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Court : Madhya Pradesh

Decided On : Jan-16-1996

Reported in : [1996(73)FLR1651]; (1998)IIILLJ1049MP

Judge : D.P.S. Chauhan, J.

Acts : [Mines Act, 1952](#) - Sections 52

Appeal No. : W.P. No. 3056/1985

Appellant : Agarwal K.C. and ors.

Respondent : Western Coal Fields Ltd. and ors.

Advocate for Def. : V. Nusin, Adv.

Advocate for Pet/Ap. : A.K. Pandey, Adv.

Disposition : Petition allowed

Judgement :

ORDER

D.P.S. Chauhan, J.

1. The status of the petitioners is not disputed regarding their employment in the Western Coalfields Ltd. They are working in the school run by this Company. Their salaries are also paid by the Company.

2. The learned counsel for the petitioner submitted that by means of this petition, the petitioners are challenging the order dated September 12, 1985 (Annexure P. 1) and the order dated October 4, 1984 (Annexure P.2).

3. Return has been filed but in the return no specific cause has been shown. Regarding the arguments advanced by the learned counsel for the petitioner, the submission of the learned counsel for the respondents is that so far Section 52 of the [Mines Act, 1952](#) is concerned, it is applicable in the case of the petitioners. Sub-sections (1) and (2) of Section 52 are quoted below :

'52. Annual leave with wages, - (1) Every person employed in a mine who has completed a calendar year's service therein shall be allowed, during the subsequent calendar year, leave with wages, calculated.

(a) In the case of a person employed below ground at the rate of one day for every sixteen days of work performed by him, and

(b) in any other case, at the rate of one day for every twenty days of work performed by him.

(2) A calendar year's service referred to in Sub-section (1) shall be deemed to have been completed.

(a) in the case of a person employed below ground in a mine, if he has during the calendar year put in not less than one hundred and ninety attendances at the mine; and

(b) in the case of any other person, if he has during the calendar year, put in not less than two hundred and forty attendances at the mine.'

4. Thus, the criterion for earning earned leave for the teachers working in the schools run by the Company and the persons employed below the ground is that the persons employed below the ground have to complete 190 days and all others including teachers will have to complete 240 days attendance in a calendar year. Calendar year is defined in Section 51 which means the period of twelvemonths beginning with the first day of January in any year. In the case of any other person,

a calendar year's service shall be deemed to have been completed if he has during the calendar year put in not less than two hundred and forty days attendance at the mine. The proportion in which the leave is to be calculated would be at the rate of 1/20. i.e. at the rate of one day for every twenty days of work performed by him.

5. The learned counsel for the respondents submitted that since the institution/school in which the petitioners are working, on account of vacation, does not remain open for 240 days and as such, the teachers/petitioners are not entitled to L.T.C. and LLTC. The learned counsel has placed strong emphasis on Section 52 of the Act and has submitted that it is on that basis that the orders Annexures P.1 and P.2 have been issued.

6. When the respondents state that the petitioners are covered by Section 52 in the matter of their earned leave, then, such a device including vacation period would never make them entitled to earn sufficient leave, as they would never be able to complete 240 days, inasmuch as the school/institution in which they are working, itself does not remain open for 240 days. Thus, it would not be a proper interpretation of Section 52 of the Act. The teachers have not refused to work and they have not absented themselves from the work but it is the vacation which is provided by the respondents themselves and it is on account of the act of the respondent Company itself that the school remains closed during such vacation and for this reason, the petitioners have not been able to complete 240 days, because the vacation period is not to be included in 240 days of attendance.

7. The submission of the learned counsel for the petitioner is that the vacation period should be treated as the period of attendance,

8. If the submission as advanced by the learned counsel for the petitioner is accepted, then, Section 52 of the [Mines Act, 1952](#), which has been relied on by the learned counsel for the respondents, would be set at naught. When the person is not allowed to work for 240 days, how he can be deprived of the statutory benefit of earned leave. I am of the view that the vacation under these circumstances cannot be treated as the period of non-attendance for the teachers and the vacation period shall be calculated as the period of attendance and on that

basis, the earned leave of the teacher should be calculated.

9. In view of the above, the petition succeeds. Annexures P.1 and P.2 are quashed and the petitioners are entitled for earned leave as also L.T.C. and L.L.T.C. on completion of required period by including vacation period. In the facts and circumstances of the case, no orders as to costs. The security amount, if any deposited by the petitioners shall be refunded.

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