ALEMBIC CHEMICAL WORKS CO., LTD.

v.

THE WORKMEN

1960

December 15.

(P. B. GAJENDRAGADKAR, K. N. WANCHOO and K. C. DAS GUPTA, JJ.)

Industrial Dispute—Award of privilege leave—Jurisdiction—Industrial Disputes Act, 1947 (14 of 1947), s. 10(1)(d)—Factories Act, 1948 (63 of 1948), ss. 79, 78, 84.

It is not correct to say that s. 79 of the Factories Act, 1948, standardises the grant of annual leave with wages to employees to whom the Act applies and that neither the employer by voluntary agreement nor the Industrial Tribunal by its award can vary that standard. It is well settled that in construing the provisions of a welfare legislation, such as the Act in question which has for its object the preservation of the health, safety and welfare of the workmen, courts should apply the rule of beneficent construction and moreover, ss. 78 and 84 of the Act put it beyond doubt that s. 79(1) is not intended to standardise annual leave with wages by providing the maximum.

Rightly construed s. 78(1) of the Act not only protects past laws, awards, agreements and contracts but also those that are to come into existence in the future and does not prohibit a more generous agreement than that prescribed by s. 79(1).

Likewise the scope of s. 84 of the Act which, in empowering the State to exempt a factory from all or any provisions of Ch. VIII of the Act, contemplates better amenities than those guaranteed by the Chapter, cannot be limited to benefits existing at the date of the Act but must also apply to future benefits which an employer may grant to his employees.

Consequently, in a case where the Industrial Tribunal, on a consideration of awards and agreements between employers and employees in comparable concerns, awarded annual leave in excess of what is prescribed by s. 79(1),

Held, that the award was not open to challenge.

Held, further, that the distinction generally made between operatives doing manual work and clerical and other staff is perfectly justifiable and so the award of privilege leave to the clerical staff could not be said to be discriminatory.

Although the Industrial Tribunals in awarding privilege leave or sick leave must not fail to consider their effect on production and so on the interest of the community in general, this Court would be reluctant under Art. 136 of the Constitution to interfere with an award unless its provisions are unsustainable on any reasonable grounds and make a violent departure from the practice and trend prevailing in comparable concerns.

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 475 of 1960.

Appeal by special leave from the Award dated March 31, 1960, of the Industrial Tribunal, Bombay, in Reference (I. T.) No. 227 of 1959.

M. C. Setalvad, Attorney-General for India, G. B. Pai and *J. B. Dadachanji*, for the appellant.

I. N. Shroff, for the respondents.

1960. December 15. The Judgment of the Court was delivered by

Gajendragadkar J.

GAJENDRAGADKAR, J.—This appeal by special leave arises from an industrial dispute between the appellant, the Alembic Chemical Works Co. Ltd., and the respondents, its workmen. The said dispute related to a single demand made by the respondents with regard to leave. This demand consisted of three parts, (a) one month's privilege leave with full salary and dearness allowance on completion of eleven months service in a year with a right to accumulate upto six months, (b) one month's sick leave with full salary and dearness allowance for each year of service with right to accumulate for the entire period of service, and (c) every workman should be entitled to take leave in proportion to the number of days he is in service of the company at the time of his application for the same. This dispute was referred by the Government of Bombay for adjudication before the Industrial Tribunal under s. 10(1)(d) of the Industrial Disputes Act XIV of 1947.

The Tribunal considered the contentions raised by the appellant against the respondents' demands, took into account awards or agreements between employers and their employees in comparable concerns and made its award. In regard to privilege leave the Tribunal has ordered that leave should be granted to the staff members covered by the reference as follows:

Privilege leave upto 3 completed years of service	...	16 days as at present per year.
Up to 9 completed years	...	22 days per year.
And thereafter	...	One month for every 11 months of service.

The award allows accumulation of privilege leave upto three years. As regards sick leave, the Tribunal has ordered that the appellant should give its staff covered by the present award 15 days sick leave in a year with full pay and dearness allowance with a right to accumulate upto 45 days. It has also directed that no medical certificate should be demanded if sick leave for three days or less is asked for. In regard to the third item of demand concerning leave in proportion the Tribunal has made appropriate direction which it is unnecessary to set out for the purpose of this appeal.

Before the Tribunal the main contention raised by the appellant was in regard to the propriety and reasonableness of the demand and in regard to the practice prevailing in comparable concerns. Before this Court, however, the provision made by the award in regard to privilege leave has been attacked mainly on the ground that the Tribunal had no jurisdiction to make such an award having regard to the provisions of s. 79 of the Factories Act, 1948 63 of 1948) (hereafter called the Act). It is urged that s. 79 of the Act has made exhaustive and self-contained provisions with regard to the granting of annual leave with wages to the employees to whom the said Act applies, and the effect of s. 79 is to introduce standardisation in the matter of leave; which means neither the employer voluntarily, nor an Industrial Tribunal by its award, can add to the leave prescribed by the said section. In the matter of leave s. 79 is a complete code, and no additions to the said leave can be made either by a contract or by an award. It is common ground that the respondents are governed by the provisions of the Act. This point was not raised before the Tribunal, but since it is a point of law which arises on admitted facts we have permitted the learned Attorney-General to argue it before us.

The Act was first enacted in 1934 as Act 25 of 1934. Since then it has been amended from time to time. Its main object is to consolidate and amend the law regulating labour in factories. For the purpose of determining which concerns and which employees

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would be governed by the Act s. 2(m) and (l) define "factory" and "worker" respectively. Even a broad view of the scheme of the Act and a perusal of its provisions would clearly indicate that the Act is a beneficent measure and its policy is to make reasonable provisions for the preservation of health of the workmen, their safety and their welfare. With that object in view, the Act has made provisions for the regulation of working hours of adults, has regulated the employment of young persons, and has also provided for annual leave with wages to the workmen. The amendments made in the relevant provisions of the Act from time to time indicate that the Act has been pursuing its beneficent policy slowly but steadily and is attempting to provide for the workmen better and larger amenities in their employment. It is in the light of this obvious policy and object of the Act that we have to decide the question raised before us by the appellant.

Section 79(1) occurs in Chapter VIII which deals with annual leave with wages. It provides thus:

"*79. (1).* Every worker who has worked for a period of 240 days or more in a factory during a calendar year shall be allowed during the subsequent calendar year, leave with wages for a number of days calculated at the rate of—

(i) if an adult, one day for every twenty days of work performed by him during the previous calendar year;

(ii) if a child, one day for every fifteen days of work performed by him during the previous calendar year.

Explanation 1.—For the purpose of this subsection—

(a) any days of lay off, by agreement or contract or as permissible under the standing orders;

(b) in the case of a female worker, maternity leave for any number of days not exceeding twelve weeks; and

(c) the leave earned in the year prior to that in which the leave is enjoyed;

shall be deemed to be days on which the worker

has worked in a factory for the computation of the period of 240 days or more, but he shall not earn leave for these days."

This section has 11 other sub-sections which deal with different aspects and make relevant provisions in regard to annual leave with wages. It is not disputed that the award purports to make provisions for privilege leave in excess of the annual leave sanctioned by s. 79. Can the Industrial Tribunal direct the appellant to provide such additional privilege leave to its employees?; in other words, does s. 79 purport to standardise annual leave with wages so that no departure from the said standard is permissible either way? The appellant's contention is that except for pre-existing awards, agreements, contracts or except for pre-existing law no departure from the standardised provision is permissible after s. 79 was enacted.

This argument raises the question of construing s. 79 in the light of the other relevant provisions of the Act. It may be conceded that the provisions made by s. 79 are elaborate, and in that sense may be treated as self-contained and exhaustive. It is also clear that s. 79(1) does not use the expression "not more than or not less than" as it might have done if the intention of the Legislature was to make its provisions correspond either to the minimum or the maximum leave claimable by the employees; but even so, when s. 79(1) provides that every worker shall be allowed leave as therein prescribed, the provision *prima facie* sounds like a provision for the minimum rather than for the maximum leave which may be awarded to the worker. If the intention of the Legislature was to make the leave permissible under s. 79(1) the maximum to which a workman would be entitled, it would have used definite and appropriate language in that behalf. We are, therefore, inclined to think that even on a plain construction of s. 79(1) it would be difficult to accede to the argument that it prescribes standardised leave which inevitably would mean the maximum permissible until s. 79(1) itself is changed.

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Even on the basis that s. 79(1) is capable of the construction sought to be placed on it by the appellant, the question would still remain whether the said construction should be preferred to the alternative construction which, as we have just indicated, is reasonably possible. The answer to this question must be in the negative for two reasons; first, having regard to the obvious policy and object of the Act, if s. 79(1) is capable of two constructions that construction should be preferred which furthers the policy of the Act and is more beneficial to the employees in whose interest the Act has been passed. It is well settled that in construing the provisions of a welfare legislation courts should adopt what is sometimes described as a beneficent rule of construction; but, apart from this general consideration about the policy and object of the Act, ss. 78 and 84 occurring in the same Chapter as s. 79 clearly indicate that s. 79(1) is not intended to standardise leave provisions as contended by the appellant, and that is the second reason why the appellant's argument cannot be accepted.

Let us then consider the provisions of ss. 78 and 84. Section 78(1) provides that the provisions of Chapter VIII shall not operate to the prejudice of any right to which a worker may be entitled under any other law, or under the terms of any award, agreement or contract of service. There is a proviso to this sub-section which lays down that when such award, agreement or contract of service provides for longer annual leave with wages than provided in this Chapter the worker shall be entitled only to such longer annual leave. Section 78(2) exempts specified workers from the operation of Chapter VIII. The first difficulty which this section raises against appellant's argument is that it undoubtedly recognises exceptions to the leave prescribed by s. 79(1). It is well-known that standardisation of conditions of service in industrial adjudication generally does not recognise or permit exceptions; if the hours of work are standardised, for instance, or the wage-structure is standardised, it is intended to make hours of work and wages uniform in the whole industry brought

under the working of standardisation. Standardisation thus inevitably means levelling up of those whose terms and conditions of service were less favourable than the standardised ones, and levelling down those of such others whose terms and conditions were more favourable than the standardised ones. That being so, if s. 79(1) intended to standardise annual leave with wages it would normally not have made provisions in regard to exceptions as s. 78(1) obviously does.

Besides, the scope and extent of the exceptions recognised by s. 78(1) are decisively against the appellant's construction of s. 79(1). The learned Attorney-General has strenuously contended that the saving provision of s. 78(1) applies only to existing law and existing awards, agreements or contracts of service; in other words, his argument is that the Legislature has deliberately decided to except pre-existing arrangements and in that sense it is a departure from the usual concept of standardisation. In our opinion, the assumption that s. 78(1) is confined to existing arrangements is plainly inconsistent with a fair and reasonable construction of the said provision. When s. 78(1) refers to any other law it could not have been intended that it is only to existing laws that the reference is made and that the idea underlying the provision was that no law can be passed in future which would grant more generous leave to the employees. Such a restriction on the legislative activities of the appropriate Legislatures cannot obviously have been intended. If the reference to law is not confined only to existing law there is no reason why reference to any award, agreement or contract of service should be similarly circumscribed or limited. We feel no difficulty in holding that what s. 78(1) protects are laws, awards, agreements or contracts of service which were then existing or which would come into existence later; that is to say s. 78(1) does not affect pre-existing arrangements and does not also prohibit future arrangements which would be more generous than s. 79(1). A law may be passed making more generous provisions, or agreements or contracts may

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be entered into or awards made with the same result. If that be the true position s. 78(1) clearly negatives the theory that s. 79(1) provides for standardisation of annual leave with wages.

The provisions of s. 84 would also lead to the same result. Section 84 provides that where the State Government is satisfied that the leave rules applicable to workers in a factory provide benefits which in its opinion are not less favourable than those for which Chapter VIII makes provision it may by written order exempt the factory from all or any of the provisions of Chapter VIII subject to such conditions as may be specified in the order. Now, the power to exempt factories has to be exercised having regard to the effect of the totality of the benefits which may be afforded to the workers by their respective factories. This power to exempt also necessarily postulates the existence of better amenities than those guaranteed by Chapter VIII, and that means that if a factory provides better leave amenities to its employees, the State Government may in the interest of the employees exempt the factory from the operation of this Chapter. The scope of s. 84, like the scope of s. 78, cannot be limited only to the more favourable benefits which may be existing at the date when the Act was passed. What is true about the existing benefits would be equally true about the benefits which may be granted by an employer to the employees in future. Let us illustrate what the consequence would be if the appellant's argument is accepted. Take the case of an employer who has been exempted under s. 84 on the ground that the benefits of leave conferred by him on his employees are more favourable to them. In such a case, the employer may make his benefits still more favourable after exemption is accorded to him; but an employer who has already not provided more favourable benefits would be effectively precluded from making any such provisions in future. It is difficult to imagine that such a consequence could have been intended by the provisions of this welfare legislation.

The history of the amendments made in the relevant provisions of the Act also indicates that the Act has been gradually making more liberal provisions in the interest of workmen to whom it applies. In the original Act as it was passed (25 of 1934) s. 34 provided for weekly holiday but no provision was made for holidays with pay. When the said Act was amended by Act 3 of 1945, s. 49A which is equivalent to present s. 78(1) without the proviso was inserted; and s. 49B provided, *inter alia*, that every worker who has completed a period of twelve months continuous service in a factory shall be allowed during the subsequent period of twelve months holidays for a period of ten days. That is how provision for holidays came to be made. By the amending Act 63 of 1948, s. 78 with the present proviso was enacted; and s. 79 made a provision for annual leave with wages. While making provision for annual leave with wages the section then prescribed a minimum of ten days; subsequently, by amending Act 25 of 1954, s. 79 as it stands at present was enacted; and in s. 78 the word "annual" has been added to qualify leave in the proviso. We have thus briefly referred to some changes made in the Act from time to time in order to show that subsequent amendments have sought to make the provisions more liberal.

There is one more point which may incidentally be mentioned whilst we are considering the amendments made in the Act from time to time. Section 49A which broadly corresponds to s. 78 of the present Act saved other laws and terms of any award, agreement or contract of service just as s. 78(1) does. Now, if the said section is construed on the lines which the appellant wants us to construe s. 78(1) it would only be arrangements existing at the date when the said amending Act came into force on January 1, 1946, that would be protected and saved, and nothing that happened either by way of legislation or by way of awards or contracts subsequent to the said date would attract the provisions of the said s. 49A or s. 78 which subsequently took its place. This obviously is not

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intended by the Legislature which incidentally shows that s. 78(1) cannot be confined to existing arrangements or laws, but takes within its sweep future laws, agreements, contracts or awards. Therefore, the challenge to the validity of the award based on the assumption that s. 79(1) provides for standardised award of annual leave with wages fails.

Then it is urged that the provision made by the award for privilege leave introduces discrimination between the clerical staff covered by the present reference and operatives covered by the earlier awards made by the same Tribunal. We were told that operatives had made a similar claim for privilege leave before the same Tribunal, and the said claim had been rejected. The argument is that the provision for privilege leave made by the present award would create discontent amongst the operatives to whom similar leave has been denied, and that would disturb industrial peace. We are not impressed by this argument. It is not seriously disputed that a distinction has generally been made between operatives who do manual work and clerical and other staff; in fact the appellant's standing orders themselves make different relevant provisions for the two categories of its employees. It is also not disputed that in practice such distinction is made by comparable concerns, and awards based on the same distinction are generally made in respect of the two separate categories of employees. We are, therefore, unable to appreciate the argument that in granting privilege leave to the present staff the Tribunal has either overlooked its earlier award or has made a decision which suffers from the vice of discrimination. The practice prevailing in comparable concerns and the trend of awards both seem to show that a distinction is generally made between the two categories of employees, and since the said distinction is perfectly justifiable no question of discrimination can arise.

It is then argued that making liberal provisions for privilege leave and sick leave are really opposed to the modern trend in industrial thought, and so such liberal awards should be discouraged and corrected.

There is no doubt that when industrial adjudication seeks to do social justice it cannot ignore the needs of national economy; and so in considering matters of leave, either in the form of privilege leave or sick leave, the Tribunals should not ignore the consideration that unduly generous or liberal leave provisions would affect production and obviously production of essential commodities is in the interest of not only the employers and the employees but also of the general community; but it is difficult for us to accept the argument that we should make suitable modifications in the provisions made by the award in regard to privilege leave or sick leave. These are matters primarily for the Industrial Tribunal to consider and decide. The Tribunal is more familiar with the trend prevailing in comparable concerns, and unless it appears that the impugned provisions cannot be sustained on any reasonable ground or that they mark a violent departure from the prevailing practice or trend, we would be reluctant to interfere with the decision of the Tribunal. After all, in deciding what would be a reasonable provision for privilege leave or sick leave, the Tribunal has to take into account all relevant factors and come to its own decision. As we have already indicated, in making the present award the Tribunal has considered previous decisions which were relevant and prevailing agreements in comparable concerns. We have carefully considered the criticism made by the learned Attorney-General against the provisions contained in the award, but we are not satisfied that a case has been made out for interference in an appeal under Art. 136.

The result is the appeal fails and is dismissed with costs.

Appeal dismissed.