

(1995) 08 KAR CK 0038
In the Karnataka High Court
Case No : Writ Petition No. 5897 to 5950/95

Sri. M.B. Byregowda and Others

APPELLANT

Vs

Managing Director, KSRTC and Others

RESPONDENT

Date of Decision : 16-08-1995

Acts Referred:

Factories Act, 1948 — Section 51, 52, 54, 61
Industrial Disputes Act, 1947 — Section 9 A, 9 B
Karnataka Shops and Commercial Establishments Act, 1961 — Section 35, 7

Citation : (1997) ILR (Kar) 368

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : V. Lakshminarayan, H. Neelakanta Rao, K. Subba Rao, H.M. Manjunatha, P.G. Mogali, V.S. Naik, A.V. Gangadhrappa, D.M. Joshi, S.B. Mukkannappa, Ravivarma Kumar, C. Jagadish and V.A. Mohanrangam, for the Appellant; S.V. Jagannath, L. Govindraj, B.B. Mandappa and V. Mukunda, for the Respondent

Final Decision : Dismissed

Judgement

Tirath S. Thakur, J

1. "Long holidays and Short working hours" is the burden of the claim made in these Writ Petitions, which call in question Circular Nos. 6, 10 & 31 dated 22.4.1991, 5.8.1991, and 7.2.1995 respectively issued by the Respondent-Corporation. By these Circulars Ministerial staff posted in Depots, Control points, Stores and workshops have been asked to work for 8 hours a day be entitled to a total of 10 valid holidays during the span of One year. The petitioners contend that the increase in the working hours from 6 1/2 hours to 8 hours a day and the decrease in the number of holidays from twenty two per year to a bare ten is illegal and amounts to changing their service conditions to their prejudice without the authority of law and contrary to the provisions of the Statutes applicable to them. The facts are few and may be stated first:

2. The petitioners are working as Clerks, Cashiers, Typists, Junior Assistants, Supervisors etc., and are presently posted in different Depots, Regional workshops, Divisional workshops and Divisional Stores of the respondent-Corporation in the State of Karnataka. They are known to be the ministerial staff of the Corporation as distinguished from the staff which is engaged in carrying out the actual operational work undertaken by the Respondent. Before the establishment of the Karnataka State Road Transport, Corporation, the transport business was being carried on by the State Government in the name and style of Mysore Government Road Transport Department (MGRTD for short) and the Bangalore Transport Service (BTS for short) the later being limited in its operation only to the Bangalore Transport Division. In respect of both these establishments standing orders had been framed which inter alia provided for the working hours of the staff employed in them. With the setting of the Statutory Corporation under the Road Transport Corporations Act 1950, the Board of Directors of the respondent passed a resolution on 1.8.1961 to the effect that the standing orders framed by the erstwhile MGRTD shall continue to be applicable to the employees who stood transferred to the Corporation from the two establishments mentioned above. The result, is that the MGRTD - standing orders are what, hold the field today, for admittedly no other standing orders have been frame by the Corporation ever since it came into existence.

3. In terms of standing orders No. 5 of the MGRTD standing orders the ministerial staff working in the Officer of workshops, stores and Depots was required to work from 8 am to 12 noon and 1Pm to 5 Pm - i.e., for nine hours per day with interval of one hour's break in between. Apart from the standing orders the service conditions of the employees of the Corporation were regulated by the settlements arrived at between the Management and the workmen. It is unnecessary for me to refer to all such settlements, except the one which is said to be a supplementary memorandum of settlement extended between the workers Union and the Management on 16.2.1978. This supplementary agreement inter alia provides for Holidays, overtime and Special allowance to Clerical staff working at the Depots. Clause 5 of the settlement states that the employees would be entitled to a total of eight paid holidays, comprising these national holidays on 15th August and 26th January and 2nd October, and another 5 out of 23 holidays set out in Clause-5 of the settlement.

4. Para-12 of the Settlement regulates working hours and the payment of over-time wages. It provides that the payment of overtime to various categories of employees shall be regulated as per the details indicated in ANNEXURE-A, to the Settlement. ANNEXURE-A, on the other hand comprises three statements out of which Statement-I pertains to Central Officers, Administrative Offices of Regional workshops and Central Stores. Settlement No. II pertains to staff working at Bus Stations and control points, whereas Statement No. III pertains to the Regional workshops, Divisional Workshops, Depots, Divisional Stores, Printing press.

5. It is not in dispute that the petitioner employees are working in Regional

Workshops, Divisional workshops, Depots and Divisional Stores and are therefore governed by Statement No. III aforesaid. Entry No. 7 in Statement No. III which pertains to the petitioners reads thus:

Category of Staff

Labour Enactment applicable to them.

Working hours prescribed under the Act.

Normal working hours prescribed by the Management per day.

Rate of overtime wages

Remarks

7. Clerks, cashiers (Jr) Typist Cashier-cum-Clerk Clerk-knowing typist, Time keeper, Jr. Asst., Asst. Accountant, Slat. Asst., Asst. Store Keeper, Asst. Stock verifier, Steno Jr., Jr. Cashier

Factories Act& Rules there-under.

9 hours a day 48 hours a week

8 hours

Twice the ordinary rate of wages

O.T. cannot be extracted without obtaining exemption from the Chief Inspector of Factories or Govt., as the case may be.

The working hours prescribed by the Factories Act are 9 hours a day and 48 hours a week whereas the normal working hours prescribed by the Management for such employees is only 8 hours a day.

6. Para-13 of the Settlement provides for payment of Special allowance to clerical staff working at the depots, Stores, Control points and workshops and states that Special allowance of Rs. 10/-p.m. to the said staff shall stand enhanced to Rs. 15/- per month w.e.f. 1.1.1977 provided they work in shifts of 8 hours per day.

7. It further provides that working hours and holidays admissible to the employees shall be governed by the Statutes applicable to the respective establishments since they have to work for longer hours and are eligible for less number of holidays, than those that are applicable to similar staff working in the Divisional Offices.

8. There are a few settlements entered into between the management and the workmen even after 1978, but reference to the settlement signed on 17th July 1989 alone is relevant for our purposes. By Clause (25) of the said settlement, the facility of extending festival holidays to the employees was continued and in addition it was agreed to grant Karnataka Rajyotsava day also as a holiday for

them.

9. The terms of the settlement arrived at between the parties notwithstanding, the stipulated working hours and the number of holidays could not be enforced against the employees on account of the intervention by this Court and an interim stay granted in C. RAJENDRAN AND ORS. v. STATE OF KARNATAKA W.P.No. 16408/1982:31.7.1989 in which Circular dated 3rd April 1982 issued by the Corporation and an endorsement dated 19th December, 1990 issued by the State Government declining to make a reference of the Industrial Dispute sought to be raised by the workmen in the Hubli Division of the Corporation, were questioned. Allowing the Writ Petition, by his order dated 31st of July, 1989 Rajendra Babu J., quashed the endorsement issued by the State Government and remitted the matter back to it with the direction to consider the same afresh in the light of the observation made in the said order and those made by the Supreme Court in the case of Ram Avtar Sharma and Others Vs. State of Haryana and Another, . The Circular issued by the Respondent-Corporation was also struck down.

10. Consequent upon the direction issued by this Court the Government appear to have examined the matter afresh but rejected the request made by the employees for a reference by an endorsement dated 8th March, 1993. The Government observed that settlements dated 16th February 1978, 27th September, 1981, 15th July 1985, and 17th July 1989 having been executed between the recognised federation and trade Unions of the employees on the one hand and the Karnataka Road Transport Corporation on the other and the same having accepted the clause regarding the working hours of the employees posted in workshops, Depots, Stands, Control points etc., the dispute sought to be revised by a few employees questioning the said clause did not call for any reference to the labour Court. It was further held that the Circulars issued by the Respondent-Corporation being in accordance with the settlements in question no further proper was required to be conducted into the validity of the same by an adjudicating authority. The demand for a reference was in these circumstances rejected. It is not in dispute that the above order passed by the State Government has attained finality as the same was not challenged either by the persons who had sought to raise the industrial Dispute or by the petitioners or their Federation in this Court or in any other forum for that, matter.

11. In the mean time, the Bangalore Division of the Respondent-Corporation had issued a Circular on the 10th of April 1990 requiring the employees working under them to give an option to avail of 5 out of 21 holidays as notified in the list of general holidays as stipulated by para-5 of the 1978 settlement. This Circular was called in question by the B.T.S. & ST. Employees Union and the Akhila Karnataka Rajya Raste Sarige Nowkara Mahamandali in W.P.Nos. 10705-706/1990 which came to be disposed of by this Court with the direction that the Corporation shall hear the petitioners before reducing the number of holidays and that till such time the Corporation did so Circular dated 10th April,

1990 issued by the B.T.S. Division would stand neutralised in so far as the members of the petitioner-Union were concerned. In compliance with the directions issued by the High Court, the Corporation appears to have examined the representation made by the petitioners in the aforesaid Writ Petitions and after hearing them rejected the same by an order dated 21st of March, 1991.

12. Shortly thereafter came Circular No. 6 dated 23rd April 1991, by which the Corporation instructed all the unit heads to follow a uniform procedure in the matter of extending the benefit of Clause 19(i) of the memo of settlement dated 17.7.1989 and enforcing the 8 hours a day work schedule in respect of the staff posted in workshops, Bus stands, Control points Depots etc., The Circular also directed the grant of festival holidays as per the provisions of the Statute in the following words:

"In view of the working hours prescribed under the various enactments, the employees working in such establishments will have to discharge their duties for 8 hours per day positively. Similarly, as prescribed in the Karnataka Industrial Establishment (National & Festival Holidays) Act, 1963 (and rules made thereunder) the employees are entitled to the holidays prescribed therein. But, such of the employees who work for 8 hours per day and are eligible for lesser number of General Holidays are entitled to Special Allowance of Rs. 5/- per day of actual work subject to a minimum of Rs. 30/- per month as envisaged in Clause-19 of the Memorandum of Settlements dated 17th July, 1989.

The Unit Heads are therefore requested to implement the said clause in true spirit and to send compliance report."

13. The above was followed by Circular No. 10 dated 5.8.1991 by which the unit heads were asked to enforce the instructions issued in regard to working hours and the holidays admissible to the employees of the Corporation. Both these Circulars came under challenge in W.P.No. 18261/1991 in which the operation of the same was stayed in so far as the petitioners in that petition was concerned. By Circular No. 31 dated 7.2.1995, the Corporation, instructed its Unit Heads to give effect to the Clause 19(1) of the memo of settlement dated 17.7.1989, in so far as other employees working in the workshops and Depots etc., were concerned. This resulted in a spate of Writ Petitions being filed in this Court challenging the said Circular, all of which were directed to be listed for hearing alongwith the original Writ Petition, as common question of law arose in all these cases. In substance the challenge in all these Writ Petitions, revolves round the Corporation's resolve to enforce the 8 hour a day working schedule and the grant of holidays only as per the Statute, in so far as the petitioners employees are concerned. This according to the petitioners cannot be done for the same would not only offend the provisions of the Industrial Disputes Act and the Shops and Commercial Establishments Act, but be unreasonable and discriminatory in nature. What is significant however is that the petitioners have not challenged any one of the settlements executed with the management, nor do the Writ Petitions call in question the order passed by the Government declining to make

a reference to the labour Court challenging the 8 hours a day stipulation contained in the same. Similarly the order passed by the Corporation regarding the number of holidays after the matter was sent back with directions in Writ Petitions No. 10705-706/1990 has not come under attack. The grievance in the present batch of Writ Petitions has therefore to be examined on these premises which are common to them all and indeed significant as well.

14. I have heard the Learned Counsel for petitioners and Mr. Govindraj, Learned Counsel appearing for Respondent-Corporation. The following questions arise for consideration:-

1. Whether the impugned Circulars offend any Statutory provisions or violate any vested right of the petitioners-Employees in so far as the same ask the employees to work for 8 hours a day.

2. Do the impugned Circulars offends any Statutory provision or any settlement lawfully entered into between the employees and the Management in so far as the same concede to the petitioners only 10 paid holidays per year;

3. Are the impugned Circulars discriminatory inasmuch as they envisage different working hours for different employees working under the same employer.

15. Reg:Question No. 1: On behalf of the petitioners it was argued that right from the dates of their appointment the petitioners had been working only for 6 1/2 hours per day and that the number of working hours that they could be asked to put in had become a condition of their service which according to the petitioners could not be altered to their prejudice by the Respondent-Corporation in view of the protection available to them u/s 7 and 35 of the Shops and Commercial Establishment Act, 1961.

16. Mr. Govindraj, Learned Counsel on the other hand contended that the provisions of the Shops and Commercial Establishments Act, had no application to the cases of the petitioners who were posted in establishments which were duly registered as Factories under the Factories Act, and were therefore governed by the provisions of the said Act. He relied upon the supplementary settlement of the year 1978 executed between the employees and the Management to show that as per Statement-III contained in Annexure-A, to the said settlement, the Statute applicable to the petitioner employees was the Factories Act, and not the shops and Commercial Establishments Act, as claimed by them. He urged that the orders impugned in this Writ Petition did not offend any provisions of the Factories Act either in regard to the number of holidays granted or the working hours required of the petitioners. It was further submitted that Section 9A of the Industrial Disputes Act had no application to the facts of the present batch of cases and that the said provision was in any event excluded by reason of a notification issued by the Government u/s 9B of the Act.

17. That the petitioners are presently posted in Establishments which have been registered as Factories under the Factories Act has not been disputed by them. It

is also not denied that in terms of the 1978 Settlement arrived at between the employees and the Management, Ministerial Staff working in the Regional Workshops, Divisional Workshops, Depots and Divisional Stores, are governed by the provisions of the Factories Act and Rules framed thereunder. In terms of Section 2(u) of the Shops and Commercial Establishments Act, a shop or a Commercial Establishment attached to a Factory is excluded from the operation of the said Act. Section 2(u) defines shop thus:

"Section 2(u): "shop" means any premises where any trade or business is acquired on or where services are rendered to customers, and includes officers, storerooms, godowns, or warehouses, whether in the same premises or otherwise, used in connection with such trade or business, but does not include a commercial establishment or a shop attached to a factory where the persons employed in the shop fall within the scope of the Factories Act, 1948."

18. It is therefore abundantly clear that even if the petitioners are treated to be working in a shop of Commercial establishments generally governed by the provisions of the Shops and Commercial Establishments Act, yet the moment it is shown that such a shop or establishment is attached to a factory where the persons employed are governed by the provisions of the Factories Act, 1948, the provisions of the former Act would get excluded and would have no application whatsoever. Reliance by the petitioners upon the provisions of the Shops and Commercial Establishments Act, is therefore wholly misplaced. The petitioners are governed by the provisions of the Factories Act not only because the settlement executed on their behalf, with the Management stipulates so but also because the establishments where they are actually working are registered as factories under the Factories Act.

19. The next question then is whether the impugned Circulars offend any provisions contained in the Factories Act or the Rules framed thereunder. Chapter-VI of the Factories Act, deals with working hours of adults employed in a factory. Section 51 of the Act provides for weekly hours which cannot be more than 48 hours per week while Section 52 provides for weekly holidays. In terms of Section 54 of the Act, no adult worker can be required or allowed to work in a factory for more than 9 hours in a day. It is therefore obvious that the impugned Circulars inasmuch as they call upon the petitioners-employees to work for only 8 hours a day as against 9 hours fixed by the Act does not in any manner violate the statutory maximum provided by Section 54 (supra).

20. Learned Counsel appearing for the petitioners however placed reliance upon Section 61 Sub-section (10) of the Factories Act in support of their submission that any change in the system of work in any factory cannot be effected except after notifying the Inspector and except after securing his previous sanction in that regard. Section 61 Sub-sections (1) and (10) reliance whereupon has been placed by the petitioner read thus:-

"Section 61(1) :- Sub-section (1) There shall be displayed and correctly

maintained in every factory in accordance with the provisions of Sub-section (2) of Section 108, a notice of periods of work for adults, showing clearly for every day the periods during the which adult workers may be required to work.

xxx xxx xxx Sub-Section (10): Any proposed change in the system of work in any factory which will necessitate a change in the notice referred to in Sub-section (1) shall be notified to the Inspector in duplicate before the change is made, and except with the previous sanction of the Inspector, no such change shall be made until one week has elapsed since the last change."

21. A plain reading of the extracted provision would show that a notice indicating the periods of works for adults has to be displayed in every factory in accordance with the provisions of Sub-section (2) of Section 108. Sub-section (10) on the other hand provides that any change in the system of work prevalent in any factory which may necessitate a change in the notice referred to in Section 61(1) cannot be made without notifying the Inspector and obtaining his previous sanction.

22. There is nothing in the present Writ Petitions to suggest that there has been a violation of Section 61 of the Factories Act in that no notice as required by the said provision has been displayed in the factory or that any change in the system of working hours shall be brought about without following the procedure prescribed by Sub-section (10) of Section 61. All that the impugned Circulars require of the petitioners is to work for 8 hours a day in accordance with the Settlements executed between the management and the Union representing the employees. Needless to say that in case the enforcement of 8 hours per day schedule would require any change in the system of work prevalent in the establishments where the petitioners are posted, the said change can be made by the Corporation only after following the procedure prescribed by the provisions of the Factories and the Rules framed thereunder. A mere possibility of a violation of the provisions of Section 61 in the event of the Circulars being enforced can hardly render the impugned Circulars illegal or justify any interference with the same. There is no gainsaid that in the event of any such violation being actually committed by the respondent, the petitioners would be entitled to seek such redressal against the same as may be legally open to them.

23. Equally untenable appears to me to be the alternative submission made by the Learned Counsel for petitioners, that since the petitioners had been ever since the dates of their employment working only for 6 1/2 hours per day, the length of the said working hours had assumed the character of being a service condition. The service conditions of the petitioners are those settled by the Standing Orders of the Settlements executed by them with the Management. As pointed out in the earlier part of this judgment, the M.G.R.T.D standing orders requires the petitioners to work for 9 hours a day, with one hours break in between. On the date the Respondent-Corporation came into existence, the petitioners were governed by the said standing Orders and the service conditions of even those who were employed subsequent to the creation of the Corporation,

were regulated by the M.G.R.T.D. standing orders. This is true even under the 1978 Settlement, Clause (7) of Statement-III whereof has been extracted in the earlier part of this judgment, according to which the working hours prescribed under the Statute applicable to the petitioners is 9 hours per day even though the normal working hours prescribed by the Management are only 8 hours per day. In the light of the provisions of the Factories Act, the standing orders applicable to the petitioners as also the settlement executed by them with the Respondent-Corporation, it is difficult to accept the submission made on behalf of the petitioners that the mere fact that they had been working for 6 1/2 hours a day could create a vested right in them to continue to work only for the said period or to prevent the employer Corporation from enforcing the working hours otherwise applicable to or prescribed for such employees. The claim made by the petitioners that their service conditions under the Statute or Statutory orders and settlements would stand abrogated merely because of what they claim has been the practice relevant in the Corporation does not commend itself to me and needs notice only to be rejected.

24. I may at this stage deal with the submission made by the petitioners even by reference to the provisions on the Shops and Commercial Establishments Act, 1961. It was argued by the Learned Counsel that even though Section 7 of the Shops and Commercial Establishments Act prescribes 9 hours per day, as the maximum number of hours that an employee could be asked to put in yet in terms of Section 35 of the Act, the rights and privileges which an employee was entitled to under any other law customs and usage applicable to such establishment, were saved. Section 35 of the Shops and Commercial Establishments Act, reads thus:

"Section 35: Nothing in this Act shall effect any rights or privileges which an employee in any establishment is entitled to under any other law, contract, custom or usage, applicable to such establishment, or any award, settlement or agreement binding on the employer and the employee in such establishment, if such rights or privileges are more favourable to him than those to which he would be entitled under this ACT."

25. A bare reading of the provision shows that all that the same means to achieve is to leave the existing rights or privileges of an employee which are better than those granted under the said Act, unaffected by the provisions of the Act. In other words, if by reason of any contract usage, law, Award Settlement or Agreement between the parties, the employees are supposed to work for less than 9 hours a day in an establishment, their right to continue with any such practice, custom or usage will remain unaffected by the provisions of Section 7 of the Act. That however would not mean that any such privilege right or obligation assuming there was one available to the employees of the respondent-Corporation as urged by the petitioners in these petitions, could not have been voluntarily given up by them in the process of an industrial settlement executed between them and the management. Any such right or privilege which the

employees were enjoying could be voluntarily curtailed or surrendered by them, by increasing the number of working hours upto 9 hours a day i.e., the maximum prescribed by Section 7. This is precisely what the petitioner-employees appear to have done by the settlements in question which undoubtedly create an obligation upon them to work for a minimum of 8 hours subject of course to the conditions regarding payment of allowances as stipulated by paras 13 of the 1978 settlement and para 19 of the 1989 settlement. There is nothing in Section 7 or Section 35 of the Act that could prevent the employees from entering into such an arrangement in consideration of other rights created in their favour of the settlement question. The doctrine of freedom of contract remains unaffected by Section 7 & 35 so long as the maximum Statutory limit prescribed by Section 7 is not breached by any such contract. In the circumstances, it makes little difference whether the petitioners are governed by the provisions of the Shops and Commercial Establishments Act or the Factories Act. The petitioners having entered into a valid settlement prescribing 8 hours a day as the minimum working time, they can make no grievance against the enforcement of the same particularly when the said settlement is neither under challenge before me nor is the same otherwise in violation of any mandatory provision of any statute, applicable to the petitioners.

26. That brings me to the alternative submission made on behalf of the petitioners namely that the Circulars in question are violative of Section 9A of the Industrial Disputes Act, in that the same change their service conditions without following the procedure prescribed by the said provision. I find no merit in this submission for more than one reasons. In the first place, the provisions of Section 9A are attracted only in case the service conditions applicable to a workman are in respect of any matter specified in the IV Schedule but before the procedure prescribed u/s 9A can be attracted it must be shown that the service conditions of the workmen regarding his working hours are sought to be altered to his prejudice. The working conditions of the petitioner employees as observed by me earlier, are governed by the Statutory Standing Orders and the Settlements entered into by the Management and the Workmen. The service conditions as regards the working hours stipulated by the said Standing Orders and the Settlements are not in any manner altered by the impugned Circulars so as to attract Section 9A of the Act.

26a. Secondly, the appropriate Government can in exercise of its power u/s 9B of the Act direct that the provisions of Section 9A shall not apply to any class of Industrial Establishment or any Class of workmen employed in an Industrial Establishment. By Notification No. PLM. 33 LLR 64 dated 3rd July, 1965 issued By the Government of Karnataka u/s 9B of the Act, the provisions of Section 9A have been made in applicable in so far as employees of the Respondent - Corporation are concerned. Thirdly the procedure prescribed by Section 9A will have no application where the change in the service conditions is effected in consequence of a settlement arrived at between the employees and management. In the instant case even assuming that the Circulars bring about a

change in the service conditions of the petitioners, yet since the said change is based on settlements entered into by the employees with the management, the procedure prescribed by Section 9A was not necessary to be followed.

26b. I may at this stage deal with the argument advanced by Mr. Lakshminarayana, Learned Counsel appearing for some of the petitioners, that besides the M.G.R.T.D. standing order, the B.T.S. standing orders were also in force qua such of the employees of the Corporation as had joined the Corporation from the erstwhile Bangalore Transport Corporation Limited. These Standing Orders, contended the Learned Counsel, prescribed lesser number of working hours and no change could be brought about in the same by the 1978 settlement, unless the same was approved by the certifying Officer in terms of Section 10 of the Industrial Employment (standing order) act 1946. There is no substance in the submission made by the Learned Counsel; for precisely speaking two reasons. Firstly because, the B.T.S. standing orders have not been adopted or continued by the Corporation; as is the position with the M.G.R.T.D. standing orders. This is apparent from the resolution of the Board of Directors of the Corporation which reads thus:

"In view of the fact that considerable time and attention would be required to scrutinise the various rules, regulations, procedures, precedents, and conventions. It is hereby RESOLVED that all rules, regulations, procedures, precedents and conventions as is force as on 31.7.1961 in the. Mysore Government Road Transport Department be continued by the Corporation until further orders."

26c. It is therefore dear that the B.T.S. standing orders have not been adopted or continued even in regard to the employees of the said Company who came to join the Corporation after it was set up. In the absence of any resolution or other decision adopting the said standing orders the same would have no application to the employees of the Corporation which is a creature of the Statute and is a distinctly different entity than the erstwhile BTS Company Limited. Secondly even according to the B.T.S. Standing Orders, the staff, working in the Garages of the Company were supposed to work up nine hours a day. There is therefore no increase in the number of working hours per day even assuming the B.T.S. standing orders were applicable to the petitioners or some of them.

26d. My answer to question No. 1 is therefore in the negative.

27. Reg: Question No. 2:- Learned Counsel appearing for the petitioners argued that the Circulars in question reduced the number of Holidays earlier enjoyed by them from 22 to a bare 10 per year. This reduction it was submitted was impermissible for two reasons namely: 1) because the same offended Section 9A of the Industrial Disputes Act and 2) because the same was violative of the provisions of Section 3 of the Mysore Industrial Establishments (National and Festival Holidays) Act, 1963.

28. In so far as the argument based on the provisions of Section 9A is

concerned, the same need not detain me in view of the opinion expressed by me, while dealing with question No. 1 above. The Notification issued by the Government u/s 9B having rendered the provisions of Section 9A of the act, inapplicable to the petitioners, reliance upon the provisions of the said Section is wholly misplaced.

29. In so far as the second limb of the argument advanced by the petitioners is concerned, I find no substance even in the same. The provisions of Section 3 of the Mysore Industrial Establishments (National and Festival Holidays) Act, 1963 as the same stand after the 1986 amendment read thus:

"Section 3: Grant of National and Festival Every employee shall be allowed in each calender year a holiday of one whole day on the 26th January, the 15th August, and the 2nd 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.

Provided that except in the case of Industrial Establishment owned or Controlled by the Government of India the number of such other holidays shall be six and the first day of May shall be one of them."

30. It is therefore apparent that in terms of the above Statutory provision, the petitioner-employees are entitled to a total of 9 holidays. The impugned Circulars however concede 10 holidays as against 9 available under the Statute. There is thus no reduction of the holidays below the minimum prescribed by Section 3 (supra) so as to render any such reduction illegal.

31. Reliance was however placed by the petitioners upon Section 11 of the Act to urge that the right of the petitioners to continue to enjoy a large number of holidays was saved and could not be taken away by the management. Section 11 may at this stage be extracted below:

"Nothing contained in this Act shall affect any rights or privileges which any employee is entitled to, on the date on which this Act comes into force, under any other law, contract, custom or usage, if such rights or privileges are more favourable to him than those to which he would be entitled under this Act."

32. It is abundantly dear from the language employed in the above provision that all that the same purports to do is to save the existing rights and privileges enjoyed by an employee from the operation of Section 3 or other provisions of the Act. That however does not mean nor does the same prevent the employees from giving up any such right in the course of an Industrial Settlement with the management. Assuming therefore that the petitioners were before the execution of the 1978 and subsequent settlements enjoying a larger number of holidays which they could continue to enjoy in view of the saving provisions of Section 11 (supra) yet nothing could prevent the employee to give up any such privilege or right in any settlement voluntarily executed by them. The legal position in regard to Section 11 is therefore the same as that of Section 35 of the Shops &

Commercial Establishments Act discussed earlier.

33. My answer to Question No. 2 is also in the above circumstances in the negative.

34. Reg: Question No. 3: The argument advanced on behalf of the petitioners was that the impugned Circulars were discriminatory inasmuch as the same have the effect of prescribing different working hours for different employees under the same employer. It was submitted that the employer could not prescribe working hours differently for different employees even when the nature of work being done by them was identical. Reliance in this connection was placed upon a judgment of the Supreme Court in Rai Bahadur Diwan Badri Das Vs. The Industrial Tribunal, Punjab, The said judgment does not in my opinion lend any assistance to the case of the petitioners. That was a case where the employer had prescribed a rule by which every workman employed on or before 1st of July, 1956 was entitled to 30 days leave with wages after working for 11 months whereas, workmen employed after that date were held entitled to earned leave only in accordance with the provisions of Section 79 of the Indian Factories Act, 1940. On a reference being made by the State Government to the Industrial Tribunal, the question whether all the employees should be allowed 30 days earned leave with full wages for every 11 months" service without discrimination fell for consideration. The Tribunal held that all the workmen are entitled to 30 days earned leave without making any distinction between workmen who joined before July 1, 1956 and those who joined subsequently. On behalf of the Management it was contended before the Supreme Court in appeal that it was entitled to fix the terms of the employment on the principle of freedom of contract and that it was open to the workmen to either accept those terms or not to accept the same. It was contended that the Tribunal was not justified in interfering with the terms stipulated by the employer. By a majority of 2:1 the Supreme Court repelled the contention urged on behalf of the Management and held that the doctrine of freedom of contract, relied upon by the Management had to yield to the higher demands for social justice. It was held that the workmen employed by the Management were governed by the same terms and conditions of the service except those in regard to earned leave and that the discrimination made between the employees-workmen in the matter of leave was not based on any principle which was bound to create disaffection among the new employees. It was further held that since the burden imposed by the Award made by the Tribunal, was slight and the provisions relating to earned leave in respect of old employees were not very generous or extravagant, there was no reason why they should not make a similar provision in respect of the new employees also.

35. The position in the instant case does not bear any analogy whatsoever to the facts of the above case. The position here is that the petitioner-Corporation is engaged in providing to the community at large a much needed utility service of a transport a service without which the common man's life is bound to get

paralysed and even the functioning of the Government, Semi-Government and Private Sector Organisation which depend heavily upon the facility provided by the Respondent adversely affected. The service provided by the Respondent is not confined to a limited number of hours in a day. As a matter of fact with the growing needs of the multitude of the population living in cities and a metropolis like Bangalore the burden on such public utility services is increasing considerably. People expect the service to be available for most part of the day and night if not for 24 hours. It is therefore but necessary for the Corporation to maintain its fleet of buses and provide all such infrastructural and other facilities for running the services as are necessary to come up to the expectations of the people for whom the same are being run. Such being the position, the requirement of the Corporation that those who are posted in workshops, Depots etc., and are taking the direct operational burden of the fleet of buses being operated by the Corporation should put in 8 hours of work every day and be entitled to their minimum number of holidays every year cannot be said to be discriminatory or unfair in any manner. Besides the petitioners are holding transferrable posts. One who is posted in the workshop can tomorrow be posted in the Central Offices where the working hours may be slightly more relaxed than the hours of work required to be put in as a part of the establishment in a Depot or workshop. It is not as though all the petitioners are for good posted to serve for 8 hours a day so as to give any reason for them to complain and make a comparison with the lesser number of hours being put in by their colleagues, posted in Offices of the Corporation. This position appears to have been realised even by the Federation and the Union Representing the employees who have agreed to the fixation of the 8 hour a day schedule for employees posted in such establishments as the workshops and Depots etc.,

36. In OIL & NATURAL GAS COMMISSION v. WORKMEN 1973(3) SCC 53, the Industrial Tribunal had interfered with the eight hours a day work schedule period by the management, on the ground that in other Offices and establishments of the Commission, employees discharging similar functions where working only for 6 1/2 hours a day. In appeal the Supreme Court, set aside the order passed by the Tribunal holding that the mere fact that in some other Offices or establishments of the employer the working hours were only 6 1/2 hours per day was no reason for reducing the 8 hours prescribed for the staff posted in the Commission's Office at Baroda which was a Controlling Office and had its own exigencies of work. The Court observed thus:

"The Tribunal was also not right in saying that in other projects the working hours of administrative office are 6 1/2 hours. Working hours in these offices according to the material on the record. But the fact that in some of the other offices, the working hours are 6 1/2 hours per day, cannot be the determining factor. The office at Baroda being the Controlling office its requirements and exigencies of work are such that fixing 8 hours work a day is, in our opinion fully justified, and the Tribunal was wrong in reducing its working hours to 6 1/2 hours a day. The mere fact that the staff at Baroda is liable to transfer to other projects

is, in our view, of little importance. Assuming that by transfer to some other projects the employees concerned would have to work for 6 1/2 hours a day, that would not render the fixation of 8 hours a day for the administrative office at Baroda objectionable or open to interference by the Tribunal. The Tribunal has itself already observed that in the other projects the working hours in the administrative offices vary. If that is so then this could not be a cogent ground for reducing the working hours from 8 to 6 1/2 in the Central Office at Baroda. Once it is found that 8 hours a day has been properly fixed for work in the administrative office there can be no question of payment of any compensation for working for 8 hours a day in the past."

37. The nature of work, being done in the establishment where the workmen are posted, the exigencies, of any such work, the compulsion behind fixing a longer work schedule than the one prescribed for other employees posted in other offices, of the management, the nature of the service rendered by the employer's organisation are thus relevant factors for determining the question whether or not the longer working hours prescribed for some are justified in an organisation where others are working for a shorter duration. Applying these tests to the instant case, the fixation of 8 hours schedule for such of the ministerial staff as is posted in workshops of the Corporation or depots etc., cannot be said to be unfair or discriminatory so as to call for any interference with the same.

38. The argument that fixation of eight hours working per day is arbitrary or discriminatory is not available to the petitioners even for the reason that the same has been agreed to by the petitioners in the settlements entered into with the management. Having accepted the stipulation as a part of the settlement, it is not open to the petitioner to turn round and question the same on the ground of arbitrariness or discrimination particularly so when the petitioners are not challenging the validity of the settlement and are infact drawing all the benefits conferred upon them under the same. No one can approbate and reprobate and question what is unpleasant, while at the same time benefiting from what is pleasant and beneficial for him.

39. Mr. Subba Rao, learned Counsel appearing for some of the petitioners however urged that the settlements in question having been entered into otherwise than in the course of conciliation proceedings were binding only on the parties to the same and not on others. In support he relied upon Section 18 of the Industrial Dispute Act and the definition of the term settlement as given in Section 2(P) of the said act. That a settlement arrived at otherwise than in the course of conciliation proceedings is binding only on the parties to the same cannot be disputed, in the light of the specific provision made to that effect in Section 18 as also the definition of the term settlement. The petitioners cannot however benefit from the same in the present cases, because, it is not their case that they are not parties to the settlements in question. There is no factual foundation laid by the petitioners in the writ petitions to the effect that they are

not bound by the settlement either because they are not parties to the same or otherwise. The submission made by Mr. Subba Rao in the circumstances is of no avail to the petitioners.

40. My answer to question No. 3 also is therefore in the negative.

41. In the result these writ petitions fail and are hereby dismissed with costs assessed at Rs. 200/- per petition. Interim orders granted shall stand vacated.