
(1979) 08 MP CK 0024

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 6 of 1973

Steel Workers Unton Bhilal Nagar

APPELLANT

Vs

Chief Labour Commissioner (Central) and others

RESPONDENT

Date of Decision : 18-08-1979

Acts Referred:

Constitution of India, 1950 — Article 226
Factories Act, 1948 — Section 78, 78(1), 79, 80, 81
Industrial Disputes Act, 1947 — Section 10(2), 25F, 25FF

Citation : (1979) 08 MP CK 0024

Hon'ble Judges : G.P. Singh, C.J.; U.N. Bhachawat, J

Bench : Division Bench

Advocate : Gulab Gupta, for the Appellant; A.P. Tare, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Singh, C.J.—This petition under Article 226 of the Constitution is directed against an order, dated 20th December 1972, passed by the Chief Labour Commissioner (Central), acting as Appellate Authority under the Industrial Employment (Standing Orders) Act, 1949. The impugned order was passed by the Chief Labour Commissioner in pursuance of the order of remand dated 8th October 1970 of the High Court in an earlier writ petition between the same parties Steel Workers Union v. Chief Labour Commissioner M. P. No. 123 of 1963, decided on 8-10-1970 (1971 M P L J 57).

2. We will take the facts from the aforesaid order of remand of the High Court. The Bhilai Steel Plant was originally started by the Central Government in 1955 as a Departmental Undertaking. The Undertaking was transferred to M/s Hindusthan Steel Limited, a Government Company with effect from 31st March 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 as 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 1st April 1960. Speaking generally, under the rules that were previously applicable, an employee was entitled to one day's earned leave for every eleven days of attendance. But under the draft Standing Orders the period of earned leave was provided at one day for every twenty days of attendance. The draft Standing Orders, approved by the Directors, were certified by the Regional Labour Commissioner (Central), Jabalpur, by order passed on 6th August 1962. In an appeal by the workers, the Industrial Court, Madhya Pradesh, Indore, which was then the Appellate Authority, held on 20th February 1965 that as the employees who had entered service before 1st April 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 12 (1) 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 Court, the draft Standing Orders of the Company were certified subject to the above modification. On December 14, 1965, the petitioner Union 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 the application that the Standing Orders as finally certified by the Industrial Court on 20th February 1965, applied different sets of rules to the employee depending upon the fact whether they were appointed prior to or after 1st April 1960. It was prayed that the Standing Orders should be modified so as to remove the differentiation regarding leave benefits between the employees appointed before and after 1st April 1960. The Regional Labour Commissioner, by his order passed on 18th January 1967, allowed the application made by the petitioner. The modification 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 who is now the Appellate Authority under the Act. The Chief Labour Commissioner, by his order passed on 18th December 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 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:

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

(ii) 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 which the original conditions had substantially changed and as it was not the 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

(iii) 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.

3. The petitioner then filed M. P. No. 127 of 1963 which, as earlier stated, was allowed on 8th October 1970 by the High Court. The High Court relying upon the decision of the Supreme Court in Management Shahdara (Delhi) Saharanpur Light Railway Co. Ltd. Vs. S.S. Railway Workers' Union, held that principles analogous to res judicata were not applicable and that it was open to the workmen to apply for modification of certified Standing Orders u/s 10(2) even without showing any change of circumstances. The High Court also negated the argument that as the differentiation between the workmen appointed before 1st April 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. The High Court also held that at the time when the Standing Orders were considered by the Industrial Court, the point that the saving clause which that Court added to preserve the rights and privileges of the workmen appointed before 1st April 1960 brought about a differentiation in the application of the Standing Orders, which was not permissible under the provisions of the Act, was overlooked and that an application for modification could, therefore, be made by the petitioner to remove the differentiation and to bring the Standing Orders in conformity with the Act. As regards the point that the employees of the Bhilai Steel Plant were better off in regard to total leave privileges as compared to the employees of the comparable concern of Tata Iron and Steel Company, the High Court said that the comparison was irrelevant for the purpose of deciding whether the differentiation in the application of the Standing Orders between the workmen appointed before and after 1st April 1960 should be allowed to continue. The High Court, however, said that "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 1st April 1960 to all the employees or by applying the provisions of the Standing Orders to all the employees." The High Court then referred to the decision of the Supreme Court in Salem Erode Electricity Distribution Company Ltd. Vs. Salem Erode Electricity Distribution Co. Ltd. Employees Union, and observed 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." It further observed that "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." In allowing the petition and directing a rehearing of the appeal by the Chief Labour Commissioner, the High Court held as follows:

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 rehear the appeal on the subject of earned leave.

4. The Chief Labour Commissioner reheard the appeal as a result of the remand order. By the impugned order, the Chief Labour Commissioner allowed the appeal and, in substance, removed the differentiation by removing the saving clause added by the Industrial Court in the previous certification proceedings. In doing so, the Chief Labour Commissioner observed as follows:

A perusal of the whole history of the case would indicate that the second set of conditions of employment with regard to leave to pre-1st April 1960 employees was incorporated by the Industrial Court, Indore which was the then Appellate Authority under the Act. If the modification as ordered by the Industrial Court is set aside, it would meet the ends of justice. I also do not find any justification for enhancing the quantum of leave and am of the view that the Standing Orders of the management as certified by Regional Labour Commissioner (Central), Jabalpur and Certifying Officer under the Act on 6th August 1962 should stand.

5. The effect of the order of the Chief Labour Commissioner is that the provisions for leave contained in the Standing Orders certified by the Regional Labour

Commissioner (Central), Jabalpur on 6th August 1962 will apply uniformly to all employees irrespective of the fact whether they were employed before or after 1st April 1960. However, the uniformity so brought about is not to the liking of the petitioner who wanted that the leave benefits which were applicable to pre-1st April 1960 employees and the rules then in force should be made applicable to post-1st April 1960 employees also. The petitioner, therefore, filed this petition for quashing the order of the Chief Labour Commissioner.

6. The learned counsel for the petitioner contended that the leave benefits available to pre-1st April 1960 employees were statutorily preserved by the provisions of section 25-FF of the Industrial Disputes Act, 1947 and section 78 of the Factories Act, 1948 and, therefore, it was not open to the Chief Labour Commissioner to so modify the Standing Orders as to take away the statutory protection of pre-1st April 1960 employees. It was submitted that the only manner in which uniformity could have been brought about was by applying the leave benefits which the employees were getting prior to 1st April 1960 to all the employees. It was also contended by the learned counsel for the petitioner that as the Management had not made any application for modification of the Standing Orders, for taking away the better leave benefits applicable to pre-1st April 1960 employees, it was not open to the Chief Labour Commissioner to so modify the Standing Orders as to take away those benefits.

7. In our opinion, none of the contentions raised by the learned counsel for the petitioner can be accepted. Section 25-FF of the Industrial Disputes Act provides for payment of compensation to workmen in case of transfer of undertakings in accordance with the provisions of section 25-F as if the workmen had been retrenched. The section in the present shape was inserted by Act XVIII of 1957 to get over the ruling of the Supreme Court in *Hariprasad v. A.D. Divelkar* A I R 1957 S C 121 which construed the definition of retrenchment narrowly. The proviso to section 25FF makes the section inapplicable to a transfer if "(a) the service of the workman has not been interrupted by such transfer; (b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and (c) the new employer is, under the terms of such transfer or otherwise, legally liable to pay to the workman in the event of his retrenchment compensation on the basis that his service has been continued and has not been interrupted by the transfer." The argument of the learned counsel for the petitioner is that the leave benefits to which pre-1st April 1960 employees were entitled were preserved to them under clause (b) of the proviso. In our opinion, clause (b) of the proviso has not the effect of containing a guarantee that the terms and conditions of service on which an employee is employed by the new employer in case of transfer of an undertaking would not be so changed in future as to make it less favourable to the workman than those applicable to him immediately before the transfer. This clause along with other clauses of the Proviso applies at the stage of transfer for finding out whether a workman is entitled to compensation in accordance with section 25-FF. If the

terms and conditions of service applicable to a workman after the transfer of an undertaking are not in any way less favourable to the workman than those applicable to him immediately before the transfer and if other conditions mentioned in clauses (a) and (c) of the proviso are also satisfied, the workman is not entitled to compensation because of transfer of the undertaking in which he is employed. The object of the Proviso to section 25-FF is merely to say that a workman cannot be taken to have been retrenched and claim compensation if his service is not interrupted and his service conditions are not prejudicially affected by the change of employers. Clause (b) of the proviso, in our opinion, is not a statutory bar for change of conditions of service in future under the new employer.

8. Now, coming to the Factories Act, the subject of annual leave with wages is covered by Chapter VIII of the Act. Sections 79 to 82 in this Chapter make provision for annual leave with wages, wages during leave period, payment in advance in certain cases and mode of recovery of unpaid wages. Section 78(1), however, preserves any right to which a worker may be entitled under any other law or under the terms of any award, agreement (including settlement) or contract of service. This section reads as follows:

78. (1) The provisions of this Chapter shall not operate to the prejudice of any right to which a worker may be entitled under any other law or under the terms of any award, agreement (including settlement) or contract of service;

Provided that if such award, agreement (including settlement) or contract of service provides for a longer annual leave with wages than provided in this Chapter, the quantum of leave, which the worker shall be entitled to, shall be in accordance with such award, agreement or contract of service, but in relation to matters not provided for in such award, agreement or contract of service or matters which are provided for less favourably therein, the provisions of sections 79 to 82, so far as may be, shall apply.

The object behind this section is to declare that the provisions of leave contained in Chapter VIII shall not deprive a worker of a better right which he has under any other law or under the terms of any award, agreement (including settlement) or contract of service. To the extent the matters relating to leave and wages are more favourably provided in such other law or award, agreement or settlement or contract of service, the provisions of sections 79 to 82 are not to apply. Section 78 does not say that such law, award, agreement, settlement or contract of service cannot later be changed to the prejudice of the worker. The effect of section 78 merely is that so long as such other law, award, agreement, settlement or contract of service continues, it will have application to the workman if the benefits conferred by it are more favourable in matters of leave than the provisions of sections 79 to 82, and then the provisions of sections 79 to 82 shall, to that extent, not apply.

9. Thus, neither section 25-FF of the Industrial Disputes Act nor section 78 of the

Factories Act was a bar for modification of the Standing Orders to change the conditions of leave which were applicable to pre-1st April 1960 employees. Certified Standing Orders have adequate statutory sanction and authority and amount to law (*Sakhrullah v. State Industrial Court* 1978 M P L J 455, at p. 464). The Standing Orders, after they are certified, apply uniformly to all workmen of the Undertaking. They abrogate the previous conditions of service. The conditions of leave of pre-1st April 1960 workmen could, therefore, be modified by the Standing Orders so as to bring uniformity.

10. As regards the point that the Management did not apply for modification of the Standing Orders and that the application for modification was made only by the workmen, it will be seen that the employer and workmen can both apply u/s 10 (2) of the Standing Orders Act for modification of the Standing Orders. It is, however, not obligatory that the modification proposed by the employer or the workmen must be either accepted or rejected as it is by the Certifying Officer. The Certifying Officer may modify the modifications suggested. This is the effect of applying the procedure u/s 5 for modification of the Standing Orders by section 10(3) of the Act. The history of the case will show that the contention of the workmen was that the Standing Orders certified by the Industrial Court should be modified to bring about uniformity and to remove the discrimination which was brought about by the addition of the saving clause in favour of pre-1st April 1960 workmen by the Industrial Court. It was for the Certifying Officer and the Appellate Authority to determine in what manner this discrimination should be removed. It may here be recalled that the Chief Labour Commissioner in his earlier order had pointed out that the leave benefits available to the workmen of the Bhilai Steel Plant are more beneficial than those available in the comparable Undertakings. The High Court in its earlier remand order had pointed out that that would be a relevant consideration in deciding as to how the differentiation should be removed. The Chief Labour Commissioner in the impugned order has also said that it would be fair and reasonable to remove the differentiation by removing the saving clause which was inserted by the Industrial Court. It is also not contended that the leave benefits which will now apply to all employees are not fair and reasonable. In these circumstances, it cannot be said that the Chief Labour Commissioner committed any patent error of law or error of jurisdiction in modifying the Standing Orders in the manner he did. Indeed, as held by this Court in *K. A. Abraham v. Bhilai Steel Plant* 1979 M P L J 50 the saving clause inserted by the Industrial Court was invalid and could not be given effect to. The modification of the Standing Orders certified by the Chief Labour Commissioner has merely removed that invalidity.

11. The petition fails and is dismissed but without any order as to costs. The outstanding amount of security deposit shall be refunded to the petitioner.