
(1978) 09 BOM CK 0002

In the Bombay High Court

Case No : Special Civil Application No. 241 of 1973

The Coorla Spinning and Weaving Co. Ltd.

APPELLANT

Vs

Trimbak Narayan Deshmukh

RESPONDENT

Date of Decision : 22-09-1978

Acts Referred:

Constitution of India, 1950 — Article 42

Employees State Insurance Act, 1948 — Section 46, 47, 48, 49, 56

Industrial Disputes Act, 1947 — Section 33C

Citation : (1979) 81 BOMLR 512

Hon'ble Judges : Kurdukar, J; Dharmadhikari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dharmadhikari, J.—Respondent No. 1, Trimbak Narayan Deshmukh was working as a clerk with the petitioner mill. He filed an application u/s 33C(2) of the Industrial Disputes Act, 1947 claiming an amount of Rs, 1,291 as a benefit towards his sick leave under an award popularly known as clerks" award. According to the respondent-employee he was in employment of the petitioner-mill for twenty-two years and was drawing Rs. 271 per month as his basic salary plus dearness allowance. As per the clerks" award he was entitled to one month"s sick leave for each year of service subject to maximum of twelve months sick leave in all, during the whole service, with half pay. He was sanctioned sick leave from March 14, 1969 to January 16, 1970 i.e. for a period of ten months and three days. Ultimately, he had to resign his job on January 22, 1970. According to the employee as the petitioner-mill did not pay him half pay during the said period he was constrained to file the application u/s 33C(2) of the Industrial Disputes Act claiming the said benefit at the rate of half pay for the period of leave.

2. This application was resisted on behalf of the employers on various grounds. However main contention raised by the employer was that the clerks" award

which prescribed sick leave at half pay stands superseded in view of the provisions of the Employees' State Insurance Act hereafter referred to as the Act. According to the employer in view of the provisions of Section 72 of the Employees' State Insurance Act read with reg. No. 97 made thereunder it was open to the employer to discontinue the benefits payable to its employees under the earlier award. For this proposition, the employer strongly relied upon the Full Bench decision of the Industrial Tribunal in Bombay Dyeing & Mfg. Co. Ltd. (Textile Mills), Bombay v. Rashtriya Mill Mazdoor Sangh, Bombay [1958] I. C.R. 1158.

3. It appears from the record that before the Labour Court the parties did not adduce any oral evidence and had filed joint purshis in that behalf. The Labour Court, vide its order dated December 6, 1972 in Application (IDA) No. 556 of 1970, came to the conclusion that the Full Bench decision of the Industrial Court stands impliedly overruled in view of the subsequent decision of the Supreme Court in The Hindustan Times Ltd., New Delhi Vs. Their Workmen, . Therefore the Presiding Officer of the Fourth Labour Court came to the conclusion that the right conferred upon the workmen by the earlier award is neither modified nor superseded and therefore he is entitled to claim, the benefit under the said award. Ultimately, the Labour Court held that the respondent-workman was entitled to recover an amount of Rs. 1,291 towards sick leave benefit. It is this order of the Labour Court which is challenged before us in this writ petition.

4. Shri B. N. Srikrishna the learned counsel appearing for the petitioner contended before us that the Labour Court committed an error in coming to the conclusion that the Full Bench decision of the Industrial Tribunal in Bombay Dyeing A Mfg. Co. (Textile Mills), Bombay v. Rashtriya Mill Mazdoor Sangh, Bombay, (supra) stands overruled by the subsequent decision of the Supreme Court in Hindustan Times" case. According to Shri Shrikrishna the area and scope of consideration before the Supreme Court in Hindustan Times" case was quite distinct and in that case Supreme Court was not concerned with the scope of reg. 97 read with Section 72 of the Act. In Bombay Dyeing & Mfg. Co. Ltd. (Textile Mills), Bombay v. Rashtriya Mill Mazdoor Sangh Bombay, the Full Bench of the Industrial Court had considered the scope of Section 72 read with reg. No. 97 and has laid down the law in that behalf. The law laid down by the Full Bench of the Industrial Court is not disturbed by the subsequent decision of the Supreme Court and therefore the learned Presiding Officer of the Labour Court has committed an error in not following the said decision of the Full Bench. According to the learned counsel for the petitioner, though it is open to the workman to raise an industrial dispute and demand more benefits, in an industrial adjudication, in the absence of an award in the subsequent industrial adjudication, the earlier award in the field stands superseded or modified in view of the provisions of Section 72 of the Employees' State Insurance Act read with reg. 97. According to him, so long as the Act, viz. the Employees' State Insurance Act applied to an establishment or a factory, the workmen are entitled to the benefits conferred by the said Act only and the employer is within his right

either to discontinue or to reduce the benefits arising out of the earlier award in exercise of the powers conferred upon him by reg. 97 of the Regulations. Thus, in substance it is contended by the learned counsel that the respondent-workman is not entitled to claim any further benefits under the earlier award viz. clerks' award and therefore the Labour Court committed an error in granting him additional benefit to the tune of Rs. 1,291.

5. It is not possible for us to accept this contention of Shri Shrikrishna. It is an admitted position that under the clerks' award the workmen working in the petitioner's mill were entitled to get one month's sick leave in each year of service, subject to maximum of twelve months sick leave during the whole period of his service and that too with half pay. Therefore it cannot be disputed that the benefits which a clerk was getting under the said award were more beneficial than the benefits which he is entitled to get under the Employees' State Insurance Act. The Employees' State Insurance Act was enacted by the Legislature to achieve the object of doing social justice to the workmen employed in various factories and establishments and therefore it squarely fell within the purview of Article 42 of the Constitution of India, therefore beneficent rule of construction will have to be adopted while interpreting the various provisions of the Employees' State Insurance Act. The various provisions in the Act are made by the Legislature to enable the workman not only to subsist but also to make up his dissipated energy, preserve his efficiency as a worker. Therefore the provisions of this Act will have to be interpreted and applied in the perspective of directive principles of the Constitution of India. In our opinion, the construction put up by the Full Bench of the Industrial Court runs counter to the specific provisions of the Act as well as the intention behind the legislation.

6. As observed by the Supreme Court in Hindustan Time's case, particularly, hi para. 20 thereof (p. 1340):

...in providing for periodical payments to an insured worker in case of sickness (sickness benefit) or for medical treatment or attendance to him or the members of his family, the legislature did not intend to substitute any of these benefits for the workmen's right to set leave on full pay on the ground of sickness.

7. This decision of the Supreme Court in Hindustan Time's case again came up for consideration before the Supreme Court in Commissioner of Income Tax (Central), Calcutta Vs. Ashoka Marketing Ltd., After making a detailed reference to the observations made in Hindustan Time's case as well as in Technological Institute of Textiles v. Its Workmen [1965] II L.L.J. 149 ultimately the Supreme Court observed that the scheme of benefits admissible under the Employees' State Insurance Act cannot be said to cover the workmen's demand for sick leave. It further found that Section 61 of the Act cannot thus be said to be applicable for the simple reason that the benefits granted by the Tribunal are not admissible under the Act. The Act in fact does not deal with the question of sickness. We cannot do better than to reproduce in detail the observations of the Supreme Court in Alembic Glass Industries v. Workmen and in particular paras.

7, 8 and 9 thereof: (p. 2093):

7. A similar question arose for consideration in *The Hindustan Times Ltd., New Delhi Vs. Their Workmen*, , and was answered as follows by this Court.

"Mr. Pathak has tried to convince us that in view of the provisions of the Employees' State Insurance Act, 1948, no provision need be made about sickness leave at all. That this Act has been applied to the Company and that the workmen of the Company get the benefit of this Act is not disputed. It is difficult to see however how the benefit that the workmen will get under this Act can affect the question of sickness leave being provided for the workmen. This Act it has to be noticed does not provide for any leave to the workmen on the ground of sickness. It provides in Section 46(l)(a) for periodical treatment of any insured person in case of his sickness if certified by a duly appointed medical practitioner. It is unnecessary to mention here the several provisions in the Act, viz., sections 47, 48 and 49 which deal with the eligibility of workmen for sickness benefit and the extent of the benefit that may be granted. Section 56 of the Act provides for medical benefits to the insured workman or in certain cases to the members of his family. It appears to us clear however that in providing for periodical payments to an insured worker in case of sickness (sickness benefit) or for medical treatment or attendance to him or the members of his family, the legislature did not intend to substitute any of these benefits for the workmen's right to get leave on full pay on the ground of sickness".

The matter came up again for consideration by this Court in *Technological Institute of Textiles v. Its Workmen*, and it was held as follows with specific reference to the first proviso to Section 49 of the Act according to which a person qualified to claim sickness benefit is not entitled to it for the initial waiting period of two days except in the case of continuous illness of the nature mentioned therein,

With regard to sick leave, the argument on behalf of the appellant was that benefits were granted by the Employees' State Insurance Act, but that is not a bar to the demand of the workmen for sick leave. The reason is that the first proviso to S. 49 of the Employees' State Insurance Act states that a person qualified to claim sickness benefit shall not be entitled to the benefit for an initial waiting period of two days except in the case of a spell of sickness following at an interval of not more than fifteen days, the spell of sickness for which benefit was last paid. It is apparent that the Employees' State Insurance Scheme does not cover all contingencies of sickness and in any event the first two waiting days are not covered. In our opinion, the tribunal was, therefore, justified in its view that the workmen are entitled to 7 days' sick leave with wages on production of a medical certificate." (p. 152).

It would thus appear that the scheme of the benefits admissible under the Act cannot be said to cover the workmen's demand for sick leave to the extent allowed by the Tribunal. S. 61 of the Act cannot thus be said to be applicable for

the simple reason that the benefits granted by the Tribunal are not similar to those admissible under the Act. The Act does not in fact deal with the question of sickness leave.

8. The other question regarding the adequacy of the sickness benefit under the provisions of the Act has been examined by the Tribunal with reference to the reports of the National Commission of Labour 1969, the Labour Laws review Committee and the Norms Committee of Gujarat State, which go to show that the benefit cannot be said to be adequate for it works out to about half the average wage of a workman, and even that amount is not admissible for the first two days of sickness except in the case of a spell of sickness following, at an interval of not more than 15 days, the spell of sickness for which the sickness benefit was last paid. It has to be appreciated that a workman is prevented from earning the normal daily wages during the period of his illness and there is no justification for the argument that the rate of benefit at about half his wage, under the Act, should be considered sufficient so as to deny him the benefit of sick leave on full emoluments for a period of 7 days when he is certified by a competent medical officer to be ill for that or a longer period. Sickness is a serious misfortune to a workman for it not only prevents him from earning his normal wages, but is a drain on his meagre financial resources by way of additional expenditure on food, nursing and visits to the medical centre etc.

9. It has not been disputed before us that the "region-cum-industry" basis is suitable in cases like the present for examining any controversy regarding the workman's demand for additional benefits, but it has been argued by the learned counsel for the appellants that the award of the benefit of sick leave to the workers of the two Companies could not be justified on that basis. We find that the Tribunal has examined this aspect of the controversy also, and we have no reason to disagree with the view which it has taken. As has been stated, the Act came into force in the region concerned on December 14, 1969, and it has not been disputed before us that till then it was the practice in the glass industries to grant sick leave with wages for periods varying from 6 to 10 days. In fact in the case of the Alembic Glass Industries Ltd., Baroda, the Tribunal made an award for 7 days sick leave on full pay and dearness allowance in 1958, subject to the conditions that the benefit would cease to apply when the benefits of the Act became available to the workmen. The benefit of sick leave was therefore lost when the Act was made applicable to the region from December 14, 1969. That was obviously under a mistaken impression of the sickness benefit which the Act allowed for, as has been shown, it does not deal with all aspects of the demand for sickness benefit and does not, at any rate, provide for the grant of leave on full emoluments during the period of the workmen's physical incapacity to earn his normal wages because of his sickness. It therefore appears that the Tribunal could not be said to have erred in restoring the benefit which the workmen were receiving under the award of 1958, for it was taken away under the mistaken impression that it had been adequately replaced by the new provisions on the coming into force of the Act.

8. From this decision of the Supreme Court it is quite clear that the Employees' State Insurance Act does not cover all contingencies of sickness and the Act does not deal with the question of sickness leave. Sickness is a serious misfortune to a workman for it not only prevents him from earning his normal wages, but is a drain on his meagre financial resources by way of additional expenditure on food, nursing and visits to the medical centre etc. Therefore, the Supreme Court found that the demand made by the employees for sick leave over and above the benefits arising out of the Employees' State Insurance Act was perfectly justified. It appears that in the case of Alembic Glass Industries also there was an earlier award in the field under which the workman was entitled to get seven days sick leave on full pay and dearness allowance. This award was passed in the year 1958 and it was also specifically provided therein that it was subject to the condition that the said benefit would cease to apply when the benefits of the Act became available to the workmen. In view of this clause in the award, the benefit of sick leave was treated as lost when the Act was made applicable to the concerned region from December 14, 1969. The Supreme Court observed that this was obviously done on mistaken impression of the sickness benefits which the Act allowed for. It further observed that such a leave could not also be categorised as privilege leave because by its very nature it would be admissible only in the case of actual sickness certified by a registered medical practitioner. Therefore, in these two decisions viz. Alembic Glass Industries v. Workmen and The Hindustan Times Ltd., New Delhi v. Their workmen, it has been laid down by the Supreme Court that the benefits which the workman is entitled to get under the Employees' State Insurance Act are not similar to those which are granted under the award viz. the sick leave with wages on production of medical certificate. In the present case also under the clerks' award the respondent workman was entitled to get one month's sick leave in each year of service, subject to maximum of twelve months sick leave. As the respondent workman has put in about twenty-two years of continuous service, obviously he was entitled to sick leave for the whole period viz. from March 14, 1969 to January 16, 1970, which comes to about ten months. The benefit conferred upon the workman under the clerks' award could not be equated with the benefit which he was deriving under the provisions of the Employees' State Insurance Act. It is further clear that in providing for periodical payments to an insured worker, in case of sickness (sickness benefit) or for medical treatment or attendance to him or the members of his family, the Legislature did not intend to substitute any of these benefits for workmen's right to get leave with pay on the grounds of sickness. In these circumstances, in our opinion, the benefits granted under the clerks' award are not similar to those admissible under the Employees' State Insurance Act. If the law laid down by the Supreme Court in Hindustan Times Ltd. v. Their workmen or in Technological Institute of Textiles v. Its workmen and ultimately in the case of Alembic Glass Industries v. Workmen, is read in this context, in our opinion, the learned Presiding Officer, Fourth Labour Court, was right in coming to the conclusion that the view taken by the Full Bench of the Industrial Tribunal was no more good law.

9. However, it was contended by Shri Srikrishna the learned counsel appearing for the petitioner that in these decisions the Supreme Court has not considered the scope of Section 72 of the Employees' State Insurance Act, 1948 read with reg. 97. He further contended that these provisions were not brought to the notice of the Supreme Court. According to him, Section 72 read with reg. 97 confers a right upon the employer to discontinue or reduce the benefits payable to his employees; and the benefits that the workman was getting under the award were similar to the benefits conferred by the Employees' State Insurance Act. Therefore, according to the learned counsel the said decisions of the Supreme Court are either distinguishable or are not binding upon us. It is not possible to accept this contention of Shri Srikrishna. As a matter of fact in Hindustan Times Ltd.'s case itself the Supreme Court has considered various provisions of the Act, such as Sections 46, 47, 48 and 49 coupled with the whole scheme of the Act. Again in Alembic Glass Industries case the Supreme Court has considered practically the whole scheme of the Act and the nature of the benefits conferred upon the employees under the said Act.

10. The decision of the Supreme Court which is binding upon us cannot be ignored on the ground that the relevant provisions of the Act were not brought to the notice of the Supreme Court. In the said case, the Supreme Court had occasion to consider the scope and meaning of phrase "similar benefits provided by the Act", as used in Section 61 of the Act. In reg. 97 also, the words used are "similar to the benefits conferred by the Act". In view of the provisions of Section 97(3) this regulation will have the effect as if enactment in the Act. Therefore, the phraseology used in Section 61 as well as Section 72 and reg. 97 being similar, will have to be given the same meaning.

11. This being a beneficial piece of legislation, if there is any doubt or the language used is susceptible of two interpretations, we should prefer that which enlarges the protection of the right of the employees rather than which restricts it. The Employees' State Insurance Act is a piece of social legislation intended to confer certain benefits upon the worker and therefore, should receive liberal and beneficial construction. The scheme envisaged by the Act is one of compulsory State Insurance, providing for certain benefits to the employees in the event of sickness etc. Under our Constitution, the State is expressly directed to endeavour to secure not only bare physical subsistence but something more so as to ensure a decent standard of life for employees. It is well-settled that a construction which will lead to manifest contradiction of the apparent purpose of the Act, or which will result in some inconvenience, hardship or injustice, presumably not intended, should not be normally accepted. In all fairness, the Court should not so construe the provision of the Act so as to attribute an intention to the legislation to give with one hand and take away with another. As observed by the Supreme Court in *K.C.P.E. Asson., Madras v. K.C.P. Ltd.* A.I.R.[1978] S.C. 474 in Industrial Law, interpreted and applied in the perspective of Part IV of the Constitution, the benefit of reasonable doubt on the law and facts, if there be such doubt, must go to the weaker section, labour. Further it is well-settled that

the subordinate legislation, such as rules or regulations cannot be said to be valid unless it is within the scope of the rule making power provided by the Statute itself. Rules or regulations framed under the Employees' State Insurance Act cannot travel beyond the power conferred upon the Corporation to frame regulations. Therefore, reg. 97 will have to be read with Section 97 of the Act itself. The Corporation is authorised to frame regulations, obviously, which are not inconsistent with the provisions of the Act and the rules made thereunder. Once it is held that the benefits conferred by the clerks' award were not similar to those conferred by the Employees' State Insurance Act, then in our opinion, reg. 97 cannot take away the said benefit. To such a case reg. 97 is not applicable at all. Regulation 97 itself contemplates that the employer may discontinue or reduce benefits payable to his employees under the conditions of their service which are similar to the benefits conferred by the Act itself. If the benefits conferred by the clerks' award were not similar to the benefits conferred by the Act then obviously there was no scope for their discontinuation or reduction. In our opinion, as already observed the benefits conferred by the clerks' award were different in nature than the benefits conferred by the provisions of the Act and therefore could not be termed as similar. In this view of the matter it is not possible to accept the contention of Shri Srikrishna.

12. It is not disputed before us that even after coming into force of the Act the employees can make a demand for sick leave with wages. The workmen's right to get leave with pay on the ground of sickness is not taken away by this legislation. However, according to the learned counsel, this will not apply to earlier awards and the rights conferred by earlier awards are governed by reg. 97 of the regulations. It is not possible for us to put up such an absurd and artificial construction upon the provisions of Section 72 read with reg. 97. As observed by the Supreme Court in the *Alembic Glass Industries v. Workmen*, this whole argument is based on a mistaken impression of the sickness benefits which the Act allows for. If the making of fresh demand for sick leave with wages over and above the benefits conferred by the Act is not prohibited by the Act, and if such a benefit which is conferred by an award in industrial adjudication subsequently is not governed by reg. 97, then in our opinion, the reg. 97 will not apply even to the earlier awards granting sick leave with wages because the Act in fact does not deal with the question of sick leave with wages at all.

13. In the result, therefore, the petition fails. Rule is discharged. However, in the circumstances of the case, there shall be no order as to costs.

14. We are informed that the petitioner has deposited the amount granted by the Labour Court in this Court. In the view which we have taken the respondent No. 1, employee, is entitled to withdraw the said amount. Therefore, the amount deposited in this Court be paid to the respondent-employee. At this stage, Shri Srikrishna has orally prayed for leave to file an appeal before the Supreme Court. In view of the law laid down by the Supreme Court in the aforesaid decisions, in our opinion, this is not a fit case, wherein such a leave should be granted. Hence

leave refused.