Madura Coats Limited

Vs

Inspector of Factories, First Circle, Madurai and Another

Civil Appeal No. 34 of 1980

(A. C. Gupta, A. P. Sen JJ)

02.12.1980

JUDGMENT

A. P. SEN, J. –

1. This appeal on certificate, from the judgment of the Madras High Court raises a question of some complexity. The question is, whether an employer is statutorily bound to pay wages if the workmen are on strike, for any of the national or festival holidays falling within the period of strike, under Section 3 read with sub-section (1) of Section 5 of the Tamil Nadu Industrial Establishments (National and Festival Holidays) Act, 1958 (hereinafter referred to as 'the Act').

2. The facts of the case are not in dispute. Messrs. Madura Coats Limited are an industrial establishment within the meaning of Section 2(e) of the Act, owning textile mills at Madurai, Ambasamudram and Tuticorin in the State of Tamil Nadu. The cotton textile industry had been declared to be a public utility service for purposes of the Industrial Disputes Act, 1947. In respect of claim for bonus for the year 1974-75 a settlement was entered into which stood superseded by the Payment of Bonus Ordinance, 1975. The management accordingly took the view that no bonus was payable for the year in question, since its payment would be against the provisions of the Act, as amended by the Ordinance. This resulted in a strike by the workmen of the concerned mills. The workmen were on strike from January 21, 196 to February 5, 1976. The strike was called off by the workmen on February 6, 1976 due to the intervention of the Commissioner of Labour, Madras, who brought about a settlement. The proceedings of the Commissioner of Labour dated February 5, 1976 show that the parties, i.e., management and the workmen, had agreed to abide by his decision in the matter. The terms of the settlement were, inter alia, that the strike was to be called off forthwith and the workmen would commence work on February 6, 1976, that the management's proposal to make a penal cut of eight days' wages of the workmen for going on an illegal strike would be waived and that there would be no wages payable for the period of the strike.In accordance therewith, the workmen resumed work on February 6, 1976 and the management paid them wages for the month of January 1976 after excluding therefrom the wages payable for the period of strike during January, namely, for the period from January 21 to 31, 1976. The management having withheld the wages payable for communication dated May 22, 1976 stating that in view of Section 5 of the Act, payment of wages of January 26, 1976 had to be made. The management challenged the order by a writ petition but the High Court declined to interfere. It held that the appellant was bound to pay to the workmen wages for January 26, 1976, having regard to the provisions contained in Section 3 and sub-section (1) of Section 5 of the Act, even though the workmen were on strike on that day. The correctness of that decision is in question.

3. It is urged firstly that in view of the term 'wages' in Section 2 (g) of the Act, no wages were

payable to the workmen for January 26, 1976, in terms of the contract of employment since they were not available for work and thereby the management were deprived of the right given to them under sub-section (2) of Section 5 of the Act, to call upon the workmen to come and do the work; and secondly, the right of the workmen to receive wages for the national or festival holidays under Section 3 of the Act, is subject to the right of the management under sub-section (2) of Section 5 to call upon them to come and work on such holidays. It is said that when a person creates a situation by going on a strike whereby he is not available for work, the terms of employment cannot be fulfilled and, therefore, a fortiori no wages are payable. It is suggested that the right of the workmen to wages is not dependent on their status as such, but on the fulfilment of the contract of employment.

4. It would be convenient in the first instance to set out the relevant provisions of the Act. In the Act the term 'wages' as defined in Section 2 (g), insofar as relevant, is in these terms :

> "Wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of the employment or of the work done by him in such employment .....

Section 3 of the Act provides as follows :

> 3. Grant of National and Festival Holidays. - Every employee shall be allowed in each calendar year a holiday of one whole day on the 26th January, the first May, the 15th August and the 2nd October and five other holidays each of one whole day for such festivals as the Inspector may, in consultation with the employer and the employees, specify in respect of any industrial establishment.

Sub-sections (1) and (2) of Section 5 of the Act provides :

> 5. Wages. - (1) Notwithstanding any contract to the contrary every employee shall be paid wages for each of the holidays allowed to him under Section 3.
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> (2) (a) Notwithstanding anything contained in Section 3, any employee may be required by the employer to work on any holiday allowed under that Section if the employer has, not less than twenty-four hours before such holiday, -
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> (i) served in the prescribed manner on the employee a notice in writing requiring him to work as aforesaid; and
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> (ii) sent to the Inspector having jurisdiction over the area in which the industrial establishment is situated and displayed in the premises of the industrial establishment a copy of such notice.
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> (b) Where an employees works on any holiday allowed under Section 3, he shall, at his option, be entitled to -
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> i) twice the wages; or
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> (ii) wages for such day and to avail himself of a substituted holiday with wages on one of the three days immediately before or after the day on which he so works.

5. The legislation is intended to provide for national and festival holidays in industrial establishments in the State. Section 3 of the Act provides that every employee in an industrial establishment shall be entitled to four national and five festival holidays in each calendar year. Sub-section (1) of Section 5 provides that 'notwithstanding any contract to the contrary' every employee shall be paid wages for each of the holidays allowed to him under Section 3. The matter is thus taken out of the realm of contract. There is a statutory obligation cast on the employer and a corresponding benefit conferred on the employees. The word 'allowed' in sub-section (1) of Section 5 means holidays allowed under Section 3. In other words, the employer has no option in the matter. There can be no contracting out of the liability to pay wages for such holidays.

6. It will be noticed that both sub-sections (1) and (2) of Section 5 contain non obstante clauses. While the non obstante clause in sub-section (1) of Section 5 gives to the workmen the right to claim wages for such holidays 'notwithstanding any contract to the contrary', the non obstante clause in sub-section (2) of Section 5 subordinates the right of the workmen to claim wages for the national or festival holidays 'notwithstanding anything contained in Section 3'. Sub-sections (1) and (2) of Section 5 have been enacted with separate and distinct objects and they operate on different planes. Sub-section (2) of Section 5 confers upon the employer the right to Call upon the workmen to come and work on such holidays on the fulfilment of the conditions set out therein.

7. As a matter of construction, the non obstante clause contained in sub-section (2) of Section 5 has an overriding effect over Section 3. The right of the workmen to claim wages under sub-section (1) of Section 5 for any of the national and festival holidays under Section 3 is, therefore, coextensive with the right of the management under Section 3 is, therefore, coextensive with the right of the management under sub-section (2) of Section 5 to call upon the workmen to come and work on such holidays subject to the compliance with the conditions laid down therein.

8. On the construction of sub-section (2) of Section 5 of the Act and its impact on Section 3 and sub-section (1) of Section 5 of the Act, there is a conflict of opinion in the High Court. (In Vasudevan, R. M. S. Union v. Lotus Mills Ltd. ((1977) 2 LLJ 483 (Mad HC) : (1977) 52) Koshal, J. in dealing with a case where the workers of a textile mill went on a strike, and in between there were two paid holidays, held that wages for the holidays in question were payable despite the strike since sub-section (1) of Section 5 was absolute and unconditional and gave to the employees the right to stay away from work. He was of the view that Section 3 and sub-section (1) of Section 5 operates independently without reference to sub-section (2) of Section 5 and as such, even if the management had no opportunity to call upon the workmen to come and work on national and festival holidays as provided for in sub-section (2) of Section 5, they were bound to declare such national and festival holidays under Section 3 and pay wages for these holidays to the workmen as provided by sub-section (1) of Section 5. In substance, Koshal, J. was of the view that the legislature never intended to give to sub-section (2) of Section 5 an overriding effect so as to make the fulfilment of the terms of contract of employment and of the work done a condition prerequisite for the payment of wages for the national or festival holidays.

9. When the matter came before Natarajan, J., he expressed his doubts about the correctness of the view taken in Lotus Mills case ((1977) 2 LLJ Mad HC) : (61977) 52 FJR 127 : 1978 Lab 1C 656) In his view the benefit conferred on the workmen under Section 3 and sub-section (1) of Section 5 cannot be taken to be independent of sub-section (2) of Section 5 which confers a special right on the management to call upon the workmen to come and work on national and festival holidays declared under Section 3, and so long as that right of the management could not be exercised as the workmen were on strike on these days, the benefits cannot be enforced by the workmen. He,

accordingly, referred the case to a Division Bench for a reconsideration of the decision in Lotus Mills case ((1977) 2 LLJ 483 (Mad HC) : (1977) 52 FJR 127 : 1978 Lab 1C 656). The Division Bench (Madura Coats Ltd.v. Inspectorof Factories, (1980) 2 LLJ 226 (Mad Hc)) (Ramanujam and Padmanabhan, JJ.), however, disagreed with him and preferred to follow the view taken by Koshal, J. expressed in Lotus Mills case. ((1977) 2 LLJ 483 (Mad HC) : (1977) 52 FJR 127 : 1978 Lab 1 C 656) The question is which of the two views is in accord with the provision of the Act.

10. Ramanujam, J., speaking for the Division Bench, while accepting that sub-section (2) of Section 5 conferred a special right on the management, which is somewhat inconsistent with Section 3 and sub-section (1) of Section 5, comments that 'these provisions confer two benefits on the employees, viz., (1) not to work on a holiday, and (2) to get wages from the management for such holiday', and observes : (LLJ p. 231, col. 2)

If the right conferred on the management under Section 5 (2) is intended to override the right given to the employees under Sections 3 and 5 (1), the legislature would have specifically said so by giving an overriding effect to Section 5 (2). But so long as Section 5 (2) does not specifically override Section 3 and 5 (1), it is not possible for us to say that Sections 3 and 5 (1) are subject to Section 5 (2). The right conferred on the management under Section 5 (2) and the right conferred on employees under Sections 3 and 5 (1) should be taken to be independent of each other.

This observation virtually renders sub-section (2) of Section 5, a mere superfluity. Furthermore, the assumption that the Act confers 'the right not to work on a holiday' appears to be unwarranted.

11. The ultimate conclusion of the High Court was that the contract of service continues even during the period of strike and, therefore, though in the instant case the employees were on strike, they still continued to enjoy the benefits of the Act and must be paid their wages for January 26, 1966 even though they were on strike.

12. In our judgment, the construction placed by the High Court on sub-section (2) of Section 5 of the Act cannot be accepted. It is apparently wrong in observing that 'if the legislature intended such a result, the language used would have been different'. That precisely is the effect of the non obstante clause in sub-section (2) of Section 5 which clearly has an overriding effect over Section 3. Under the scheme of the Act, the workmen are entitled to wages for the national and festival holidays under Section 3 read with sub-section (1) of Section 5, but this right of theirs' is subject to the right of the management given under sub-section (2) of Section 5, to call upon the workmen to come and work on such holidays. Any other construction would make the provisions contained in sub-section (2) of Section 5 wholly nugatory.

13. It would depend on the facts and circumstances of each case whether or not wages become payable in the context of strike. It is true that where a strike is neither illegal being not in contravention or any statutory provision, nor unjustified having been lodged as a protest against the unreasonable attitude of the management, there is no reason to deprive the workmen of their wages. It must, nevertheless, be observed that workmen cannot resort to strike with impunity for any kind of demand without first exhausting reasonable avenues for possible achievement of their object.

14. In the present case, the affidavit of the Inspector of Factories, First Circle, Madurai shows that the dispute between the management and their workmen as to payment of bonus for the year 1974-75 had been referred to the Special Industrial Tribunal, Madras which gave a decision in favour of the workmen. That has a bearing on the claim for bonus but has no relevance to the question in

controversy. It appears that the workmen went on a strike without serving a notice under Section 22 of the Industrial Disputes Act, 1947. That being so, the strike resorted to by the workmen was wholly unjustified - if not illegal. When the workmen themselves brought about a situation by going on a strike, they cannot be permitted to claim wages under sub-section (1) of Section 5 of the Act, since the management were deprived of their right under sub-section (2) of Section 5 of the Act.

15. In Buckingham and Carnatic Co. Ltd. v. Workmen (1953 SCR 219 : AIR 1953 SC 47 : (1953) 1 LLJ 181) the night-shift operatives of a textile mills stopped work from about 4 p. m. up to about 8 p. m. on a certain day, the apparent cause of the strike being that the management had expressed their inability to comply with the request of the workers to declare the forenoon of that day as a holiday for solar eclipse. The stoppage of work was the result of a concerted action and fell within the definition of a 'strike' in Section 2 (q) of the Industrial Disputes Act, 1947. The strike was an illegal strike as the textile mills was a public utility industry and no notice had been given to the management, even though the refusal to work continued only for a few hours. It was held that the continuity of service of the workers was interrupted by the illegal strike and, therefore, they were not entitled to claim holidays with pay under Section 49-B (1) of the Factories Act, 1934. In Chandramalai Estate, Ernakulam v. Workmen ((1960) 3 SCR 451 : AIR 1960 SC 902 : (1960) 2 LLJ 243) the workmen made certain demands and the matter was referred for conciliation. After conciliation efforts failed the workmen struck work. The question was whether the workmen were entitled to paid holidays for the period of strike. It was held, on the facts of the case, that the strike was unjustified and the workmen were not entitled to any wages for the period.

16. The question ultimately is one of fact. The liability of the management to pay wages for the national and festival holidays under Section 3, read with sub-section (1) of Section 5 of the Act, is subject to their right under sub-section (2) of Section 5 of the Act to call upon the workmen to come and work on such holidays. That depends upon whether or not the strike was illegal or unjustified.

17. In the result, the appeal succeeds and is allowed. The judgment of the High Court is reversed. The writ petition filed by the appellant is allowed and the impugned notice issued by the Inspector of Factories is quashed.

18. We wish to mention that the appellant has undertaken to pay wages to the workmen for January 26, 1976 irrespective of the result of the appeal.

19. There shall be no order as to costs.

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