Technological Institute of Textiles

v.

Its Workmen and Others

(Supreme Court Of India)

HON'BLE JUSTICE P.B.GAJENDRAGADKAR (CJI) HON'BLE JUSTICE K. N. WANCHOO HON'BLE JUSTICE VAIDYNATHIER RAMASWAMI

Civil Appeal No. 241 Of 1964 | 16-03-1965

Ramaswami, J.

1. This appeal, by special leave, is brought on behalf of the management of the Technological Institute of Textiles, Bhiwani, against the award dated 21 May, 1963 of the Industrial tribunal, Punjab at Patiala, in Reference No. 9 of 1962, which award was published in the Punjab Government Gazette, Part I, dated 21 June, 1963. By this award the tribunal adjudicated four items of dispute, viz. :

(1) Whether the workmen are entitled to the grant of casual leave and sick leave with wages; if so, how much and with what details ?

(2) whether the management be required to pay the same wages/dearness allowance to the sweepers working in the lines that is paid to the other unskilled workers ? If so, with what details ?

(3) Whether the workmen are entitled to the payment for national and festival holidays on the basis of their average earnings of the month in which the holidays fall ? If so, with what details ?

(4) Whether the jamadars, drivers and sweepers should be allowed weekly national and festival holidays with wages ? If so, how much and with what details ?

By the order granting special leave, this Court has restricted the scope of the appeal to items (1) and (3).

2. With regard to the grant of casual leave and sick leave the tribunal took the view that the workmen should be granted seven days' casual leave with wages and seven days' sick leave with wages in a year. Regarding the payment for the national and festival holidays, the tribunal held that the method adopted by the management did not make full payment for these holidays which were declared by the Punjab Government as paid holidays and, therefore, direction was given that there should be payment of full wages to workmen for the holidays.We propose, first, to deal with the question whether the trial of both these issues was incompetent because of a settlement dated 7 July, 1959 - Ex. R. 4 - and an award made in Reference No. 33 of 1959 which are said to be still subsisting. According to the management of the Technological Institute of Textiles (hereinafter called the management) the demands covered by these two issue cannot be adjudicated upon as long as the settlement and the award remain operative and are not validly terminated. In our opinion, the argument advanced on behalf of the management has no justification. As regards the settlement dated 7 July, 1959 - Ex. R. 4 - there is no evidence to show that the provisions of rules were 58 of the Industrial Disputes (Punjab) Rules were complied with and in the absences of necessary formalities it is not possible to hold the settlement was binding upon the parties. It also appears from this document that the demand for payment of double wages and compensatory holidays workers who are made to work in festival holidays not pressed by the Karamchari Sangh and the staff union. It is also apparent from the document that the demand for grant of casual leave to workers was also withdrawn. It appears from the dated 3 August, 1959 in Reference No. 33 of 1959 that the workers' union did not press the demand with regard to festival holidays and accordingly the tribunal disallowed those demands. It was contented on behalf of the respondent-workmen that the award - Ex. R. 1 - was terminated with regard to six items of dispute and, therefore, in regard to those items the award cannot be held to be still in operation. It is contended on behalf of the appellant that an award cannot be terminated in part and if an award is to be terminated it must be either in full or not at all. we shall assume in favour of the appellant that an award cannot be terminated in part and that Ex. R. 1 was in force at the material time. Even on that assumption we are of opinion that trial of items (1) and (3) of the order of reference was not barred under S.19 of the Industrial Disputes Act. The reason is that the demands covered by items (1) and (3) of the order of the reference were withdrawn by the workmen in reference Case No. 33 of 1959, and there

has been no adjudication with regard to the merits of the demand put forward by the workmen before the tribunal in that case. With regard to the settlement, Ex. R. 4 dated 7 July, 1959, the same argument is applicable, because there is no agreement or settlement between the parties with regard to the demand of the workmen covered by items (1) and (3) of the reference. On the other hand, it appears from Ex. R. 4 that the demands were not pressed by the workmen and there is no agreement between the parties with regard to these matters.Section19(1) of the Industrial Disputes Act status that"a settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute."

Section 19(2) enacts that

"such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement."

Section19(3) of the Act similarly states that

"an award shall, subject to the provisions of this section, remain in operation for the period of one year from the date on which the award becomes enforceable under S. 17A."

the expression "award" is defined in S.2(b) of the Act to mean

"an interim or final determination of any industrial dispute or of any question relating thereto by any labour court, industrial tribunal or national industrial tribunal."

The expression "settlement" is defined in S.2(p) of the Act to mean.

"a settlement arrived at in the course of conciliation proceeding and include a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by parties thereto in such manner as may be prescribed."

3. It is manifest in the present case that there has been no adjudication on merits by the industrial tribunal in the previous reference with regard to the matters to covers by items (1) and (3) of the present reference, because the workmen had withdrawn those matters from the purview of the dispute. There was also no settlement in Ex. R. 4, because the demands in question had been withdrawn by the workmen and there was no agreement between the parties in regard thereto. Our conclusion, therefore is that the bar of S.19 of the Industrial Disputes Act does not operate with regard to the matters covered by items (1) and (3) of the present reference and the argument put forward by the appellant on this aspect of the case must be rejected.On the merits of the dispute it was contended on behalf on behalf of the appellant that there was no justification for the granting any casual leave or sick leave to the workmen employed. It was said that there was no practice of granting sick leave or casual leave in a textile mill. We do not think that there is any warrant for this argument. There is evidence in this case that most of the mills in Punjab State including six cotton and textile mills grant 7 days' casual leave with wages to their workmen. The tribunal has referred to the fact that the members of the staff are granted 40 days' leave every year, but the workmen employed by the appellant are given 15 or 16 days' leave besides the six national and festival holidays. In view of this disparity of service conditions and also in view of the practice prevailing in other textiles mills in Punjab state the tribunal took the view that the workmen should be granted 7 days' casual leave with wages in a year. It is not shown on behalf of the appellant that the finding of the tribunal on this point is arbitrary or, in any way, defective in law. With regard to sick leave, the argument on behalf of the appellant was that benefits were granted by the Employees' State Insurance Act, but that is not a bar to the demand to the workmen for sick leave. The reason is that the first proviso to S.49 of the Employees' State Insurance Act states that a person qualified to claim sickness benefit shall not be entitled to the benefit for on initial waiting period of two days except in the case of a spell of sickness following at an interval of not more than fifteen days, the spell of sickness for which benefit was last paid. It is apparent that the Employees' State Insurance

Scheme does not cover all contingencies of sickness and in any event the first two waiting days are not covered. In our opinion, the tribunal was, therefore, justified in its view that the workmen are entitled to 7 days' sick leave with wages on production of a medical certificate.As regards item (3) of the reference, the tribunal has found that the method of calculation of wages adopted by the management shows that it was not making full payment for the national and festival holidays other to the piece-rated workmen or to the monthly rated workmen. The tribunal, therefore, ordered that the management should make full payment to all the workmen, whether monthly rated or piece-rated, with regard to national and festival holidays.

4. In our opinion, there is no merit in this appeal which is accordingly dismissed with costs.