Bijili Cotton Mills (P) Ltd.

Vs

The Presiding Officer, Industrial Tribunal II and Others

Civil Appeals Nos. 1611 of 1968 and 676 of 1972

(C. A. Vaidialingam, I. D. Dua JJ)

20.03.1972

JUDGMENT

DUA, J. -

The following dispute between M/s. Bijili Cotton Mills (P.) Ltd., and their workmen was referred to the Industrial Tribunal II, U.P. for adjudication :

> "Should the employers be required to pay wages for the festival holidays allowed to their workmen in a year ? If so, from which date and with what other details ?"

According to the workmen the employers had been giving 17 festival holidays to their workmen in a year and through those holidays should have been paid ones the employers were not making any payment.

2. The dispute was originally espoused at the instance of Hathras Mazdoor Panchayat but later three other unions namely Sooti Mill Mazdoor Panchayat, Congress Mazdoor Sangh and Sooti Mill Karmachari Sangh were also accorded right of representation on their applications. The employer mills contested the claim on various grounds. The plea on the merits in substance was to the effects that neither in law nor in practice was there any provision for festival holidays with wages. The Mill, it was averred, was already paying wages for three holidays allowed to the workmen, under the U.P. Industrial Establishments (National Holiday) Act (U.P. Act XVIII of 1961) and in the entry Agra region in which this Mill is situated no textile mill pays wages for festival holidays. It was added that the Mill was an uneconomic unit and was not in a position to bear any extra burden. The Congress Mazdoor Sangh, the Sooti Mill Karmachari Sangh and the Hathras Mazdoor Panchayat filed separate written statements on behalf of the workmen and pleaded that the grant of holidays without wages was illegal and against social justice.

3. The employer mill filed rejoinder statement to the written statements of all the Unions, pleading that the holidays mentioned by the Unions were not allowed to the workmen at the employer's initiative but were granted because the workmen demanded the same and these holidays were substituted by other days in lieu of holidays, and as they were paid for the days on which they worked on account of these holidays there was no loss of wages caused to the workmen.

4. On July 15, 1965, the parties made their statements under Rule 12 of U.P. Industrial Disputes Rules, 1957, which provides for procedure at first sittings of the Tribunal requiring the parties to state their respective cases, Shri M. P. Jaiswal, on behalf of the employers, admitted that the company gives 17 festival holidays to all its employees, 15 of which are those mentioned in the

written statement of the Congress Mazdoor Sangh and two other being Sankranti and Baldev Chat observed on Bhadon Sukla Chat. All these holidays were stated by him to be paid holidays in the sense that the workers were allowed to work on their unpaid rest days in substitution of the said festival holidays. The unpaid rest days were the same as those provided and observed under Section 52 of the Factories Act as unpaid holidays. It was admitted that the monthly raters were paid for 365 days in a year whereas piece-raters were paid according to the quantum of work done by them on working days in a month. The national holidays given by the employer are not substituted on rest day then only day's wages are paid.

4. After this statements four representatives of the contesting unions stated that whenever the management takes work from the workers on a rest day only day's wages are paid and it was emphatically denied that holidays were substituted on a rest day. Monthly raters, according to these representatives, get their wages for all 365 days.

5. After these statements the Presiding Officer of the Tribunal put the following question to Shri Jaiswal :

> Q : Whether the festival holidays observed in the mill are paid or unpaid ?
>
> A : They are paid holidays and payment is made by substitution as stated earlier.

Thereafter it appears that the workmen did not lead any evidence but Shri M. P. Jaiswal, Secretary of the mills, appeared as a witness on behalf of the employer. He filed two charts showing the festival holidays observed in the mills in the years 1964 and up to July, 1965. He proved these charts stating that they had been prepared from the Mills' Muster Rolls and that they were true copies correctly prepared from the records of the mills. These two charts were marked as Ex. E-1 and Ex. E-2. When the witness tried to depose about the holidays in the Kanpur Textile Mills the question was disallowed. While cross-examined by Sri B. D. Sethi, on the behalf of the workmen, Mr. Jaiswal stated that in Ex. E-1 only two holidays for Holi were substituted, one on February 23, 1964, and the other on March 1, 1964, the remaining two not being substituted. In the case of Diwali also two holidays were substituted leaving unsubstituted the remaining two holidays. On being cross-examined by Shri O. P. Gautam also in behalf of the workmen the witness stated that in 1965 as well only two holidays on account of Holi were substituted, the remaining two being unsubstituted. In the preceding years also the position was stated to be the same in regard to Holi holidays.

6. The following two questions and answers may also be reproduced :

> Q : When you take work in Sunday which is a weekly holiday on which date you give the festival holiday ?
>
> A : As such we do not give the weekly rest day on the day on which the festival falls within the limits allowed under the Factories Act.
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> Q : Is there any limit for festival holidays in Factories Act ?
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> A : There is no such limit nor any such direction in the Factories Act. For substitution there is a restriction in Sections 51 and 52 of the Factories Act.
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> Exhibits E-1 and E-2 show festival holidays for the years 1964 and 1965 and these

> charts corroborate the answers elicited from Shri Jaiswal that for Holi and Diwali only two days on which substitution was allowed were paid for, the remaining two holidays being unpaid.

7. It may be pointed out that the Tribunal, after the statements of the parties under Rule 12, framed the following issue :

> "Whether the festival holidays are given to the workmen in the form of substituted holidays on weekly rest days ? If so are the workmen other than the monthly raters entitled to only one day's wages or two day's wages, i.e., one day's wages for the work done on the weekly rest day and one day's wages for the substituted holiday ?"

8. It appears that the language of this issue was not objected to by either party and this appears to be the real crux of the controversy which emerged after the statements of the parties requiring decision by the Tribunal. It was not disputed before the Tribunal that the employers had been giving 17 festival holidays to all the workmen besides three national holiday. The plea taken by the employers in their pleadings that the holidays are not paid holidays was in the opinion of the Tribunal given the go-by in the statement of Shri Jaiswal recorded under Rule 12 on July 15, 1965. The Tribunal then dealt with that statement and observed that after that statement it was for the employers to show how payment for the festival holidays was made by them. To reproduce the words of the award :

> "In the written statement without stating whether the festival holidays were paid or unpaid they pleaded that neither in law nor in practice there was any provision for festival holidays with wages and that in the entire Agra Region to textile mill was paying wages for the festival holidays. Originally it appeared that the employers wanted to set up that the festival holidays were unpaid but at the time of the statement under Rule 12, Shri Jaiswal took as contrary position and stated that all the festival holidays were paid holidays and the payment was made in the sense that they were substituted on rest days. I have already shown how this statement is incorrect and no impartial mind will be wrong in drawing a legitimate inference that the purpose of the employers in setting up inconsistent pleas or in giving inconsistent statements was only to conceal the truth or it may be that the purpose was to confuse the issue."

9. A little lower down, after observing that Shri Jaiswal was not the kind of witness who would give straight answers to straight questions and that the witness had to be warned for this attitude observed :

> "From the employers own pleadings. - The statements of Shri Jaiswal recorded under Rule 12 and his deposition, it is evident that 17 festival holidays besides three National Holidays are all paid holidays but the employers had been wrongfully depriving their workmen of their dues in this behalf."

10. The Tribunal, while dealing with the case of monthly raters observed that they were not entitled to the relief because they were paid for all the 365 days in a year. The case of daily raters or piece raters being different (they were paid according to the number of days on which they worked or the quantum of work they turned out) they were held entitled to festival holidays with wages. Daily raters were accordingly held entitled to payment on the basis of their daily wage whereas piece raters were held entitled to get the average earning to be calculated on the basis of the average of the

last one month immediately preceding the holiday. The relief granted by the award was stated thus :

> "My award, therefore, is that the employers shall pay wages to their daily rated and piece rated workmen for 17 festival holidays besides three National Holidays, i.e., to each of their workmen who are daily raters and piece raters with effect from January 1, 1965. For the holidays which have accrued from January 1, 1965, till the date of enforcement of the award and which are given in the list Ex. E-2 the employers shall pay the arrears and in future all the festival holidays and National Holidays shall be paid for. If the employers substitute festival holidays on a rest day, for that day they shall double the wages."

11. The appellant, feeling aggrieved by this award, presented a writ petition in the Allahabad High Court under Article 226 of the Constitution complaining that the Industrial Tribunal had misread and misinterpreted the statement of the parties recorded under Rule 12 particularly the statement of Shri Jaiswal. It was also averred that the question of festival holidays depends on so many other factors particularly custom and usage and the Industrial Tribunal had committed a serious error in shutting out evidence in regard to the practice prevalent at Kanpur in respect of the custom and usage regarding festival holidays in the textile industry there. The main textile industry in the State of Uttar Pradesh according to the appellant's averment is concentrated at Kanpur. The alleged admission by Shri Jaiswal contrary to the appellant's pleading and contrary to the case set up by both parties could not be conclusive and the Industrial Tribunal illegally based its finding on such alleged admission.

12. The High Court dismissed the writ petition holding that it was open to the Industrial Tribunal to allow or disallow any question which it considered relevant or irrelevant and the High Court, in exercising its jurisdiction under Article 226 of the Constitution, could not go into the correctness or otherwise of the order disallowing a particular question to be put to a witness such function being vested only in an appellate court. The grounds that the Industrial Tribunal had misread the statement of Shri Jaiswal in holding that he had made an admission that 17 paid festival holidays were being allowed to the workmen was also considered to be impermissible in the High Court in writ jurisdiction because that pertains to the appreciation of evidence. The statement made by Shri Jaiswal under Rule 12, according to the High Court, was capable of the interpretation that it contained an admission that the employers were giving 17 paid festival holidays to their workmen, not being satisfied that the impugned award suffered from any error of jurisdiction or from any manifest error of law the writ petition was dismissed.

13. Special leave from the judgment of the learned single Judge to a Bench of two Judges was summarily dismissed on December 5, 1966. However, leave to appeal to this Court was granted by the Division Bench on February 16, 1968, the petitioner having been held, to quote the words of the High Court "entitled to a certificate either under clause (a) or (b) of Article 133(1) of the Constitution". The High Court also certified "that the value of the subject-matter of dispute before the High Court and in appeal is not less than Rs. 20,000/-; alternatively, it is certified that the judgment of this Court involves directly or indirectly a claim respecting wages amounting to more than Rs. 20,000/-."

14. Before us the respondents raised an objection that the certificate granted by the High Court was incompetent and, therefore, should be cancelled. Our attention was drawn to Article 133(1)(a) and (b) of the constitution and it was pointed out that the High Court missed that part of sub-Article 133(1) where it is stated that "where the judgment, decree or final order appealed from affirms the

decision of the court immediately below in any case other than a case referred to in sub-clause (c), if the High Court further certifies that the appeal involves some substantial question of law". Merely because the value of the subject-matter in dispute is more than Rs. 20,000/-, the respondent contended, it does not by itself justify the grant of a certificate under clause (a) or clause (b). In the application for the requisite certificate the prayer included clause (c) of Article 133(1) as well, but apparently at the time of arguments the submission was confined to clause (a) and (b) alone.

15. The appellant, when faced with this difficulty, submitted that this Court should, on its oral request, grant special leave to appeal after condoning delay and it also filed a formal written application for special leave to appeal accompanied with an condonation of delay. For adopting such a course the appellant relied on an unreported decision of this Court in The District Board (afterwards Zila Parishad), Allahabad v. Syed Tahir Hussain and Others. [C.A. No. 578 of 1963, decided on July 23, 1965]. There the appellant had come to this Court on a certificate purporting to have been granted under Article 133 of the Constitution. At the time of hearing it was objected on behalf of one of the respondents there that the certificate could only be granted if there was a substantial question of law and since the certificate did not disclose on its face the existence of any such question, the appeal was incompetent. This Court, in view of its earlier decision in Shri Durga Prasad and Another v. The Banaras Bank Ltd., [(1964) 1 SCR 475] sustained the objection and in the absence of a certificate of the High Court showing the existence of some substantial question of law held the appeal to be incompetent. The appellant in that case when faced with a similar situation, had made an oral request praying for special leave, undertaking to file a written petition for that purpose supported by an affidavit and accompanied by an application for condonation of delay. This Court considered the case to be fit and proper for granting special leave which was granted on oral prayer but the appellant there was directed to file special leave petition in this Court within a week. The appellant in the present case also filed during the course of hearing special leave Petition No. 676 of 1972 duly supported by an affidavit and Civil Miscellaneous Petition No. 1319 of 1972 with a supporting affidavit praying for (i) condonation of delay, (ii) treating court fee paid on C.A. No. 1611 of 1968 as court fee on special leave to appeal and (iii) the security deposit in the earlier appeal being treated as security, in the special leave appeal. We heard all the matters together.

16. We considered the case to be covered by the precedent cited and accordingly held the certificate granted by the High Court to be incompetent and, therefore, liable to be cancelled. With the cancellation of the certificate C.A. No. 1611 of 1968 must be dismissed; but in the circumstance there would be no order as to costs.

17. With regard to the prayer for granting special leave to appeal there can be no dispute that this Court is fully competent to entertain this prayer and if the cause of justice so demands, to grant the same and consider the special leave to appeal on the merits. Article 136 is couched in very wide terms and it vests this Court with discretionary power for setting right grave injustice in fit cases. In Shri Durga Prasad's case (supra), this Court, having regard to all the circumstances, did not consider that to be a fit case for granting special leave to appeal whereas in the later case of the District Board (afterwards Zila Prishad) Allahabad (supra), it may be recalled, this Court granted special leave to appeal on oral request, directing that a formal special leave application be filed within a week. After considering all the circumstances we consider the present case to be fit for granting special leave to appeal and for condoning the delay. We order accordingly. The appellant, however, must pay full court fee payable within two weeks but the security already deposited in C.A. No. 1611 of 1968 may be treated as security in the special leave appeal. The result, therefore, is that now we have the fresh appeal by special leave before us for decision.

18. The appellant's learned counsel drew our attention to the statements of the respective cases of the parties before the Industrial Tribunal and also to the statement of Shri Jaiswal under Rule 12. In our view the statement of Shri Jaiswal had, as a matter of law, to be read as a whole and also in the background and along with the pleadings as disclosed in the respective statements of cases of the parties in order to understand whether Shri Jaiswal's statement amounted to a clear and conscious admission eliminating a crucial part of the controversial issue. Reading them as a whole we do not consider it possible to hold that the appellant had admitted that the 17 festival holidays were being given by them as paid holidays dispensing with the enquiry into the question referred for adjudication to the Industrial Tribunal.

19. It may in this connection be pointed out that the real purpose and object of Rule 12 is only to pinpoint the precise controversy by requiring the parties to state their respective cases at the very first sitting of the Tribunal. This statement is not like the testimony of a witness, part of which can be accepted and rest rejected. It was only in the nature of a supplementary pleading designed mainly to remove vagueness and to clear ambiguities or indefiniteness in the pleadings. This statement had, therefore, to be read and considered as a whole. If it was considered unsatisfactory in some respects this factor could be taken into account in appreciating the pleadings and evidence led in the case while coming to the final decision but it could not debar the appellant from leading evidence on the controversial issue as if such issue did not arise. It is noteworthy that even the workmen did not plead that the festival holidays were treated as paid holidays but no payment was as a matter of fact being made.

20. The holidays were of course allowed to the workmen but the written statement on behalf of the appellant unequivocally denied that there was any provision in law or practice for allowing festival holidays with wages and it also denied that in the Agra region where the appellant's mill is situated any textile mill was paying wages for festival holidays. The appellant Mill it was emphasised could not be treated on a different footing. It was further pointed out that the appellant Mill was a highly uneconomic mill and was not in a position to take any extra burden. The statement made by Shri Jaiswal under Rule 12 could on no reasonable hypothesis be considered to have replaced this unequivocal and clear plea. It is true that Shri Jaiswal tried to be somewhat clever by stating that the festival holidays were paid in the sense that the workers were allowed to work on unpaid rest days in substitution of the said festival holidays. But this statement clearly explains in unambiguous terms the sense in which Shri Jaiswal meant to say that the festival holidays were paid. The facts contained in the explanation lead to the only conclusion that festival holidays are not paid as the National Holidays are. This statement read with the detailed explanation which constitutes its real core could not logically serve as a ground for ignoring the unequivocal denial in the written statement particularly when even the workmen did not set up this case. The Industrial Tribunal had, in our opinion, erroneously ignored the real plea and had on the basis of this manifest blatant error which is clear on the face of the record, disallowed the evidence on the question of the practice and custom in the textile industry in Kanpur. In Shri Jaiswal statement we find a clear distinction drawn that three National Holidays were paid holidays and the other festival holidays were such for which the workers were allowed to work on substituted rest days. It was also clearly mentioned in that statement that if a holiday is substituted on a rest day then the workmen gets only one day's wages. This impregnate part of the statement was virtually ignored by the Tribunal. The facts being clearly stated, in our view, the Industrial Tribunal was wrong in law in holding that the appellant's written plea was modified by reason of the statement under Rule 12 or that there was a clear admission superseding the earlier plea. The learned single Judge of the High Court, in our opinion, also missed the real point; and if the real plea was ignored and it was erroneously held that Shri Jaiswal's statement under Rule 12 constituted an admission overriding the earlier plea and as a result evidence

on that plea was excluded then it was an eminently fit case for interference under Article 226 of the Constitution, the error being gross and palpable which was manifest on the face of the record and the same having resulted in failure of justice by excluding evidence on the most vital point. The Division Bench on special appeal from the judgments of the learned single Judge fell into the same error in summarily dismissing the appeal in limine without even recording a speaking order on the crucial point of substance arising in the case which went to the root of the matter.

21. The question of festival holidays requires consideration from several aspects. Employers and workers have always differed in their suggestions about the level at which uniformity in the number of holidays should generally be achieved. In the Report of the National Commission on Labour prepared in August, 1969 we find at p. 105 that the workers' organisations generally favour a minimum of 7 to 12 paid holidays in a year without making any differentiation as between different categories of employees. Employers, on the other hand, feel that the number of paid holidays enjoyed by workers in India is already on the high side, and, therefore, uniformity should be achieved at a much lower level. The opinion of the Commission contained in its Report supported the view of its Study Group on Labour Legislation which recommended three paid National Holidays viz : January 26, (Republic Day), August 15, (Independence Day) and October 2, (Mahatma Gandhi's Birth Day) and five paid festival holidays as may be fixed by the appropriate Government in consultation with the representatives of employers and employees. The Report also suggests that there is a trend towards industry-wise uniformity in the matter of holidays, as in the case of jute and coal. Incidentally it may be mentioned that in U.P., the U.P. Industrial Establishments (National Holidays) Act No. XVIII of 1961 and rules made under Section 9 thereof provide for paid National Holidays but that Act does not deal with festival holidays.

22. In the case before us, according to the appellant, the 17 festival holidays as directed by the award would impose on the appellant industry an additional burden to the extent of about Rs. 1,49,600 as was stated in the order of the Allahabad High Court while granting leave. Custom, practice and uniformity in the industry without prejudicially affecting efficiency and increase production are some of the relevant factors which have to be taken into account in determining the number of paid festival holidays per year. The question affects national economy and the present instance may well be cited in future in deciding similar questions in other allied concerns in the region. The effect of such instances, therefore, does not remains confined only to the establishment concerned but has its impact on other concerns as well. This aspect has been completely ignored by the Industrial Tribunal which has proceeded solely on the basis of the statement of Shri Jaiswal as interpreted by it. This statement being the sole basis of the Tribunal's conclusion if it is not possible to read in this statement any admission having the effect of giving up the only crucial plea that the workmen have no right to 17 paid holidays than this is clearly a misreading of that statement and the Tribunal's order must be held to be tainted by a manifest error of law on the face of the record which has resulted in grave failure of justice as evidence on the only material point in issue was illegally shut out. In our view, the High Court also fell into the same error and did not apply its mind to the real point which arose for decision in the case. We accordingly allow this appeal, set aside the orders of the High Court and of the Industrial Tribunal and remit the case back to the Tribunal for a fresh decision of the merits after permitting the parties to lead relevant evidence in accordance with law and in the light of the observations made above. As the whole trouble arose because of the unsatisfactory nature of the statement made by Shri Jaiswal, who was also found by the Tribunal as a person who was not inclined to give straight answers to straight questions, it is only just and proper that the appellant should pay the respondents' costs both in this Court and in the High Court. The court fee, as already directed, must be paid by the appellant within two weeks.

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