

(1970) 10 MP CK 0012

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 127 of 1968

Steel Workers Union

APPELLANT

Vs

Chief Labour Commissioner (Central) and Appellate Authority,
New Delhi and Others

RESPONDENT

Date of Decision : 08-10-1970

Acts Referred:

Industrial Employment (Standing Orders) Act, 1946 — Section 10(2)

Citation : AIR 1971 MP 93 : (1971) 22 FLR 379 : (1977) ILR (MP) 941 : (1971) JLJ 105 : (1971) 1 LLJ 101 : (1971) MPLJ 57

Hon'ble Judges : Bishambhar Dayal, C.J;G.P. Singh, J

Bench : Division Bench

Advocate : Gulab Gupta, for the Appellant; K.A. Chitaley and G.M. Chaphekar, for the Respondent

Final Decision : Allowed

Judgement

Singh, J.

This petition under Article 226 of the Constitution is by a registered and representative union of the workers employed in Bhilai Steel Plant and is directed against an order passed on December 18, 1967 by the Chief Labour Commissioner (Central) functioning as Appellate Authority under the Industrial Employment (Standing Orders) Act, 1946.

The facts giving rise to this Petition are that the Bhilai Steel Plant was originally started by the Central Government in 1955 as a departmental undertaking. The undertaking was transferred to M/s. Hindustan Steel Limited, a Government owned company, with effect from March 31, 1957. During the period the Steel Plant was run as a departmental undertaking, the leave rules relating to the Central Government employees were made applicable to the employees of the Plant. After the transfer of the undertaking to the company the Board of Directors of the company decided to continue the leave rules then applicable to the employees till the company was able to finalise its own leave rules. Draft

Standing Orders prescribing service conditions including leave rules were adopted by the Board of Directors of the company with effect from April 1, 1960. Speaking generally, under the rules that were previously applicable, an employee was entitled to one months earned leave and fifteen days" casual leave every year. But under the Standing Orders the period of earned leave as also of casual leave was reduced nearly to half. The Draft Standing Orders approved by the Directors were certified by the Regional Labour Commissioner (Central), Jabalpur by his order passed on August 6, 1962. In an appeal by the workers, the Industrial Court, Madhya Pradesh, Indore, which was then the appellate authority, held on February 20, 1965 that as the employees who had entered service before April 1, 1960 were entitled to longer earned leave and casual leave, their rights should be preserved; to that end a saving clause was inserted in Standing Order No. 12 (i) which is worded as follows:--

"The provisions of this section as far as they relate to earned leave and casual leave shall not operate to the prejudice of any right to which the persons employed in the establishment may be entitled under any other law or under the terms of any award, agreement or contract of service provided that when such award, agreement or contract of service provides for a longer leave with wages than provided in this section relating to these two types of leave, such person shall be entitled only to such longer leave."

As a result of the order passed by the Industrial Tribunal, the Draft Standing Orders of the company were certified subject to the above modification.

On December 14, 1965 the petitioner applied u/s 10(2) of the Act to the Regional Labour Commissioner Central), Jabalpur, for modification of the Standing Orders in respect of leave benefits. It was alleged in this application that the Standing Orders as finally certified by the Industrial Court on February 20, 1965, applied different sets of leave rules to the employees depending upon the fact whether they were appointed prior to or after April 1, 1960. It was submitted that this was not permissible under the law and there should be uniformity in the application of Standing Orders. It was, therefore, prayed that the Standing Orders should be modified so as to remove the differentiation regarding leave benefits between the employees appointed before and after April 1, 1960. The Regional Labour Commissioner by his order passed on January 19, 1967, allowed the application made by the petitioner. The modifications made by the Regional Labour Commissioner are appended to the order passed by him. The Management being aggrieved by this order went up in appeal to the Chief Labour Commissioner (Central), who is now the Appellate Authority under the Act. The Chief Labour Commissioner by his order passed on December 18, 1967, set aside the order of the Regional Labour Commissioner in so far as it had modified the Standing Orders regarding earned leave. It was held that there was no justification for modifying the Standing Order No. 12 (i) as originally certified by the Industrial Court. In reaching this conclusion the Chief Labour Commissioner accepted the following three points urged by the Management:

(1) The differentiation between the employees who were in service on April 1, 1960, and those joining the company after that date was not the Management's making out the result of the order of the Industrial Court on the appeals preferred on behalf of the workers;

(2) The principles underlying the rule of res judicata applied to the case and it was not open to the certifying officer or the appellate authority to reopen the issue except when the original conditions had substantially changed and as it was not workmen's case that there had been any material change in the position since the decision of the Industrial Court, the Standing Orders as certified by that Court could not be modified; and

(3) The employees of the Bhilai Steel Plant were better off in regard to total leave privileges than the employees of the comparable concern of Tata Iron and Steel Company. It was pointed out that though the provision in regard to earned leave privileges in TISCO was better than in BSP, other leave privileges namely, half pay leave, quarantine leave, casual leave, extraordinary leave and special casual leave were better in BSP. Thus, having regard to the totality of leave privileges the employees of BSP were better off as compared to the employees of TISCO.

It is the aforesaid order of the Chief Labour Commissioner (Appellate Authority) which has been challenged in this petition.

The question whether the petitioner was entitled to move for modification of the certified Standing Orders even without showing any change of circumstances is now concluded in favour of the petitioner by the decision of the Supreme Court in Management Shakhara (Delhi) Saharanpur Light Railway Co. Ltd. Vs. S.S. Railway Workers' Union, . In that case it was held that it was open to the workmen to apply for modification of certified Standing Orders u/s 10 even without showing any change of circumstances. It was also held that principles analogous to res judicata were not applicable in such proceedings.

The argument that as the differentiation between the workmen appointed before April 1, 1960 and other workmen was created by the Appellate Authority while certifying the Standing Orders, no fresh application was maintainable to get rid of the differentiation is also not correct. The conditions for certification of Standing Orders are contained in Section 4. It is one of the conditions for their certification that they should be in conformity with the Act. Another requirement is that the provisions contained therein should be fair and reasonable and it is the function of the certifying officer and the appellate authority to adjudicate upon the question of fairness and reasonableness. These authorities have also to decide u/s 5(2) whether the Standing Orders are certifiable or whether any addition or modification in them is necessary to make them certifiable. Certified Standing Orders can be modified by an application u/s 10 and the provisions of Sections 4 and 5 also apply while considering such an application as they apply to the certification of the first Standing Orders. As the existence of change of

circumstances is not necessary for making an application u/s 10 for modification of certified Standing Orders and as principles of *res judicata* do not apply, an application for modification can be made on the ground that the certified Standing Orders are not in conformity with the Act especially when the point was overlooked in the previous certification proceedings. The decision of the Supreme Court in *Management Shahdara (Delhi) Saharanpur Light Railway Co. Ltd. Vs. S.S. Railway Workers' Union*, , clearly contemplates that an application for modification of the Standing Orders can be made on the ground that "some fact was lost sight of at the time of certification;" see *Management Shahdara (Delhi) Saharanpur Light Railway Co. Ltd. Vs. S.S. Railway Workers' Union*, . At the time when the Standing Orders were considered by the Industrial Court, the point that the saving clause, which that Court itself added to preserve the rights and privileges of the workmen appointed before April 1, 1960, brought about a differentiation in the application of Standing Orders which was not in conformity with the provisions of the Act was overlooked. This point, therefore, can be considered in the application for modification made by the petitioner and if the differentiation in the matter of earned leave between the two classes of workmen is not permissible, the same must be removed by a suitable amendment of the Standing Orders and it would be immaterial in this context to consider that the impermissible differentiation was brought about by an order of the Industrial Court in the earlier certification proceedings. Once it is found that the differentiation is not in conformity with the Act, it should not be perpetrated and it would also be fair and reasonable to get rid of it by modifying the Standing Orders.

Similarly, the point that having regard to the totality of leave benefits available under the Standing Orders the employees of the Bhilai Steel Plant were better off as compared to the employees of the comparable concern of the Tata Iron Steel Company, is also irrelevant in determining whether the differentiation in the application of Standing Orders between workmen appointed before and after April 1, 1960 should be allowed to continue. If the said differentiation is bad in law being not in conformity with the Act, it cannot gain validity by showing that the employees appointed on or after April 1, 1960 are getting leave benefits under the Standing Orders which are not less advantageous than enjoyed by employees of a comparable concern. Such a consideration may be relevant in deciding the manner in which the differentiation should be removed, whether by applying the rules applicable prior to April 1, 1960 to all the employees or by applying the provisions of the Standing Orders to all the employees. Be that as it may, the comparison, in our opinion, is irrelevant for the purpose of deciding that the differentiation is impermissible under the Act.

The main question, therefore, in this petition is whether the saving clause inserted by the Industrial Court for the benefit of the workmen appointed before April 1, 1960 in Clause 12 of the Standing Orders created a differentiation which was not permissible under the Act. The learned counsel for the petitioner argued that the saving clause had the effect of introducing two sets of of Standing

Orders on the subject of earned leave, one applicable to the old workmen and the other applicable to the new workmen, which could not be done under the Act. The learned counsel for the Management on the other hand submitted that the saving clause merely continued the longer leave benefits to the old employees to which they were entitled under their service conditions and it had not the effect of introducing one set of Standing Orders for the old employees and another set for the new employees.

This question must be examined in the light of the decision of the Supreme Court in Salem Erode Electricity Distribution Company Ltd. Vs. Salem Erode Electricity Distribution Co. Ltd. Employees Union, , where it was held that it was not permissible for an industrial establishment to have two sets of Standing Orders to govern the terms and conditions of its employees, for two sets of Standing Orders cannot be made under the Act. In that case the first Standing Orders were certified in 1947. The Management wanted to modify the certified Standing Orders on the subject of leave and holidays sometime in 1960 in respect of the new entrants preserving the old rules in respect of the old employees. This modification was negatived by the certifying officer and the appellate authority. The Supreme Court in an appeal on special leave upheld those orders observing that the Standing Orders certified under the Act must be uniform and applied to all workmen alike who are employed in the industrial establishment. It is true that in that case the Management wanted to preserve the existing Standing Orders in respect of the existing workmen and to have new set of Standing Orders in respect of the new entrants and the question was not of preserving the benefits available to the existing employees under their conditions of service when the first Standing Orders were made, but in principle there can hardly be any distinction.

The guiding rule that emerges from Salem Erode Electricity Distribution Company Ltd. Vs. Salem Erode Electricity Distribution Co. Ltd. Employees Union, is that uniformity in application is an essential attribute of Standing Orders certified under the Act and no provision can be introduced in them which is destructive of uniformity. A provision that preserves to the previous employees the longer leave benefits to which they were entitled under their service conditions before the introduction of the Standing Orders militates against uniformity and cannot be said to be in conformity with the Act. It is immaterial whether such a provision is made by an independent clause or by a saving clause, for in judging upon the validity the label is not important and what is to be seen is the real nature or effect. If the effect of the provision is to affect the uniformity in application of the Standing Orders, it must be held to be bad, whatever be its label, being not in conformity with the provisions of the Act.

The question can be examined from another angle. When the Standing Orders are first made and certified they begin to apply to all workmen existing and future. The existing conditions of service of the workmen are superseded on matters included in the Standing Orders. If this normal consequence of the

Standing Orders is sought to be prevented by introducing in them an independent provision or a saving clause to preserve wholly or partially the existing conditions of service for the existing workmen, the effect would be to make one set of Standing Orders for the existing workmen and another set for the workmen to be employed in future, a course which is not permissible under the provisions of the Act as clearly held in Salem Erode Electricity Distribution Company Ltd. Vs. Salem Erode Electricity Distribution Co. Ltd. Employees Union, . Had the legal position been that the first Standing Orders on their coming into operation do not automatically apply to the existing employees but only apply to the employees employed thereafter, it could have been said that a saving clause that preserves to the existing employees their service conditions merely makes express what is already implicit and there is no question of making two sets of Standing Orders. But that is not the correct legal position as laid down by the Supreme Court in Salem Erode Electricity Distribution Company Ltd. Vs. Salem Erode Electricity Distribution Co. Ltd. Employees Union, and as reaffirmed in Agra Electric Supply Co. Ltd. Vs. Sri Alladdin and Others, .

In Agra Electric Supply Co. Ltd. Vs. Sri Alladdin and Others, , first Standing Orders of the company were certified in 1951. In these Standing Orders the age of superannuation of employees was fixed at 55 years. Prior to 1951 there were no rules relating to superannuation. Three workmen who were appointed long before 1951 were retired from service in 1963 and 1964 on the ground that they had crossed the age of superannuation of 55 years. The workmen challenged the orders retiring them from service on the ground that they were appointed before the making of the Standing Orders and were not governed by the rule of superannuation contained in them. In negating this contention and in holding that the workmen appointed before the enforcement of the Standing Orders were also governed by the provisions contained in them, their Lordships made the following pertinent observations:

"Once the standing orders are certified and come into operation, they become binding on the employer and all the workmen presently employed as also those employed thereafter in the establishment conducted by that employer. It cannot possibly be that such standing orders would bind only those who are employed after they come into force and not those who were employed previously but are still in employment when they come into force."

** ** "Besides, if the standing orders were to bind only those who are subsequently employed, the result would be that there would be different conditions of employment for different classes of workmen, one set of conditions for those who are previously employed and another for those employed subsequently, and where they are modified, even several sets of conditions of service depending upon whether a workman was employed before the standing orders are certified or after, whether he was employed before or after a modification is made to any one of them and would bind only a few who are recruited after and not the bulk of them, who though in employment were

recruited previously. Such a result could never have been intended by the legislature, for, that would render the conditions of service of workmen as indefinite and diversified, as before the enactment of the Act."

These observations are decisive that the previous conditions of service are abrogated when the first Standing Orders come into operation. This result cannot be avoided by inserting a saving clause in the Standing Orders so as to preserve the conditions of service of the existing workmen, for the saving clause read along with the old conditions of service would in effect be one set of Standing Orders applying to the old employees and the other provisions of the Standing Orders would be another set applying to the new employees.

Before concluding we must refer to the case of *Guest, Keen, Williams Private Ltd. Vs. P.J. Sterling and Others*, , on which reliance was placed by the learned counsel for the Management. In that case it was held that the retiring age fixed by the Standing Orders did not apply to the workmen appointed before their coming into operation and for them a higher age of retirement was fixed as at the time when they were employed there was no age of retirement. The case arose out of an industrial dispute decided under the Industrial Disputes Act before the enactment of Act 36 of 1956. The authority of this case has been considerably shaken by the two later decisions of the Supreme Court already noticed by us viz. *Salem Erode Electricity Distribution Company Ltd. Vs. Salem Erode Electricity Distribution Co. Ltd. Employees Union*, and *Agra Electric Supply Co. Ltd. Vs. Sri Alladdin and Others*, , where it was distinguished as a decision under special and unusual circumstances. In our opinion, the case of *Guest, Keen, Williams Private Ltd. Vs. P.J. Sterling and Others*, , cannot be relied upon for the proposition that the authorities functioning under the Industrial Employment (Standing Orders) Act, 1946, as amended by Act 36 of 1956, can, while certifying or modifying the Standing Orders incorporate in them provisions to preserve the conditions of service of the existing workmen which are not to apply to the workmen to be employed after the coming into operation of the Standing Orders. Such a differentiation, we have already shown, is impermissible under the Act.

In our opinion, therefore, the saving clause that was added by the Industrial Court in the previous certification proceedings to preserve longer earned leave benefits to the workmen appointed before April 1, 1960 brought about a differential treatment of workmen in the matter of application of Standing Orders which was not permissible under the Act. The saving clause was destructive of uniformity which, as we have already stated, is an essential attribute of Standing Orders certified under the Act and its introduction in effect amounted to making one set of Standing Orders for the previous workmen and another set for the new workmen, a course which was not at all in conformity with the provisions of the Act. The Standing Orders certified by the Industrial Court thus need modification to bring uniformity and to make them in conformity with the Act. We, however, make it clear that the point as to what modifications should be

made to remove differentiation and bring about uniformity is not before us and we express no opinion on it. This point will have to be considered by the Chief Labour Commissioner who will re-hear the appeal on the subject of earned leave.

The petition is accordingly allowed. The order of the Chief Labour Commissioner (Appellate Authority) in so far as it relates to earned leave is quashed and he is directed to re-hear the appeal on that matter and to determine it afresh in accordance with law. The petitioner will have costs of the petition from the respondent No. 3 with counsel's fee of Rs. 100/-, if certified. The security amount shall be refunded to the petitioner.