
(1981) 11 KL CK 0020
In the High Court Of Kerala

Steel Complex Limited

APPELLANT

Vs

Assistant Labour Officer and Others

RESPONDENT

Date of Decision : 30-11-1981

Acts Referred:

Kerala Industrial Establishments (National and Festival Holidays) Act, 1958 — Section 3, 5

Citation : (1982) 1 LLJ 389

Hon'ble Judges : T. Kochu Thommen, J

Bench : Single Bench

Judgement

T. Kochu Thommen, J.—The question is whether respondents 2 to 18 who are casual employees of the petitioner are entitled to wages for holidays as provided u/s 5 of the Kerala Industrial Establishments (National and Festival Holidays) Act, 1958 as amended by Act 8 of 1969 with effect from 1-1-1970 (hereinafter referred to as the "Act"). Section 3 of the Act provides:

3. Grant of National and Festival Holidays: Every employee shall be allowed in each calendar year a holiday of one whole day on the 26th January, the 15th August and the 1st May and four 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 ;

. . .

Section 4A gives the employer the power to require any employee to work on holidays. The relevant portion of the new Section 5 which substituted the old section by Act 8 of 1969 reads:

5. Wages- (1) Notwithstanding any contract to the contrary, every employee shall be paid wages for each of the holidays allowed to him u/s 3.

(2). . . (3). . . Provided that no such employee shall be entitled to be paid any wages for any of the holidays allowed u/s 3 other than the 26th January, 15th August and the 1st May unless he has been in service under the employer for a

total period of thirty days within a continuous period of ninety days immediately preceding such holiday.

(emphasis supplied)

Explanation :- . . .

The relevant portion of Section 5 as it stood before it was deleted by Act 8 of 1969 read:

5. Wages-(1) Notwithstanding any contract to the contrary, every employee shall be paid wages for each of the holidays allowed to him u/s 3 .

(2). . . (3). . . Provided that no such employee shall be entitled to be paid any wages for any of the holidays allowed under this section, if his name was not on the rolls of the industrial establishment continuously for a month immediately prior to the holiday.

(emphasis supplied)

(4). . .

The new section draws a distinction between the national holidays and the festival holidays. To get the benefit of the Act on the Festival Holidays, that is, holidays other than those falling on the 26th January, the 15th August and the 1st May, the employees should have been in the service of the employer for a total period of 30 days within a continuous period of 90 days immediately preceding such holiday. The proviso to the old section stated that no employee, whose name was not on the rolls of the establishment continuously for a month immediately prior to the holiday, was entitled to be paid wages for that holiday. This requirement to be on the rolls for a month immediately prior to the holiday has been done away with under the proviso to the new section.

2. It is not disputed by the petitioner that casual employees come within the ambit of Section 5. But according to the petitioner they would do so only if the employer-employee relationship existed on the date of the holiday. If they had ceased to be employees in the establishment prior to the holiday as in case of such casual workers who are engaged from morning to evening of each day, i.e., on a day-to-day basis-they would not, according to the petitioner, be entitled to wages for the holiday u/s 5.

3. The statement of Objects and Reasons concerning the Act as stated in the Kerala Gazette, Extraordinary, dated 24-2-1969 says in Clause 3 as follows:

According to Sub-section (3) of Section 5 of the Act no employee shall be entitled to be paid wages for any of the holidays allowed under the Act if his name was not on the rolls of the industrial establishment continuously for a month immediately prior to the holiday or if he was enjoying leave with pay. It is considered that it is not fair to insist on a particular minimum period of service under the employer to entitle an employee to wages for the three national

holidays which are allowed without the option of the employees. In the case of festival holidays also, the existing condition is causing hardship to the employees. It is also considered that an employee on leave with pay should also be entitled to wages for such holidays. It is, therefore, proposed to amend the Act suitably to provide that in the case of national holidays, the employee shall be entitled to wages irrespective of the period of service under the employer and that in the case of festival holidays, the employees shall be entitled to wages if he has been in service for a total period of thirty days within a continuous period of ninety days.

(emphasis supplied).

The above clause seems to indicate that the object of the amendment was to do away with the requirement of one month of continuous service immediately prior to the holiday in so far as national holidays are concerned. Under the new provision even employees who had less than one month of service are entitled to wages for those national holidays. In the case of festival holidays, however, it is necessary that the employee should satisfy the requirement under the new proviso, that is he should have been in service for a period of 30 days within a continuous period of ninety days immediately preceding the holiday. The statement does not say that the amendment was intended to do away with the requirement of being on the rolls of the establishment. But the new proviso does not speak of an employee being on the rolls immediately prior to the holiday.

4. The petitioner's counsel Sri M. Ramachandran does not dispute that if a casual employee was working in the establishment on the days previous to and succeeding a holiday he would be entitled to wages for the intervening holiday. He admits that the fact that the employee worked on those days would naturally give rise to a presumption that even on the holiday in question the relationship between himself and the employer continued. But counsel says that if he did not work on the day immediately succeeding a holiday, it would be sufficient indication to show that the relationship had ceased at the end of the day immediately preceding the holiday.

5. Whether or not a person is a casual employee has to be decided with reference to the nature of his work and not the tenure of the work. There is however, no dispute in the present case as to who is a casual worker. Although the requirement of a person being on the rolls of the establishment immediately prior to the holiday has not been specifically stated under the new section, the legislative intent could not have been to compel an employer to pay holiday wages to an employee who had ceased to be his employee on the day in question. The point really is not whether his name was on the rolls, but whether he continued to be in service. The relationship must continue on the day in question. If for example a permanent employee had ceased to be in service on the day previous to the holiday by retirement or otherwise he would not be entitled to wages for the succeeding holiday. The same principle must necessarily apply to every other employee. But unlike in the case of a permanent employee,

it is not always easy to say whether a casual employee remains in service on a holiday. The burden in such cases must be upon the employer to prove that the relationship between the employee and the employer had terminated prior to the day in question. By the nature of the work of a casual employee, it may not be possible for the employee to prove that he is in the service of an establishment on a particular day unless he is in a position to show that he worked on that day. If on a holiday a casual employee was not called upon to work, it would be difficult for him to prove that he continued in the service of the establishment on that day also. It may be that in the case of casual employees rolls are not maintained by the establishment. Rolls are evidence of employment, but not the only evidence. The fact that a person's name is not on the rolls, and he is not able to prove that he continues to be an employee of the establishment, should not necessarily deprive him of the benefit of the section unless the employer is in a position to show that previous to the day in question he had ceased to be an employee. The mere fact that the employment is from day to day and payment is calculated with reference to the wages of a particular day, does not necessarily mean that the employee did not continue in service at the end of a day. Although he is recruited on a daily basis by being called in, to work on the morning of each day, he may still be a casual worker on a regular basis for a period of time. On the other hand if his service as a casual worker has been dispensed with by the employer on a day previous to the holiday and the employer is in a position to establish that fact, then the employee would have no right to claim wages for the holiday in question. The fact that an employee did not work on the day or days immediately following the holiday may be relevant-but not conclusive evidence to establish that his service had ended prior to the holiday. The burden to establish this fact is upon the employer. He must show that, apart from the day to day nature of the employment, the employee's service had been terminated prior to the holiday. The fact that an employee worked on the days previous to and subsequent to a holiday will be strong evidence to show that the relationship continued even on the holiday. This may be in many cases nonetheless so, even if the employee was not called to work on the day or days immediately following the holiday. Any mala fide attempt on the part of the employer to show break in the relationship by keeping the employee out of work on particular days will not defeat the object of the Act if there is some evidence to show that an employee, although casual, has been engaged regularly for a period of time. The burden to show that it is otherwise, will be on the employer. To what extent the employment has been regular, although casual, is a matter for the employer to establish. Such questions of dispute must of necessity be decided by persons authorised to do so under the Act.

6. In the present case it is stated that respondents 2 to 18 have been regularly employed by the petitioner from 1-8-1978. The question here is whether those employees are entitled to be paid for the national holiday which fell on 18th August, Ext. P-1 and the consequential orders do not show which are the days on which the employees worked apart from saying that they regularly worked from

1-8-1978. The petitioner has not furnished a list of the days on which the employees worked during the relevant period. In the absence of data I will presume that they worked regularly from 1-8-1978, that is, on every day other than the holidays. If that is so, the burden is upon the employer to show that notwithstanding their employment on every working day during that period, there was a termination of their connection with the establishment at the end of the day previous to the holiday in question. If such proof is not forthcoming, then the necessary presumption must be that these employees, although employed on a casual basis, have been in the employment of the petitioner for the purpose of claiming the benefit of Section 5.

7. In the circumstances the O.P. has to be dismissed. I do so. No costs.