(1977) 01 MAD CK 0036

In the Madras High Court

Vasudevan, R.M.S. Union — APPELLANT

Vs

Lotus Mills Ltd. and Another — RESPONDENT

Date of Decision : 11-01-1977

Acts Referred:

Tamil Nadu Industrial Establishments (National and Festival Holidays) Act, 1958 — Section 5(1)

Citation : (1977) 2 LLJ 483

Hon'ble Judges : Koshal, J

Bench : Single Bench

Judgement

Koshal, J.—Vasudevan, the petitioner before me is in employee of the Lotus Mills Limited, Podanur (hereinafter referred to as the mills) which is a manufacturing concern. The employees of the mills were on strike for the period from 1st January, 1966 to 3rd of February. 1966. During that period they had two holidays, viz., the 15th day of January, and 26th of January. The petitioner claimed wages for the two holidays in spite of the fact that he had been on strike, in accordance with the provisions of Sub-section(1) of Section 5 of the Tamilnadu Industrial Establishments (National and Festival Holidays) Act, 1958 (hereinafter referred to as the Act) by means of an application filed before the Additional Commissioner for Workmen''s Compensation, Coimbatore who dismissed the same on the ground that wages are payable under the Act only for holidays on which an employee was willing to work a condition which the petitioner did not fulfil by reason of the fact that he was on strike as stated above.

The order passed by the Additional Commissioner for Workmen''s Compensation, Coimbatore, is dated 29th February, 1958, and it is that order by which the petitioner is aggrieved and which he seeks to have quashed through a writ of certiorari.

2. The provisions of Section 3 and Sub-sections (1) and (2) of Section 5 of the Act may be reproduced herein under with advantage:

3. Every employee shall be allowed in each calendar year a holiday of one whole day on the 26th January, the first May, the 15th August and 2nd October, and five other holidays each of one whole day for such festivals as the Inspector may in consultation with the employer and employees, specify in respect of any industrial establishment.

5. (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. (a) Notwithstanding anything contained in Section 3 any employee may be required by the employer to work on any holiday allowed under that section if the employer has not less than twenty-four hours before such holiday:

(i) served in the prescribed manner on the employee a notice in writing requiring him to work as aforesaid; and

(ii) send to the Inspector having jurisdiction over the area in which the Industrial establishment is situated and displayed in the premises of the industrial establishment a copy of such notice.

(b) Where an employee works on any holiday allowed u/s 3, he shall, at his option be entitled to:

(i) twice the of wages:

(ii) wages for such day and to avail himself of a substituted holiday with wages (on one of the three days immediately before or after the day on which he so works).

It would be seen that while the provisions of Section 3 are made subject to those of Sub-section (2) of Section 5, Sub-section (1) of the section last mentioned is absolute and unconditional in terms. Once it is shown that a particular date has been specified as a holiday u/s 3 of the Act, every employee becomes entitled to wages therefor. Sub-section (1) of Section 5 does not say in so many words that wages shall be payable for holidays only in the case of an employee who is willing to work on such holiday.

3. On behalf of the mills two contentions have been raised:

(a) Sub-section (2) of Section 5 gives the employer a right to require his employees to work on a holiday which means that if an employee is not so willing to work, he would not be entitled to wages for the holiday.

(b) ''Wages'' is defined in Clause (g) of Section 2 of the Act thus:

"Wages" means all remuneration on payable of being expressed in terms of money which would if the terms of employment express or implied, were fulfilled, be payable to an employee in respect of his employment or of the work done by him in such employment, and includes -

(i) such allowances (including dearness allowance) as the employee is for the time being entitled to;

(ii) the value of any house accommodation; or of supply of light, water, medical attendance or other amenity of any service or of any concessional supply of foodgrains or other articles....

According to this definition, wages become payable only on the terms of -employment being fulfilled and the provision of Sub-section (2) of Section 5 are part of such terms so that no wages can be due to a worker for a holiday on which he refuse or is unwilling to work in accordance with the provisions of Sub-section (2) of Section 5. Both these contentions appear to be attractive, but on a careful examination I find them to be without substance.

4. All that Sub-section (2) of Section 5 does is to give the employer a right to have work done from his employees on a holiday and in case he requires them to do so he has to pay wages at an enhanced rate. The sub-section goes no further and does not prescribe that if an employee is unwilling to work or does not honour the requisition of the employer, he would lose his ordinary wages for the holiday. Had the Legislature intended to make the wages pay able only if the employee was willing to work the language used in the opening part of Sub-section (2) of Section 5 would have been something like this:

Notwithstanding anything contained in Section 3 or in Sub-section (1) of this section, any employee....

In other words the Legislature would have in that case specifically stated that the payment of wages was contingent on willingness to work and it would not have left Sub-section (1) uncontrolled and unconditional.

5. The definition of "wages" as occurring in Clause (g) of Section 2 is also of no avail to the case of the mills. It does not lay down the conditions when wages shall be paid. It only states what wages are. According to it wages mean a particular type of remuneration, i.e., remuneration which fulfils the following conditions:

1. It must be able of being expressed in money.

2. Such money is to be calculated on the basis that the employee would become entitled to it if the terms of employment are fulfilled.

3. Such money is payable in respect of his employment or of work done by him in such employment.

The fact that the definition talks of the fulfilment of terms to employment or of work done would not make it a mandate for payment of wages only in respect of work done. The references to the fulfilment of the terms of employment and to the work done are merely incidental to the definition and have really nothing to do with the contingency when wages become payable. That contingency is the subject-matter of other sections of Act including Sections 3 and 5. In fact Sub-section (1) of Section 5 expressly states that wages shall be paid for holidays in spite of the contract of employment laying down a condition to the contrary what the Sub-section, therefore, clearly provides is that holidays, i.e., days on which an employee is given the right to stay away from work shall be paid holidays. As there is nothing incongruous in the situation created by the sub-section which appears to, provide for certain paid off days to the employee by reason of the mere fact of his holding that status, i.e., the status of an employee.

6. In the above view of the matter I find the impugned order to be unsustainable. Accepting the petition, therefore, I quash it. In the circumstances of the case, the parties are left to bear their own costs.