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Court : Mumbai

Decided On : Mar-29-1956

Reported in : (1956)IILLJ552Bom

Judge : Indrajit G Thakore, J.

Acts : Factories Act, 1943 - Sections 78; Industrial Disputes Act - Sections 2 and 33

Appeal No. : Reference (I.T.) No. 104 of 1956.

Appellant : Ramsing Bhimsing and 8 ors.

Respondent : Anil Starch Products Ltd.

Judgement :
Acts/Rules/Orders:

Factories Act, 1943 - Section 78; Industrial Disputes Act - Sections 2 and 33

AWARD

1. This is a complaint filed by one Ramsing Bhimsing and eight others. The complainants are members of the watch and ward staff. It is alleged that they were given one month's privilege leave in a year with wages including dearness allowance since 1940; that the management has reduced this fully paid privilege leave by 15 days as from 9 August, 1955; that this amounts to an alteration in the

conditions of service which affects them adversely and having been effected during the pendency of proceedings in reference (I.T.) No. 104 of 1955, without my permission, is illegal. The complainants have, therefore, prayed that the opponents be compelled to withdraw the change in the conditions of service by giving the watch and ward staff one month's fully paid privilege leave in each year. It is not denied that the members of the watch and ward staff of this concern were getting one month's privilege leave since 1940 as alleged. It is, however, stated that they were not getting weekly off and that one month's leave with wages was granted by way of compensatory holidays in lieu of weekly off. That later as other workers were getting all weekly offs and the benefits of the Factories Act leave with wages, and working hours, the watchmen were given fortnightly off and this compensatory leave to avoid dispute and by way of an amicable settlement in the works committee; that thereafter the watchmen claimed all benefits of the Factories Act, 1948, of eight hours' work and weekly off, etc.; that ultimately a settlement was reached on 1 August, 1953, granting them weekly offs; that in these circumstances they were no longer entitled to compensatory leave which was granted to them in lieu of weekly off and that the conciliator was therefore informed to this effect on 27 July 1955.

2. Sri Patwari, who appeared for the company, has submitted that this complaint does not lie as there has been no contravention of S. 33. It has been urged that the compensatory leave given was not 'a condition of service' within the meaning of S. 33(a) of the Industrial Disputes Act which could not be altered. Reliance has been placed on the following decisions :-

(1) Kanti Cotton Mills, Ltd., and its workmen 1953 II L.L.J. 260,

(2) Bank of India, Ltd., and their workmen 1953 II L.L.J. 372,

(3) H. N. Hemmady and four others and Glaxo Laboratories (India), Ltd. 1955 II L.L.J. 628, and

(4) R. K. Nathan and Bennett Coleman & Co., Ltd. 1955 I L.L.J. 636.

3. In the Bank of India, Ltd., and their workmen 1953 II L.L.J. 372 all that was held is that wrongful withholding of the amount of proper salary due is not an alteration of conditions of service within the meaning of S. 33 of the Act and therefore has no bearing on the present case. In the dispute between R. K. Nathan and Bennett Coleman & Co., Ltd. 1955 I L.L.J. 636, the complainant who was on an incremental scale of pay complained that his increments due on 1 July of the years 1951, 1952 and 1953, had been withheld. The Labour Appellate Tribunal left the question really open whether this would amount to a change in the conditions of service and whether the scale of pay is a condition of service within the meaning of S. 23, as they were not called upon to do so. They assumed for the purpose of that decision that it was a condition of service but came to the conclusion that there had been no alteration in that scale as they observed :

'All that has happened is that there is a difference of opinion between the company and the complainant as to the company's powers in respect of that scale of wages. According to the company in certain circumstances the company is entitled to withhold an increment; the complainant contests this. The matter is one which can be decided in the civil court.'

So also the decision in H. N. Hemmady and four others and Glaxo Laboratories (India), Ltd. 1955 I L.L.J. 628, has no bearing in the present case. It is true that in Kanti Cotton Mills, Ltd., and its workmen 1953 II L.L.J. 260 their lordships have observed :

'... We doubt if a question of dearness allowance could be regarded as one of the 'conditions of service' which is the expression used in S. 22 in contradistinction to the expression 'terms of employment' in S. 2(k) of the Industrial Disputes Act; the expression 'conditions of service' in S. 22 is a nearer approximation to the expression 'conditions of labour' in S. 2(k) of the Industrial Disputes Act.'

It is, however, obvious from the observations quoted above that their lordships only raised a query or doubt and did not intend in that matter to decide that question finally as they have immediately thereafter observed :

'Be that as it may, we are of the view that we should not decide this application relating to dearness allowance now that both the appeals have been determined.'

At the time their lordships' attention also does not seem to have been drawn to the earlier decision of the Labour Appellate Tribunal where it has been held that dearness allowance is a condition of service. Thus in General Assurance Society, Ltd., and General Assurance Society Employees' Association 1952 II L.L.J. 193 their lordships have observed as follows :

'... We think, however, that annual increments or the grade scales of pay, as they are called, are part of the conditions of service which cannot be changed or abrogated without permission of the tribunal.'

4. So also in the dispute between the Mottamal Raghavan and two others and Sri Subramania Weaving Establishment, Azhikode 1954 I L.L.J. 325, when a reduction in wages was made their lordships observed that it is true that there was a technical violation of S. 22 of the Act. In the dispute between D. V. Lonkar and Famous Cine Laboratories and Studios, Ltd. 1954 I L.L.J. 345, where the complainant was drawing a total emolument of Rs. 275 and the company during pendency of adjudication proceedings split it up into Rs. 240 basic and Rs. 35 as dearness allowance their lordships treated it as a contravention of S. 22 and entertained the complaint under S. 23. The privilege leave given to a worker would in these circumstances be a condition of service and any reduction thereof to the prejudice of the workmen in my opinion would be an alteration in the conditions of service prejudicial to the complainants.

5. I shall now deal with the question on merits, that is, whether company was justified in effecting this change. The only ground on which this leave of one month which was given since 1940, is sought to be reduced is that it was given as compensatory leave in lieu of weekly offs. There is however no evidence whatsoever either documentary or oral produced in support of this contention that this leave was given as compensatory leave in lieu of weekly offs or of the workers not getting any weekly holiday. The watchmen were not getting any weekly offs at all and they were given one month's leave. Thereafter, however, as a result of an amicable settlement in the works committee, the watchmen were being given one

off every fortnight. It this leave was given as and by way of compensatory holidays for weekly offs, there would have been a reduction on the introduction of this fortnightly off. But there has been no such reduction. A settlement was again reached on 1 August, 1953, before the conciliator granting watchmen all weekly offs. The terms of the settlement are in writing and it was signed before the conciliation officer. I have no doubt that if this leave was being given as compensatory leave in lieu of weekly off the company would have insisted at that time for a reduction of this compensatory leave. However whilst the company agreed that all watchmen and jamadars should be given weekly off it did not raise this question at all at the time of the agreement. Even after the agreement was entered into on 1 August, 1953, for a period nearly of two years till practically the end of July, 1955, the company continued to give this leave and did not raise the present contention. In the face of this it is difficult for me to accept the contention that one month's leave was given as compensatory leave in lieu of weekly holiday. A reduction therefore on the ground alleged is not justified.

6. A further question remains whether in view of the fact that the watchmen are now getting all the benefits of the Factories Act like other workers, it would not be fair that they should get any leave higher than what other workers are getting under the Factories Act.

7. Sri Daru has relied upon the decision of the Labour Appellate Tribunal in Lord Krishna Sugar Mills Workers' Union, Sahranpur v. Lord Krishna Sugar Mills, Ltd., Sahranpur 1963 L.A.C. 485 : 1952 II L.L.J. 791 and upon S. 78 of the Factories Act, 1943, Sub-section (1), which is as follows :

'The provisions of this chapter shall not operate to the prejudice of any right to which a worker may be entitled under any other law or under the terms of any award, agreement or contract of service.'

8. The company has not led any evidence before me to show what is the practice in this respect in other textile mills at Ahmedabad or in other factories at Ahmedabad or in the textile mills and other factories in Bombay. I do not like to express a final opinion on this question particularly when the matter has come before me only under S. 33A.

9. I am satisfied that there has been a change during the pendency of proceedings before me in service conditions to the prejudice of the complainants and on the ground alleged before me at any rate the said change was not justified. The company is, therefore, directed to restore the conditions pertaining to leave prevailing before the reference was made.