

(1953) 04 BOM CK 0009
In the Bombay High Court

The Indian Hume Pipe Company Ltd.

APPELLANT

Vs

Pandurang Sadashvi Pandit and Another

RESPONDENT

Date of Decision : 02-04-1953

Acts Referred:

Citation : (1953) 1 LLJ 471

Hon'ble Judges : Chagla, C.J.;Dixit, J

Bench : Division Bench

Judgement

Chagla, C.J.—The Government of Bombay referred certain disputes between the appellant company and its workers for adjudication by the industrial tribunal and the order of reference was made on 13 May 1950. The industrial tribunal gave its award on 13 August 1951 and the only portion of the award with which we are concerned in this appeal is with regard to leave which the workers enjoyed. It appears that the appellant company gave 15 days" casual leave which included sick leave with full pay to its workers, but it did not permit the workers to accumulate any leave, In other words, at the end of the year, if the whole of the leave was not enjoyed, what was not enjoyed lapsed. The adjudicator in his award converted these 15 days of casual leave to 15 days of casual-cum-sick leave and he allowed the workers to accumulate this leave for a period not exceeding 30 days. The appellant company appealed to the Labour Appellate Tribunal and the Labour Appellate Tribunal varied the award made by the industrial tribunal and directed that the workers should enjoy 7 days" casual leave and 8 days" sick leave and only the 8 days of sick leave may be accumulated for a period of 20 days. Thereupon the petitioner filed this petition and contended that in modifying the award of the industrial tribunal, the Appellate Tribunal has acted without jurisdiction. The petition came before Mr. Justice Tendolkar and he upheld the contention of the petitioner and ordered that the order of the Appellate Tribunal should be set aside to the extent that it modified the award made by the industrial tribunal with regard to leave. The appellant company has now come in appeal.

2. Now, the jurisdiction that the Appellate Tribunal enjoys is a limited jurisdiction and the ambit and scope of that jurisdiction is to be found in Section 7 of Act XLVIII of 1950. This section provides:

Subject to the provisions of this section, an appeal shall lie to the Appellate Tribunal from any award or decision of an industrial tribunal if;

(a) the appeal involves any substantial question of law, or

(b) the award or decision is in respect of any of the following matters.

Then various matters are set out and among them the question of leave is not one. Thereafter it is common ground that the Appellate Tribunal could only exercise jurisdiction in respect of the decision of the industrial tribunal on the question of leave provided that decision involved a substantial question of law. There can be no doubt that the existence of a substantial question of law is a condition precedent to the exercise of the jurisdiction of the Appellate Tribunal in respect of matters not covered by Section 7(1)(b). The scheme of Section 7 is clear that in matters which are not enumerated in Sub-clause (b) the legislature intended that the decision of the industrial tribunal should be final. That finality was only to be affected if the decision involved a substantial question of law. Therefore, unless there is a substantial question of law involved in matters not dealt with in Sub-clause (b), the Appellate Tribunal would have no jurisdiction at all. Therefore the question whether there is a substantial question of law or not being a juridical fact or a collateral fact, if the Appellate Tribunal wrongly decides in a particular case that a matter involves a substantial question of law, the decision of the Appellate Tribunal would not be final but would be subject to correction by this Court.

3. Mr. Palkhiwala has argued with considerable force that a substantial question of law is not an objective fact which can be determined or demonstrated, and that a substantial question of law in its very nature involves a subjective determination. Now, whether there is a question of law or not may easily be determined, but when the legislature adds an adjectival qualification to the question of law, the qualification must in its very nature be determined by a mental process. What is substantial and what is not substantial is a matter of quality affecting the object, and quality may differ in degrees. One tribunal may take the view that a particular question of law is substantial, another tribunal may take the view that the question is not substantial, and we think on the whole Mr. Palkhiwala is right that if the Appellate Tribunal were to take the view that a particular question of law which comes up before it is a substantial question of law, the High Court should be reluctant to take a different view on that question. It is not as if the High Court has no jurisdiction to interfere with the decision of the Appellate Tribunal that a particular question is a substantial question of law, but unless the decision of the Appellate Tribunal is arbitrary or capricious or unreasonable or one which no tribunal can possibly take, the High Court undoubtedly possessing the jurisdiction would be reluctant to exercise that

jurisdiction and come to a contrary decision to the one arrived at by the Appellate Tribunal. But the position would be different if the High Court was satisfied that no question of law was involved in a matter which the Appellate Tribunal dealt with, and in our opinion, as we shall presently point out, we have here a case not of a question of law which may or may not be substantial, but we have a case here where in our opinion no question of law at all arises.

4. Now, we have ourselves a clear indication from the judgment of the Appellate Tribunal as to what is in their opinion the substantial question of law which conferred jurisdiction upon them, and this is how the substantial question of law is enunciated. "This matter does involve a substantial question of law in that casual leave which is essentially non-cumulative has been allowed to be accumulated." As the learned Judge below has pointed out, it is now a well-settled principle of industrial law that casual leave cannot be accumulated. We should have thought apart from its being a well-settled principle of industrial law, that it is obvious and elementary that the very nature of casual leave cannot permit it to be accumulated. Therefore according to the Appellate Tribunal, the industrial tribunal has failed to apply a well-established principle of law or has departed from a well-settled principle of law. The Appellate Tribunal would be perfectly justified in interfering with the lower tribunal if that tribunal either failed to apply a well-settled principle of law or being conscious of the well-settled principle of law applied it erroneously or departed from it consciously. In other words, if we had found in this case that the industrial tribunal had given an award by which it had permitted the workers to accumulate casual leave, then it would have been guilty of violating a principle of law which was well settled and accepted. But now let us try and find out what the industrial tribunal has done. The industrial tribunal has not permitted the workers to accumulate casual leave. It has permitted the workers to accumulate casual-cum-sick leave, and we have asked Mr. Palkhiwala to draw our attention to any principle, well settled or otherwise, of industrial law which does not permit casual-cum-sick leave to be accumulated. Therefore in permitting the workers to accumulate this type of leave, the industrial tribunal has not violated any principle of law. Mr. Palkhiwala says that if there is no principle of law with regard to casual-cum-sick leave, it would be for the Appellate Tribunal to lay down the principle which would guide the tribunals all over the country and Mr. Palkhiwala emphasises the fact that the very reason for setting up the Appellate Tribunal was to achieve uniformity in industrial decisions. In the first place, we have looked in vain, with respect to the industrial tribunal, to find what is the principle which the Appellate Tribunal has laid down which according to Mr. Palkhiwala would be of great assistance and guidance to all the subordinate tribunals in the land. Again, turning to the judgment of the Appellate Tribunal we find that in the first place they pose the substantial question of law which really does not arise from the decision of the industrial tribunal at all because the industrial tribunal, as already pointed out, has not allowed casual leave to be accumulated, and having erroneously posed what the Appellate Tribunal thought was a substantial question of law they

merely proceeded to direct that leave should be enjoyed by the workers otherwise than as directed by the industrial tribunal. Now, Mr. Palkhiwala is entirely in error when he suggests that it is for the Appellate Tribunal to lay down what should be the governing principle with regard to casual-cum-sick leave. The legislature has chosen we ware say, for good reasons to give finality, as already pointed out, to certain decisions of the industrial tribunal, and If the industrial tribunal without failing to apply any principle of law and without violating any principle of law, chooses to decide that the worker of a particular industry should enjoy casual-cum-sick leave for a particular duration and should be allowed to accumulate that leave up to a particular number of days, that decision is a decision with regard to a subject-matter which is solely within the competence of the industrial tribunal and which is wholly outside the competence of the Appellate Tribunal. We must not overlook the important fact that certain subject-matters are not within the jurisdiction of the Appellate Tribunal and one of them is the subject-matter of leave. If the industrial tribunal deals with that subject-matter, it has jurisdiction to deal with it and it has the sole authority to deal with it. No appeal lies from that decision to the Appellate Tribunal and the Appellate Tribunal cannot interfere with the award given by the industrial tribunal. It is no use saying that the industrial tribunal was deciding for the first time something which falls within the subject-matter within its competence. What Mr. Palkhiwala chooses to call "laying down a principle" is nothing more and nothing less " than the interference by the Appellate Tribunal with a subject-matter which is not within its competence. It is difficult to understand what possible question of law can arise, leave aside a substantial question of law, when a tribunal with jurisdiction decides that with regard to a particular kind of leave accumulation should be permitted when in so deciding it does not, as already pointed out, depart from or fail to give effect to any well settled principle of law, and if from such a decision the Appellate Tribunal is allowed to interfere ,the Appellate Tribunal would be interfering with a decision relating to a subject matter which is not within its competence.

5. Therefore, whatever view we might have taken of the matter if we were satisfied that a question of law was involved in the decision of the industrial tribunal, inasmuch as we are of the opinion that in deciding what the industrial tribunal decided no question of law arose, it is clear that the Appellate Tribunal in interfering with and modifying the award passed by the industrial tribunal has assumed jurisdiction which it did not possess. In our opinion, therefore the learned Judge below was right in the conclusion what he came to.

6. The result is that the appeal fails and must be dismissed with costs.