

(1984) 11 CAL CK 0006
In the Calcutta High Court
Case No : Matter No. 1314 of 1983

Satyajit Dey and Others

APPELLANT

Vs

Hindusthan Steelworks Construction Ltd. and Others

RESPONDENT

Date of Decision : 23-11-1984

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : 89 CWN 338

Hon'ble Judges : U.C. Banerjee, J

Bench : Single Bench

Advocate : Sadhan Chandra Gupta, for the Appellant; Arijit Chowdhury, for the Respondent

Judgement

Umesh Chandra Banerjee, J.—The petitioners in this writ petition are employed as monthly rated employees in the Head Office at different sites at Calcutta of the first respondent. The first respondent carries on business of construction and erection of steel works and other industrial projects and equipment. It has its Head Office in Calcutta and work sites at various Projects in West Bengal and at other parts of India. At present it has two works "sites in Calcutta, one is with the Hooghly Bridge Project and the other with the Metropolitan Transport Project. It has three classes of employees, viz., executive staff, non-executive staff and workers. The executive staff comprises of managerial staff, senior technical staff such as engineers etc and senior supervisory staff. The non-executive staff comprises clerical staff, and junior technical and non-technical supervisors. All the rest are workers doing skilled or unskilled manual work of various description including crane operators and operators of other, equipments, masons, electricians, security guards, sweepers, peons, messengers, bearers, cooks etc. As on 1st October 1983 the first respondent had in its employment all over India about 17,430 workers the number of workers in the petitioners' categories was about 5220 of whom about 132 including the petitioners were employed at the Head Office and two work sites at Calcutta. Petitioners Nos. 15. 16 and 17 are employed at the Hooghly Bridge Project. The petitioners in this writ petition

contend that since the petitioners are monthly rated employees they are covered by the company's service rules. The petitioners- contend that according to Company's Service Rule every employee of the company is entitled to earned leave of 30 days in a year which can be accumulated for a period of 180 days at a time But the petitioner contend that there exist sharp discrimination and inequality of in respect of earned leave facilities in as much as those who were "appointed on or before 1.5.74 are granted 30 days earned leave and those who were appointed after 1.5.74 but before 1.1.78 are granted 18 days earned leave but those appointed thereafter from 1.1.78 are granted only 14 days earned leave year. Accordingly, the contention of the petitioners is that there is the violation of the fundamental rights of the employees in the matter of granting of leave and there exists no rational or intelligible ground of discrimination between different groups. On the contrary they are entitled to be similarly treated as they are all similarly placed.

2. The learned Additional Advocate General appearing for the petitioners contended that as peon, sweepers, watchmen, security guards, cook, messengers etc have the same duty hours in the Head Office and in the site office. The petitioners being peon, cooks, security guards etc. should be granted the same earned leave and to do otherwise would be an arbitrary or unjust discrimination.

3. Mr. Arijit Chowdhury appearing for the respondent no. 1 however contended that Rules apply only to executive staff and to non-executive staff of the first respondent. The conditions of service of the petitioners and each of them are governed by the Standing orders of the first respondent duly certified by the Certifying Officer in terms of the Industrial Employment (standing Orders) Act 1946, The first respondent has establishments all over India. In some, more than one hundred workmen are employed and in those the Standing Orders apply by force of the Industrial Employment (Standing Orders) Act 1946. In others, the provisions of the said Standing Orders have been made applicable to workers by the first respondent by office circulars, in order to achieve; uniform conditions of service all over the country.

4. Mr. Chowdhury further contended that, prior to 1st May 1974 the first respondent had two categories of employees, being monthly-rated and daily rated. Monthly rated employees were granted earned leave for 30 days in a year in terms of the Service Rules of the first respondent. The daily rated employees were granted earned leave at the rate of 1 day's leave for every 20 day's work actually performed.

5. From 1st May, 1974, the first respondent brought all its daily rated employees, into monthly scales of pay and there remained no daily rated employees. This was effected by two circulars. No. MDP-29|74|390 and No. MD|P-29|74| 391 both dated 26th April 1974. The circular, no 390 enumerated certain categories; which would thenceforth be on monthly scales. These categories were somewhat altered by subsequent circulars. The Circular No. 391 provided that the

previously daily rated field workers brought on to monthly scales would be entitled to leave with wages at the rate of, one day for every twenty days of work actually done in the previous calendar year.

6. The categories enumerated in the circular No. 390 included certain employees who had been monthly-rated employees even prior to 1st May 1974. In order to protect the individual rights of these employees, in their case the condition of one day's earned leave for every 20 days work performed was not enforced, but their pre-existing right to 30 days' earned leave per year was retained by way of personal protection.

7. In 1976 and 1977, Standing Orders were certified for different industrial establishments of the first respondents to which the Industrial Employment (standing Orders) Act 1946 applied. There were some units where less than 100 workmen were employed and in such units the certified standing Orders did not apply by force of law, but the same were made applicable by administrative orders.

8. The petitioners and each of them joined the service of the first respondent after 1st May 1974 and therefore in common with all other workers who joined the first respondent after that date were offered and accepted conditions of service which provided an entitlement of 1 day's leave for every 20 days of work actually performed.

9. After the Standing Orders had been certified and administrative orders made, the provisions as to leave were misinterpreted by the persons responsible for their implementation at the first respondent's Calcutta office and at its Hooghly Bridge Project. The view erroneously taken was that workers should get 1 day's leave for every 20 days in a calendar year. Certain persons in the Calcutta office and some workers at the Hooghly Bridge Project of the first respondent were actually given leave on this basis. When the error was pointed out, the first respondent at the request of the Trade Union of its workmen continued to grant 18 days' leave in a calendar year to only those workers who had already been given such leave erroneously to avoid possible friction. This leave however it was submitted was and is personal to the workers numbering about 95 who had been granted such leave erroneously.

10. Mr. Chowdhury further contended that the writ petitioners and each of them joined the service of the 1st respondent after 1st May 1974 and the service conditions are in common with all other workers who joined the 1st respondent after that date. In any event Mr. Chowdhury contended that at the time of appointment the conditions of the service were duly accepted and interference by this Court would mean in reference in the terms and conditions of service between the 1st respondent and the writ petitioners. Mr. Chowdhury submitted that the writ court ought not to alter the terms of appointment. It was further contended by Mr. Chowdhury that mis-construction on the part of some of the officers of the respondent no. 1 cannot be said to confer any right on to the writ

petitioner to claim a privilege which is not otherwise permissible either on a true and proper construction of the rule or in accordance with the terms and conditions of service of the writ petitioners. Lastly Mr. Chowdhury contended that the instant issue was raised before the 5th Industrial Tribunal and the 5th Tribunal by its Award in Case No. VIII-189 of 1979 have categorically agreed with the contention of the company that the present dispute relates to workers in the different units or work sites of the Company situated in the different states in India and as such reference was not competent and the matter ought to be agitated in a National Tribunal. But no steps whatsoever was taken by the writ petitioner or its Union for having a reference to be made to the National Tribunal.

11. Admittedly the relationship between the 1st respondent and the writ petitioners is governed in terms of the contract of service. Alteration of the leave Rules would mean and imply alterations of the condition of service which in my view is beyond the jurisdiction of the writ court. While it is true that Article 226 grants an extra ordinary remedy which is essentially discretionary, although founded on legal injury and- it is perfectly open for the court, exercising this flexible power, to pass such order as public interest dictates and equity projects as has been laid down by the Supreme Court in the case of Shiv Shankar Dal Mills and Others Vs. State of Haryana and Others, . But in my view in the facts and circumstances of the instant case it does not warrant any interference by a writ court. The discrimination stated to have been written large in regard to the application of the leave rules cannot be actually termed as discrimination. Article 14 confers a personal right by enacting a prohibition and the only question which has to be determined when a law is said to violate the right, is to inquire whether the prohibition has been violated. If the prohibition has been violated the law will be valid if not, motive irrespective of the legislature, the same will not be so. The U. S. Supreme Court in the case of Sioux City Bridge Co. v. Dakota County (260 U.S. 441, 67 L. ed. 340) though dealing with a slightly different issue observed that mere errors of judgment do not support a claim of discrimination, but that there must be something more something which, in effect, amounts to an intentional violation of the essential principle of practical uniformity.

12. In Narain Das and Others Vs. The Improvement Trust, Amritsar and Another, the Supreme Court observed that merely because some other party has erroneously succeeded in getting his lands exempted u/s 56 of the Punjab Town Improvement Act that by itself would not clothe the appellants with a right to secure exemption for their lands.

13. It is well settled that mathematical nicety and perfect equality are not required in the matter of classification. It is also well settled that Art. 14 does not confer on any person a right to which he is not entitled under a valid law. Conferment of benefit on a few employees by reason of mistaken interpretation cannot in my view be termed to be an act which is violative of constitutional safeguard as enshrined in Art. 14 of the Constitution. Article 14 of the Constitution forbids discrimination. Differential treatment does not however per

se constitute violation of Article 14. It is not an imaginary differentiation which the court would strike down but a differentiation affecting the rights without any basis whatsoever. In the event of such a situation Courts would normally strike down the legislation or the acts of the Executive authorities. The facts here do not justify in my view any interference by the writ court. Erroneous interpretation of rules and consequent conferment of some benefit to a small section of employees cannot in my view be said to be of such a discriminatory act which would warrant writ course intervention. In regard to the contention of Mr. Chowdhury that writ court is not the proper forum, I do not wish to make any observation excepting however that if other forum is chosen, the observations made herein would not have any effect and the chosen forum would deal with the matter on its merit and in accordance with law.

In the view, I have taken this petition fails. The Rule is discharged. All interim orders are vacated. There will however be no order as to costs.