SUPREME COURT OF INDIA

Dalmia Cement (Bharat) Ltd. New Delhi

Vs.

Their Workmen

C.A.No.443 of 1958

(P. B. Gajendragadkar and K. C. Das Gupta, JJ.)

17.03.1960

JUDGEMENT

DAS GUPTA, J.:

The two disputes on which the reference out of which the present appeal has arisen was made were in these terms

1. Whether there has been any departure from the past practice by the Management in the matter of encashment of privilege leave and, if so, what directions are necessary in this respect ?

2. Whether leave facilities to subordinate staff should be granted on the same basis as other staff members and what directions are necessary in this respect ?

2. The workmen's contention was that since 1948 till shortly before the dispute arose the company had been encashing privilege leave standing to the credit of the workmen after keeping 30 days at the credit and this practice became by implication a part of the terms and conditions of service. The employer's case on this question of encashment was that this matter was dealt with by the company's Rule 45 under which encashment of privilege leave was permitted only "if privilege leave, which would lapse unless availed of, is refused due to urgent necessity of work, and if the company is unable to grant such lapsing privilege leave at any other time even on repeated fresh applications before the date of lapsing, an employee may be paid extra salary for that period of leave which lapses." It was further the company's contention that for some years from 1948 the company had as a matter of grace permitted encashment in other circumstances also in relaxation of Rule 45. But the concession was withdrawn in l956 and from that year when encashment was allowed it was made clear that it was not as a matter of right. On the question of leave the workers' case was that there was no reason for discrimination as between them and the clerical staff in the matter of leave and that they should also be granted 30 days as privilege leave. 12 days casual leave and 12 days sick leave as enjoyed by the clerical staff, On both these points the Tribunal's decision was in favour of the workmen. On the first question the Tribunal found :-

"that there has been a continued and uninterrupted practice ever since 1948 for encashment of privilege leave, as claimed by the workmen for the purposes mentioned in Ex. W/4, that such encashment of privilege leave has ripened into a condition of service that the management departed from such practice in 1957 without lawful reasons, and that the workmen are entitled to encashment of privilege leave provided the purposes for such encashment are purchase of bicycles, incurring of

expenditure on ceremonial occasions, expenditure on marriage, payment of insurance premia, payment of building loans, sickness of the employees and their dependents, additions and alterations in buildings purchase of lands, payment of private tuition fee; purchase of sewing machines, and for purposes of litigation in which employees may get involved."

3. On the question of leave the Tribunal held that there was no reason for discrimination between members of the clerical staff and the subordinate staff and the workmen belonging to the subordinate staff are also entitled to privilege, casual and sick leave in the same way as the clerical staff. Against these orders the employer has preferred this appeal.

4. The question whether encashment of leave was being allowed since 1948 in the manner as alleged is really a question of tact and we find nothing that would justify US in interfering with the decision of the Tribunal on a consideration of all the materials that there has been a continued and uninterrupted practice ever since 1948, of allowing encashment for certain purposes as set out in the award. There is first the oral testimony of A. L. Talwar, workmens' witness No. 1 that there was such a practice. The management was asked to produce the applications for encashment of leave and the orders passed thereon for the years to 1948 to 1957. The management did not produce the applications for the years 1948 to 1953 on the ground that it was difficult to trace them and produced documents only for the period 1954 to 1957. Ex. W-4 is the statement showing the summary of orders made on such applications for encashment of privilege leave during the years 1954, 1955 and 1956. It shows the number of applications for encashment which were allowed for different periods - 21 in 1954, 28 in 1955 and 30 in 1956. There is nothing to show that any application for encashment made for any of the periods set out in W-4 was ever refused during these years. In Ex. M-1 (W. W. 1) we have these several applications for encashment with the orders thereupon. The orders show that in all these cases encashment was permitted. The appellant relies on the fact that in several of these applications the workmen-respondents mentioned that the prayer was being made not as a matter of right but only as a request.

5. If this be an admission by the workmen that they had acquired no right to obtain such encashment of privilege leave it is abundantly clear that this admission was made under pressure as otherwise the encashment might not have been granted. It is reasonable to think "that during all this period from 1948 to 1955 no such statement that the prayer was being made not as of right appeared in any of the applications. If any such statement had appeared in a single application during those years the management would have produced that before the Tribunal. In this state of the evidence the Tribunal was right in its conclusion that there had been a continued and uninterrupted practice from 1948 for the encashment of privilege leave for the purposes mentioned in Ex W-4. In view of such long and continued practice the Tribunal was also right in holding that such encashment of privilege leave had ripened into a condition of service and when in 1957 the management refused some of such applications this was without lawful reasons. The Tribunal's award on the dispute as regards encashment of privilege leave is therefore correct.

6. As regards leave the position undoubtedly is that the clerical staff enjoys better leave facilities than the subordinate staff. The clerical staff gets 30 days privilege leave, 12 days sick leave and 12 days casual leave in a year. The subordinate staff was getting 15 days privilege leave and 12 days sick and casual leave in a year. The Tribunal has accepted the workmens' contention that this discrimination is unjustified. We have to consider however in this connection the provisions of S. 22 of Delhi Shops and Establishments Act, 1954. That section is in these words :-

'Leave- (1) Every person employed in an establishment shall be entitled :-

(a) after twelve months of continuous employment to privilege leave with full wages for a total of not less than fifteen days;

(b) in every year, to sickness or casual leave with wages for a total period not exceeding twelve days, provided that

(i) Privilege leave admissible under Cl. (a) may be accumulated;

Provided that where an employee has completed a continuous period of four months, he shall be enticed to not less than five days for every such completed period;

Provided further that a watchman or caretaker who has been in continuous employment for a period of one year shall be entitled to not less than thirty days of privilege leave.

2. If an employee entitled to leave under Cl. (a) of sub-s (1) of this section is discharged by his employer before he has been allowed the leave, or if, having applied for and having been refused the leave, he quits his employment before he has been allowed the leave, the employer shall pay him full wage for the period of leave due to him."

7. As regards privilege leave the section prescribes a minimum of 15 days. That does not stand in the way of the Tribunal's conclusion that they should get 30 days' leave as enjoyed by the clerks. We are unable to see anything that would justify our interference with the Tribunal's decision on this point.

8. As regards sick leave and casual leave however the position is that S 22 fixed a maximum of 12 days total leave for sickness or casual leave with full wages. We do not see how this peremptory direction of the Legislature can be disregarded by a Tribunal. The fact that clerks are allowed sick and casual leave more than maximum mentioned in S. 22 does not entitle the Tribunal to disregard these provisions. In our opinion the Tribunal has acted illegally in directing the grant of sick and casual leave more than the maximum fixed by S. 22.

9. We accordingly set aside the award in so far as it directs casual and sick leave more than this maximum i. e., a total of 12 days in a year.

10. The appeal is therefore allowed in part and the Tribunal's award modified as indicated above. There will be no order as to costs.

Appeal partly allowed.

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