract of employment.

The employer is one who employs, i.e., one who engages the services of other persons. The employee is one who works for another for hire. The employment is the contract of service between the employer and the employee whereunder the

employee agrees to serve the employer subject to his control and supervision."

11. Then the learned Judge went on to distinguish between a contractor and a workman and in that context the learned Judge observed (p. 256) :

". . . There is, therefore, a clear-cut distinction between a contractor and a workman. The identifying mark of the latter is that he should be under the control and supervision of the employer in respect of the details of the work. This Court in Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra, in the context of the definition of "workman" under the Industrial Disputes Act (14 of 1947) made the following observations at p. 480 : "The essential condition of a person being a workman within the terms of this definition is that he should be employed to do the work in that industry, that there should be in other words, an employment of him by the employer and that there should be the relationship between the employer and him as between employer and employee or master and servant. Unless a person is thus employed there can be no question of his being a workman within the definition of the term as contained in the Act".

12. Diamond, in his Law of Master and Servant, has in Art. 2 stated the relationship of master and servant in the following words :

"The relation of master and servant exists between two persons where by agreement between them, express or implied, the one (called "the servant") is under the control of the other (called "the master").

A person is under the control of another if he is bound to obey the orders of that other not only as to the work which he shall execute, but also as to the details of the work and the manner of its execution",

and he gives these principles from a number of decisions of the English Courts to which reference has been made in the footnote at p. 1. In Art. 3 he has further made clear the nature of that control as follows :

"The question whether a person is under the control of another is a question of fact :

Provided that where the terms of the contract between the parties are in writing, the question depends on the construction of the contract and is a question of law.

Control may exist between two persons, although the one -

- (1) did not appoint the other;
- (2) does not pay the remuneration;
- (3) has no power to dismiss;
- (4) has not the exclusive control."

There is thus no doubt as to the principles or the definition of the relationship of master and servant as given in the above authorities, though it was argued

strenuously to the contrary upon the authority of the later decisions of the Supreme Court.

13. In *State Vs. Shankar Balaji Waje*, , a Division Bench of this Court also dealing with the question of persons rolling bidis, held that

" . . . applying the prima facie test of the existence of right to supervise and control the manner in which the work was to be done as determinative of the existence of the relationship of employer and employee, the facts of the case led to the conclusion that the bidi-rollers were in the employment of the owner of the factory and workers within the meaning of that expression in S. 2(I) of the Act."

14. The Division Bench also relied upon *Chintaman Rao* case to which we have already referred and to the decision in *Dharangadhara Chemical Works* case also. Here again, the question arose with reference to whether persons working under a sattedars had any privity of contract with the owner of the bidi factory. There, the privity of contract was only with the sattedars. Thus, it appears to us that if the matters had stood at that, there would have been no difficulty in our coming to the conclusion in this case that respondent 2 was a worker of the petitioner and, therefore, entitled to take advantage of S. 79 of the Factories Act. But the question of difficult is said to arise from subsequent decisions of their lordships of the Supreme Court of India.

15. In *Shri Birdhichand Sharma Vs. First Civil Judge Nagpur and Others*, an appeal from a decision of this High Court in *Birdichandji v. First Civil Judge, Nagpur* 1957 N.L.J. 594 their lordships affirmed that decision and, in the arguments before them, reference was also made to all the cases which we have referred above, namely, *Chintaman Rao* case, the *Dharangadhara Chemical Works* case and the decision of this Court in *State Vs. Shankar Balaji Waje*, and in Para. 8 of their decision the Supreme Court held :

" . . . This is also the view taken by the Bombay High Court in *State Vs. Shankar Balaji Waje*, , in similar circumstances and that we think is the right view."

16. A little later, however, the decision in *State Vs. Shankar Balaji Waje*, itself came up in appeal before their lordships of the Supreme Court and their lordships allowed the appeal before them and reversed that decision. The decision of the Supreme Court reversing the decision of this Court in *Shankar Balaji* case is in *Shankar Balaji v. State of Maharashtra* 1952 I L.L.J. 119. We shall presently show that the two decisions of the Supreme Court to which we have referred above, though they have taken, with all respect, different views as to the decision of this Court in *Shankar Balaji* case, throughout adopted the principles which we have set forth above so far as the question of what constitutes the relationship of master and servant is concerned. Even if as has been urged there were a conflict of views, we would be bound to follow the latter pronouncement of the Supreme Court.

17. In Birdichand case, Mr. Justice Wanchoo accepted the statement in the Dharangadhara Chemical Works case as well as Chintaman Rao case so far as the law is concerned and observed (p. 87) :

" . . . The prima facie test whether the relationship of master and servant or employer and employee existed was laid down as the existence of the right in the employer not merely to direct what work was to be done but also to control the manner in which it was to be done, the nature or extent of such control varying in different industries and being by its nature incapable of being precisely defined. The correct approach therefore to the question was held to be whether having regard to the nature of the work, there was due control and supervision of the employer."

18. Then his lordship proceeded to explain that the question as to whether a particular worker was a worker or an independent contractor would depend upon the terms of the contract entered into between him and the employer and

" . . . no general proposition could be laid down which would apply to all cases. Thus in order to arrive at the conclusion whether a person working in a factory (like respondents 2 to 4 in this case) is an independent contractor or a worker the matter would depend upon the facts of each case." (p. 87.)

19. Thereafter the facts of the case were considered in Paras. 5 to 8 and the decision reached that the particular persons concerned in that case were workers.

20. In the subsequent decision, practically the same principle was accepted and applied. Mr. Justice Raghubar Dayal, who delivered the judgment on behalf of the majority, indicated in Para. 7 that there were two points raised,

(1) whether the worker Pandurang was not a worker within the meaning of that expression in the Factories Act and

(2) whether, even if Pandurang was a worker, he was not entitled to leave wages under S. 80 of the Act.

21. So far as the statement of the law on the subject is concerned, the same passage, which we have already quoted from Chintaman Rao case, was relied upon in Para. 13 and, upon that view of the law, the question which fell to be determined was whether under the particular circumstances existing in Shankar Balaji case, the worker was a worker within the meaning of S. 79 read with the definition in S. 2(I).

22. In our opinion the law is as stated in Chintaman Rao case and the other authorities to which we have referred above. Whatever questions of difficulty have arisen are really questions arising upon the applicability of those principles to the facts of the giving case. If there was any difference, as has been argued before us, between the decision in Birdichand case and Shankar Balaji case, the difference was not upon any principle of law but upon the applicability of that law to the facts of those particular cases. In fact, Mr. Justice Wanchoo, in the earlier

case, in terms stated that everything would depend upon the facts and circumstances in each case and turned to an examination of those facts. We cannot therefore, countenance the argument which has been advanced, with a grate deal of eloquence by Mr. Phadke that there is a conflict between the two decisions of the Supreme Court as to the principles governing the question as to who is a worker within the meaning of S. 79 read with S. 2(l) of the Factories Act. The whole question depends upon what are the facts and circumstances in each case. In fact, the Supreme Court itself distinguished the earlier case upon the facts, in the second case.

23. Turning then to the facts of the present case we have already set forth the findings which the Payment of Wages Authority gave as to the nature of the contract between respondent 2 and the petitioner and, in our opinion, upon those facts, the Payment of Wages Authority was right. The important circumstances, which show that the relationship between respondent 2 and the petitioner resulted in giving to the petitioner the right to control or direct respondent 2 not only as to the work which he was to do but as to the details of that work are as follows.

24. The workers had to attend the factory between 8 a.m. and 12 noon. If they wanted the issue of tobacco after 12 noon they could not get the tobacco and, therefore, necessarily they were deprived of work. Secondly, they were not allowed to take the tobacco home except with the permission of the petitioner. The whole idea was that the most valuable ingredient in the manufacture of bidis should be utilized in that manufacture under the supervision of the employer or his own agents. That shows the measure of control and directive capacity retained by the employer. Thirdly, the work, after it was completed, was itself subject to the scrutiny of the supervisors of the petitioner both as to quantity and quality. Fourthly, so far as the quantity is concerned, the finding is that if a worker manufactured much less than the average, namely, 800 to 1,200 bidis per day the supervisors threatened that the quantity of tobacco issued to him will be reduced in future. Fifthly, so far as the quality was concerned, the manager had the power to destroy bad bidis; in other words, not to pay for bad work. Lastly, though there was no definite time of attendance, it is clear that the liberty of the worker not to work at all was controlled. The worker could not remain absent at his will for more than three days. He had to take leave or be not paid for longer absence.

25. No doubt, the controls here were very much more lax than the controls in other industries and the controls which an employer exercises in any modern industry. But the fact remains that all the same the employer did retain direction and control over the worker, both in the matter of the nature of the work as also its details. Apart from the terms of the contract, the Payment of Wages Authority also indicated that the worker were made subject to standing orders and that in itself shows that they were treated as workers. A perusal of the standing orders read in the light of S. 30 and the schedule to the Central Provinces and Berar

Industrial Disputes Settlement Act would indicate that the conditions in the standing orders were engrafted as additional terms upon the actual contract between the two parties. The finding as to whether in the particular circumstances a person is a worker within the meaning of the law is, in our opinion, a pure finding of fact. In that view, the finding of the Authority would be binding upon us. Apart from that, we are also satisfied that that finding was under the circumstances correct. We hold that respondent 2 was a worker of petitioner within the meaning of S. 79 of the Factories Act.

26. A question of greater importance is whether the worker would in this case be entitled to the right conferred upon the workers by S. 79 read with S. 80 of the Factories Act. Though we have found that he was a worker, there are other conditions laid down in the two sections. We have already reproduced the provisions and the clause which calls for interpretation is in Sub-section (1) of S. 80 :

". . . shall be paid at a rate equal to the daily average of his total full-time earnings for the days on which he worked during the month immediately preceding his leave . . ."

27. The point raised by Mr. Phadke is that even assuming that he is a worker, it is established upon the facts which we have accepted that the worker here was not working for any stated period of time at all. In fact, he was at liberty to go in and come out of the factory at his choice at any time and work for any number of hours or even less than an hour on any day. The question then is how is the rate to be calculated in the case of such a worker when the law says that the worker shall be paid at a rate equal to the daily average of his total full-time earnings for the days on which he worked during the month. Mr. Phadke stresses that the words used in the section are "total full-time earnings." Since the worker in this case need not work full-time in the very nature of his contract of employment, he could not take advantage of S. 79. Here again, the question is no longer open to doubt. The same question was raised before the Supreme Court of India in Shankar Balaji case (supra), and the question of what is the meaning of the words "total full-time earnings" was considered in great detail in Paras. 27 to 30 of the judgment of the majority in that case. The decision given states the interpretation which their lordships put in clear terms as follows Shankar Balaji Waje Vs. State of Maharashtra, :

". . . The question is how the daily average of his total full-time earnings for the days on which he worked during the month immediately preceding his leave is to be calculated. It is necessary for the calculation of the rate of wages on leave, to know his total "full-time earnings" for the days he had worked during the relevant month. What does the expression "total full-time earnings" mean ? This expression is not defined in the Act. It can only mean the earnings he earns in a day by working full-time on that day, the full-time to be in accordance with the period of time given in the notice displayed in the factory for a particular day. This is further apparent from the fact that any payment for overtime or for bonus

is not included in computing the total full-time earnings."

28. Then their lordships proceeded to consider the connotation of the words, "full-time" and further observed :

". . . We are therefore of opinion that there can be no basis for calculating the daily average of the worker's total full-time earnings when the terms of work be as they are in the present case and that therefore the wages to be paid for the leave period cannot be calculated nor the number of days for which leave with wages can be allowed be calculated in such a case. It does not appear from the record, and it is not likely, that any period of work is mentioned in the notice displayed under S. 61, with respect to such workers who can come at any time they like and go at any time they like and turn out as much work as they like."

29. In our opinion, these remarks apply with equal force to the present case. It is clear that in this case also there is no averment as to what was contained in the notice displayed under S. 61. That notice or copy thereof has not been produced nor has there been any pleading in the matter and, as observed by their lordships of the Supreme Court, it is not likely that any period of work must be mentioned in the notice displayed under S. 61. Therefore, the full-time of work for a day cannot be ascertained from the notice. So far as the evidence is concerned, we have already indicated that upon a finding of fact which we have accepted the Payment of Wages Authority held that the worker in this case could come at any time he liked so far as the work of rolling bidis was concerned and could go at any time he liked and turn out as much work as he liked. The only compulsion on him, if any, was that he should attend the work between 8 a.m. and 12 noon in order to take the tobacco. Beyond that he was completely free to work as long or as little as he chose. Upon the interpretation, therefore, which their lordships of the Supreme Court have put upon the words "total full-time earnings" as indicated in the passage we have quoted above, it is impossible to determine in this case what would be the total full-time earnings of respondent 2. In that view, we must hold, as it was held by the majority in the Supreme Court decision just referred to, that respondent 2 could not take advantage of the provisions of S. 79 even though we have held that he was a worker of the petitioner within the meaning of that Act.

30. Mr. Kukde on behalf of the respondent then invoked in his aid the stranding orders by which the relationship of the employer and the employee is governed in this case. The standing orders were not put on record in this petition. But having regard to the fact that a poor worker is involved we are inclined to overlook that lapse. Mr. Phadke also did not dispute that the standing orders, which Mr. Kukde produced, were the relevant standing orders governing the factory of the petitioner. In the standing order 8, there is a provision for leave with wages and the provision merely refers to Ss. 79, 80 and 83 of the factories Act. Therefore, the question would still fall to be determined by an interpretation of those provisions of the law. But apart from this, what seems to be decisive in this case is not what was the provision of the contract between the parties or of

the standing orders which incorporated certain conditions into the contract but how much a particular worker has actually worked. Under S. 79, it is only every worker who has worked for a period of 240 days or more in a factory who can be entitled to the annual leave with wages or wages in lieu of leave, if no leave is taken and it is for the leave allowed to the worker under S. 79 that the worker has to be paid at a rate equal to the daily average of his total full-time earnings and the total full-time earnings can only be calculated upon the actual work he has done and not upon the number of days he ought to work or upon any term of his contract of employment. In our opinion, the worker in the instant case cannot take advantage of the provisions of the standing orders in order to assist him to compute the leave wages which he claims when the finding is that the actual work he has done is of a different kind from that contemplated in the standing orders.

31. In the result, therefore, we make the rule absolute, allow the petition and set aside the order of the Payment of Wages Authority. The Payment of Wages Authority is now directed to dismiss the application filed by the worker. In the circumstances, there shall be no order as to costs.

32. At this stage, Mr. Kukde prays for leave to appeal to the Supreme Court under Art. 133(1)(c). There is a conflict of view as to the correctness or otherwise of the decision of this Court in Birdichand case and the question involved is of general importance to all workers in the bidi industry. Mr. Phadke on behalf of the petitioner has nothing to urge against the grant of leave. In the result, we grant leave to appeal to the Supreme Court of India under Art. 133(1)(c). A certificate shall issue.