
(1990) 12 KL CK 0022
In the High Court Of Kerala
Case No : O.P. No. 7477 of 1987

Tata Tea Ltd.

APPELLANT

Vs

Inspector of Plantations

RESPONDENT

Date of Decision : 11-12-1990

Acts Referred:

Kerala Industrial Establishments (National and Festival Holidays) Act, 1958 — Section 3, 4A, 5(1)
Maternity Benefits Act, 1961 — Section 4, 4(1), 4(2)

Citation : (1992) 1 LLJ 603

Hon'ble Judges : Radhakrishna Menon, J

Bench : Single Bench

Advocate : C.M. Devan and Antony Dominic, for the Appellant; K.A. Abdul Gafoor and V.I. Joseph, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Radhakrishna Menon, J.—Employer is petitioner.

2. Ext. P5 order of the second respondent, the Chief Inspector of Plantations, Kottayam confirming the orders of the Inspector of Plantations directing payment of maternity benefit to respondent 3 onwards, in addition to the benefit they have already been given by the management under the Kerala Industrial Establishments (National and Festival Holidays) Act, 1958, for short the National and Festival Holidays Act, is under challenge.

3. The short question arising for consideration is whether an employee entitled to the benefit of Maternity Benefit Act, 1961 is eligible to claim the benefit u/s 5(1) of the National and Festival Holidays Act. The answer depends upon the construction of Sections 4A and 5 of the National and Festival Holidays Act. I shall now extract the relevant provisions:

"4A. Power of employer to require to work on holidays.—(1) Notwithstanding anything contained in Section 3, an employer may, by notice in writing, require

any employee to work on any holidays allowed under that section.

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) Where an employee works on any holidays allowed u/s 3, he shall be entitled to twice the wages and to avail himself of a substituted holiday on any other day."

The language employed in Sub-section (1) of Section 5 would show that an employee has the right to claim wages for each of the national or festival holidays allowed to him u/s 3. Section 4A on the other hand confers on the employer the right to call upon the employee to come and work on such holidays. Sub-section (2) of Section 5 provides that where an employee thus works on any such holiday, he shall be entitled to twice the wages and avail himself of a substituted holiday on any other day. This in short is the scheme. The right of an employee recognised under Sub-sections 1 and 2 of Section 5 is co-extensive with the right of the employer to call upon the workmen to come and work on the holidays subject to the compliance with the conditions laid down u/s 4A of the National and Festival Holidays Act. I am fortified in this view by the decision of the Supreme Court in *Madura Coats Limited Vs. Inspector of Factories, First Circle, Madurai and Another*, The Supreme Court in this case, while overruling a Division Bench ruling of the Madras High Court in *Vasudevan, R.M.S. Union Vs. Lotus Mills Ltd. and Another*, where the Madras High Court had taken a contrary view, has held as follows:-(p.258):

"In our judgment, the construction placed by the High Court on Sub-section (2) of Section 5 of the Act cannot be accepted. It is apparently wrong in observing that "if the Legislature intended such a result, the language used would have been different". That precisely is the effect of the non obstante clause in Sub-section (2) of Section 5 which clearly has an overriding effect over Section 3. Under the scheme of the Act, the workmen are entitled to wages for the national and festival holidays u/s 3 read with Sub-section (1) of Section 5, but this right of theirs is subject to the right of the management given under Sub-section (2) of Section 5, to call upon the workmen to come and work on such holidays. Any other construction would make the provisions contained in Sub-section (2) of Section 5 wholly nugatory."

It therefore follows that the right recognised under Sub-sections (1) and (2) of Section 5, the employee however can enjoy only subject to the right of the employer u/s 4A to call upon the employee to come and work on the holidays allowed to him u/s 3. An employer however cannot call upon an employee to come and work on the holidays if the said employee is enjoying the maternity benefit within the meaning of the Maternity Benefit Act. A reference in this connection to Section 4 of the Maternity Benefit Act is profitable. Sub-section (1) of this Section provides that no employer shall knowingly employ a woman in any establishment during the six weeks immediately following the day of her delivery or her miscarriage. To make sure that such employee is not employed during the

said period, the legislature has enacted Sub-section (2) which provides that no woman shall work in any establishment during the six weeks immediately following the day of her delivery or her miscarriage. Sub-section (3) however carves out an exception. It provides that without prejudice to the provisions of Section 6 (Section 6 provides the procedure regarding the issue of notice of claim for maternity benefit and payment thereof) no pregnant woman shall, on a request being made by her in this behalf, be required by her employer to do during the period specified in Sub-section (4) any work which is of an arduous nature or which involves long hours of standing or which in any way is likely to interfere with her pregnancy or the normal development of the foetus, or is likely to cause her miscarriage or otherwise to adversely affect her health. The periods referred to in this sub-section are (a) the period of one month immediately preceding the period of six weeks, before the date of her expected delivery, and (b) any period during the said period of six weeks for which the pregnant woman does not avail of leave of absence u/s 6. It is thus clear that during the six weeks immediately following the day of the delivery or miscarriage of the employee within the meaning of Sub-section (1) of Section 4 an employer cannot at all call upon such employee to come and do the work on the festival day if the same happens to fall during the said period. Law, however, is different as regards the right of the employer to call upon a pregnant woman to do the work during the period of one month immediately preceding the period of six weeks before the date of her expected delivery or any period during the said period of six weeks. During the said period the employer, on a request being made by such employee in that behalf, shall not make her to do, during the said period, any work which is of arduous nature or which involves long hours of standing or which in any way is likely to interfere with her pregnancy or the normal development of the foetus, or is likely to cause her miscarriage or otherwise to adversely affect her health.

4. The cumulative effect of these provisions is that during the period made mention of in Sub-sections (1) and (2) of Section 4 the employer cannot in exercise of his right u/s 4A of the the National and Festival Holidays Act call upon a woman employee to come and do the work on the national and festival holidays allowed u/s 3 of the said Act. The said right of the employer, as regards the period made mention of in Section 4 of the Maternity Benefit Act however is subjected to the restrictions imposed by Sub-section (3) thereof. Considered in this background the claim of the employees for the wages under the National and Festival Holidays Act is not sustainable.

5. The learned counsel for the employees, however, contended that the benefit the employees are entitled to have under the Maternity Benefit Act shall not be denied to them on account of the fact that they have been given the benefit under the National and Festival Holidays Act as the benefit conferred on the employees under the Maternity Benefit Act is distinct and different from the benefit the employee can claim under the other Act, he argues. This argument though apparently is attractive, cannot be accepted in view of the position of law discussed in the preceding paragraph. Nonetheless an incidental question would

arise and it is this: Should the workmen in the case be denied the benefit they are entitled to under the Maternity Benefit Act because they have been given the benefit under the National and Festival Holidays Act. Admittedly this payment was made as per the practice that prevailed in the plantation. A reference in this connection to the following excerpt from Ext.PS is relevant:

"Now the point raised by the appellant (the petitioner herein) is that the workers were customarily being paid wages under the National & Festival Holidays Act which were more beneficial to the workers and correspondingly the maternity benefit for those days was not paid."

If that be the position the said payment, as rightly pointed out by the counsel for the workmen, cannot be adjusted from the maternity benefit the employees are entitled to under the Maternity Benefit Act. I therefore am of the view that payments already made by the employer towards the wages under the National and Festival Holidays Act shall not be adjusted from the maternity benefit the employees are entitled to get under the Maternity Benefit Act.

6. The O.P. is disposed of as above. No costs.