
(1972) 01 MAD CK 0033
In the Madras High Court

The Manager, Rousdon Mullai Estate

APPELLANT

Vs

V. Vasu Nair and Another

RESPONDENT

Date of Decision : 24-01-1972

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (1972) 85 LW 520 : (1972) 2 MLJ 143

Hon'ble Judges : T. Ramaprasada Rao, J

Bench : Division Bench

Judgement

T. Ramaprasada Rao, J.—The first respondent was an employee in the Rousdon Mullai Estate, which is a plantation estate. He retired from service on 31st March 1966, and the case of the petitioner is that his services were extended ad hoc and not on a regular basis, from 1st April, 1966 to end with 31st March 1967. After completing such a year of ad hoc service, the first respondent claimed that he was entitled to a month's leave for such service rendered by him during 1966-67 and on refusal of such leave by the management, he approached the Labour Court u/s 33-C(2) of the Industrial Disputes Act for monetary computation of his alleged benefit of leave which was wrongfully refused by the management. The Labour Court finds that the refusal was wrongful and there is no challenge as against this finding of fact. But the Labour Court went further and was of the view that as such earned benefit was not availed of by the first respondent, the first respondent would be entitled to a money equivalent thereto and in this view and purporting to act under Standing Order No. 7 of the Standing Orders of the Management granted a month's pay as such compensation to the first respondent. It is as against this, the present writ petition has been filed.

2. It is fairly conceded that under the Standing Orders, there is no specific provision whereby an employee of the petitioner would automatically be entitled to be paid the money equivalent of the benefit of earned leave or privilege leave, if such leave was not availed of by such employee. Standing Order No. 7 does

not refer to such encashment of privilege leave or earned leave under any circumstance and much less a situation which has arisen in the instant case. The petitioner therefore says that unless there is a provision in the Standing Orders which compels the management to pay the money equivalent of the benefit of privilege leave or earned leave, the direction of the Labour Court to pay such money u/s 33-C(2) of the Industrial Disputes Act is illegal and without jurisdiction. The learned Counsel for the first respondent, however, would state that the Labour Court having found such an entitlement in favour of the first respondent, such a finding, though flowing from an interpretation of Standing Order No. 7 of the petitioner-company, cannot be lightly disturbed by this Court in exercise of its jurisdiction under Article 226 of the Constitution.

It is no doubt true that rules are not issued to disturb the findings of facts or conclusions arrived at by judicial Tribunals while applying the correct position of law. There may be exceptions even to this rule. If the finding of fact is based on no material and prima facie perverse, then it is susceptible of interference. Even so, if the conclusion on law is without jurisdiction and if such a decision is based on a patent misinterpretation of law, then also this Court can interfere under Article 226 of the Constitution.

3. In the instant case, no doubt leave was refused. Standing Order No. 7 provides that the privilege leave of 30 days for every n months of service is non-accumulative except when it is refused on grounds of exigencies of work in the estate. This poses an entirely different situation with which we are not concerned in the instant case. The first respondent who was asked to serve after and beyond 31st March, 1966, on an ad hoc basis for a period of one year did not obviously avail himself of his leave (assuming that he had that privilege leave) during the period of the year of service, but after completing the same, he claimed such a benefit in himself. This was refused and he filed an application u/s 33-C(2) of the Industrial Disputes Act, as if such a benefit was computable in terms of money. The Bombay High Court in *The Bombay Gas Co. Ltd. Vs. R.N. Kulkarni and Another*, and later the Supreme Court in *U.P. Electric Supply Co. Ltd. Vs. R.K. Shukla and Another*, etc., have made the position clear that in cases where a privilege which is gained or earned by an employee is to be encashed or converted into money, the standing orders governing the employee and the employer should expressly provide for the same or in the alternative there should be a law of the land which should govern the position. Neither is the case here. As already stated by me, no Standing Order has been brought to my notice which compels the petitioner to allow encashment of the alleged accumulated privilege leave and respect the demand of the first respondent. In the absence of any such provision in the Standing Orders, I am unable to accept the view taken by the Labour Court that the first respondent Would be entitled to such conversion of his alleged benefit, earned by him during his ad hoc service with the employer. The conclusion arrived at by the Labour Court is one which is against the accepted principle laid down by the Supreme Court and the Labour Court had no jurisdiction to hold that such a conversion of the benefit into money

was possible, when there was no provision in the Standing Order to do so. In this view, though the finding which is bordering on fact may not be perverse, yet the conclusion is not warranted because it is not supported by the terms of engagement between the employee and the employer. The writ petition is therefore allowed. There will be no order as to costs.

4. The first respondent is at liberty to approach the petitioner and seek for an ex gratia payment, if he so desires.