

(1963) 12 MAD CK 0024
In the Madras High Court

The Secretary, Tiruchengode Mill Workers' Union	APPELLANT
Vs	
The Industrial Tribunal and Another	RESPONDENT

Date of Decision : 11-12-1963

Acts Referred:

Factories Act, 1948 — Section 49B(1)
Industrial Disputes Act, 1947 — Section 2(eee)
National and Festival Holidays Act, 1958 — Section 3

Citation : (1964) 1 MLJ 320

Hon'ble Judges : K. Srinivasan, J

Bench : Division Bench

Judgement

K. Srinivasan, J.—The Industrial Tribunal, Madras, adjudicated a dispute that was referred to it. The question it had to consider was

whether the deduction of two days wages of the employees--members of the Tiruchengode Mill Workers "Union, Tiruchengode, on the nth and

12th June, 1960, by the Management, is justified and to what relief they are entitled. The payment of wages for these two days is covered by the

National and Festival Holidays Act, 1958, and it is not denied that but for certain features wages would have to be paid for these two holidays.

What happened was that on the 24th of May, 1960, there was a strike of all the workers. This was claimed by the Management to be an illegal

strike, because no proper notice had been given to the Management before the strike and also because the dispute which led to the strike was

pending before the Tribunal. The strike was accordingly held by the Tribunal to be an illegal strike. The Tribunal further held that according to

Proviso to Section 5 of the Act mentioned, the employee should have had a period of thirty days" continuous service immediately preceding the

holiday in respect of which he is entitled to the wages. In the present case, by the intervention of the strike, the continuity of service became

disrupted. The Tribunal adopted the substance of the definition of the expression "continuous service" appearing in Section 2(eee) in the Industrial

Disputes Act. It held that these workers had therefore not completed a period of thirty days of continuous service immediately before the festival in

question. It was however stated by the Tribunal that as a gesture of goodwill the Management had agreed to pay wages for one of these days. The

award was that the Management should pay the wages for one of these holidays and could withhold the wages for the other holiday.

2. It is this order of the Tribunal that is impugned in this proceeding under Article 226 by the Workers' Union. It is claimed that there is an error of

law in that the relevant provision of the National and Festival Holidays Act has not been correctly interpreted by the Tribunal.

3. Section 3 of the National and Festival Holidays Act, Madras Act XXXIII of 1958, provides that every employee shall be allowed in each

calendar year holiday of one whole day on the 26th of January and the 15th of August and five other holidays each of one whole day for such

festivals as the Inspector may in consultation with the employer and the employees specify in respect of any industrial establishment ; that is to say,

in addition to the two days specified which the Act itself declares to be holidays, the employer and the employees may agree to have five other

holidays. Section 5(1) states that every employee shall be paid wages for each of the holidays allowed to him u/s 3. Sub-section (2) of this section

gives an option to the employee to be paid wages in a particular way if he works on any holiday allowed u/s 3. Sub-section (3) stated that not with

standing Sub-sections (1) and (2), an employee who is paid wages by the day or at piece rates shall be entitled to be paid wages for any holiday in

the manner prescribed there in. There is a Proviso which states:

Provided that no such employee shall be entitled to be paid any wages for any of the holidays allowed under Sub-section (3) other than the 26th

January, and 15th August if he has not completed a period of thirty days continuous service immediately preceding such holiday.

It is this Proviso that calls for interpretation. The Explanation to this section states that a weekly or any other holiday or authorised leave availed of

by an employee shall be included in computing the thirty days mentioned therein.

4. It may be mentioned that this Proviso was amended to read thus by Act XLIII of 1961:

Provided that no such employee shall be entitled to be paid any wages for any of the holidays allowed u/s 3 other than the 26th of January and the

15th August, unless he has been in the service under the employer for a total period of thirty days within a continuous period of ninety day

immediately preceding such holiday.

5. On behalf of the Management it has been contended that where an illegal strike has intervened, the period of continuous service is broken and

reliance was placed in this regard upon the definition contained in the Industrial Disputes Act. For the petitioner, it is urged that the definition in the

Industrial Disputes Act cannot govern and that even an illegal strike does not break up the continuity of service. Support was sought from the

decision of the Supreme Court in Jeewanlal (1929) Ltd., Calcutta Vs. Its Workmen, . In that case, the expression " continuous service " had to be

interpreted. But that expression had been used in a gratuity scheme framed under an award. It was not defined in the scheme itself. The question

was whether an unauthorised absence from duty for about 8 1/4 months caused a break in service for the purposes of calculating the qualifying

period. The relevant part of the gratuity scheme provided that an employee would be entitled to gratuity on voluntary retirement or resignation after

fifteen years of continuous service. The Management contended that there was a break in his service by reason of the unauthorised absence and

that therefore the length of continuous service was not established. Their Lordships observed that the definition contained in Section 2(eee) of the

Industrial Disputes. Act is no doubt relevant:

But its operation cannot be automatically extended in dealing with an interpretation of the words "continuous service" in an award made in an

industrial dispute unless the context in which the expression is used in the award justified it. In other words, the expression" continuous service"

may be statutorily defined, in which case the definition will prevail. An award using the said expression might itself give the definition of that

expression and that will bind the parties in dealing with the claims arising from the-award. Where however the award does not explain the said

expression and statutory definitions contained in other Acts are of no material assistance, it would be necessary to examine the question on principle....

Proceeding further, their Lordships point out that continuous service in the context of the scheme postulated the continuance of the relationship of master and servant. They observe that if the servant resigns his employment or if the employer terminates the service of the employee, the continuity of service comes to an end. The continuity could also be disrupted by operation of law. But they state that it is difficult to hold that merely because an employee is absent without obtaining leave that itself would bring to an end the continuity of service. Similarly, the participation in an illegal strike which may incur the punishment of dismissal may not by itself bring to an end the relationship of master and servant. It may be a good cause for termination of service.... But mere participation in an illegal strike cannot be said to cause a breach in continuity for purposes of gratuity scheme. It is argued by Mr. K.V. Sankaran, learned Counsel for the petitioner that applying the principle of this decision, it cannot be said that participation in the illegal strike has caused a break in the service in the present case as well, for the reason that the relationship of master and servant has not ceased to exist.

6. The matter is certainly not quite an easy one to decide. Mr. M.R. Narayanaswami, learned Counsel for the Management, referred to another decision of the Buckingham and Carnatic Co. Ltd. Vs. Workers of The Buckingham and Carnatic Co. Ltd., . In that case, there was an illegal strike. The question was whether by reason of that strike the workers lost their right to the benefit of the holidays they would have otherwise got under the leave rules of the mill. The question arose u/s 49-B(1) of the Factories Act. The Industrial Tribunal to whom the disputes had been referred held that the continuity of service was broken by the interruption caused by the illegal strike and that as a consequence the workers who had participated in such a strike were not entitled to the annual holidays with pay. On appeal, the Labour Appellate Tribunal was of the view that the strike did not cause any interruption in the workers' service and it was ordered that holidays at full rates should be given to the workers. The management appealed and contended before the Supreme Court that continuity

of service was broken by the interruption caused by the illegal strike and that the workers were not entitled to annual holidays u/s 49-B(1), inasmuch as they would not have completed the period of twelve months continuous service in the factory and that the non permitted absence as a result of the concerted refusal to work even for two to four hours in the course of a working day amounts to an illegal strike and consequently an interruption of service of the workers. This contention was accepted by their Lordships. It may be mentioned that Section 49-B of the Factories Act provided for holidays with pay if the worker had completed a period of twelve months continuous service in a factory. The Explanation to that section allowed the taking into account of sickness or other leave periods, but excluded any strike which was an illegal strike. The principle underlying the relevant sections which their Lordships had to construe are almost similar to the provisions of the Festivals and Holidays Act now in question. Their Lordships took the view that this interruption by the illegal strike caused a breach in the continuity of service or the continuous service that was required.

7. It seems to me that the principle of this decision must apply under the circumstances of the present case. If a strike was illegal under the law, notwithstanding that a disciplinary action could be taken against the workers for that reason and that the relationship of master and servant still continued to subsist, in the context of the special enactment, I am inclined to take the view that it did break up the continuous service that was required. In that view, I can see no error of law in the order of the Tribunal.

8. The petition fails and is dismissed. There will be no order as to costs.