

Bhaskaran M.S. Vs Managing Director, Steel Authority of India and Others

Court: Madhya Pradesh High Court

Date of Decision: June 26, 1995

Acts Referred: Constitution of India, 1950 & Article 226

Citation: (1995) 71 FLR 406 : (1998) 3 LLJ 199

Hon'ble Judges: S.K. Dubey, J

Bench: Single Bench

Advocate: K.N. Vyas, for the Respondent

Judgement

S.K. Dubey, J.

By this petition under Articles 226/227 of the Constitution of India, the petitioner has challenged the order of the Industrial

Court and Labour Court, (Annexure P-14) dated January 24, 1994 and (Annexure P-12) dated April 10, 1992.

2. Facts -- the petitioner is an employee of Respondent No. 1 and is working as Chargeman. From the inception of his employment the petitioner

was enjoying the benefit of 15 days casual leave a year and earned leave one day per 15 days on a calendar year and accumulation of earned

leave was allowed to a maximum 180 days as per Leave Rules applicable. On enforcement of the Standing Orders, the petitioner was denied the

leave which was larger than as prescribed by the Standing Orders Clause 12 (i). Therefore, the petitioner filed a dispute in the first round before

the Labour Court and claimed that he is entitled to leave in accordance with the Leave Rules which were applicable when the petitioner entered in

the service and not in accordance with Clause 12 (i) (e) of the Standing Orders (Plant), which reads thus :

If an employee does not in anyone calendar year take the whole of the leave allowed to him under Clause (a) or (b), any leave not taken by him

shall be added to the leave to be allowed to him in the succeeding calendar year : Provided that the total number of days of leave that may be

carried forward to a succeeding year shall not exceed thirty : Provided further that an employee, who has applied for leave but has not been given

such leave, shall be entitled to carry forward the unavailed leave without any limit.

3. The petitioner contends that as he was being given earned leave and casual leave according to Leave Rules which were applicable at the time of

entry in the service, the same was saved by Clause No. 44 of the Standing Orders (Plant). In the earlier litigation, the Labour Court having

accepted the contention of the petitioner directed the benefit of the leave as per the petitioner's conditions of service as were applicable to him

prior to May 3, 1963. Against that an appeal was preferred before the Industrial Court by the petitioner. The Industrial Court modified the order

of the Labour Court and granted benefit of the leave to the petitioner from May 3, 1963, but did not grant the relief of payment of encashment of

leave as that was not claimed by the petitioner. Against that the petitioner preferred a petition which was heard and decided by a Division Bench of

this Court, vide order dated November 28, 1991 in M.P. No. 98/84, wherein this Court rejected the claim of the petitioner regarding

accumulation of leave as this Court held that accumulation of leave can be claimed under Clause 12 (1) (e) of the Standing Orders. In the

meanwhile, in compliance of the orders of Industrial Court, the respondent passed orders (Annexure P-7) and (Annexure P-8) dated January 14,

1984 and March 6, 1984 respectively and granted the benefit accordingly.

4. The petitioner again challenged the order (Annexure P-8) dated March 6, 1984 before the Labour Court contending, therein that the order of

the Industrial Court has not been complied and, therefore, the respondent has committed an illegal change. The Labour Court rejected the claim

against which the appeal filed before the Industrial Court was also rejected on the ground that the petitioner was given benefit of carry forward

leave under Clause 12 (i) (e) of the Standing Orders (Plant). Aggrieved of that the petitioner has filed this petition.

5. The petitioner contends that the Management has issued circulars from time to time and according to Clause 8.2 of the circular dated February

15, 1983 issued by the Management, the petitioner was entitled for accumulation of 180 days.

6. Learned counsel for the respondent submitted that as the matter was finally settled by this Court the benefit of carry forward of leave and

accumulation of leave to which the petitioner was entitled can only be in accordance with Clause 12 (i) (e) of the Standing Orders (Plant),

therefore, the Industrial Court rightly dismissed the appeal of the petitioner,

7. After having heard the counsel for the parties, I am of the opinion that under Article 227 of the Constitution, no interference can be made

because in the second round of litigation the Labour Court and the Industrial Court passed the order in terms of the decision of this Court passed

in Writ petition, wherein this Court held that the petitioner has not shown any other leave rules applicable to him entitling him for encashment of the

leave. According to the petitioner himself, the petitioner is governed by the Standing Orders (Plant) framed and certified under the Industrial

Employment Standing Orders Act, 1946, therefore, Clause 12 (i) (e) governs the earned leave. The Court further held that Leave Rules (Annexure

P-7) are not applicable nor the petitioner has challenged the settlement arrived at between the management and representative Union in connection

with earned leave.

8. Though the two Courts have not considered (he effect of circular dated February 15, 1983, therefore at first instance, I was inclined to remit the

case, but no useful purpose will be served because the judgment of the High Court operates as res judicata.

9. In the circumstances, I dispose of this petition with a direction to the petitioner to make a representation if the petitioner makes such

representation, it is expected from the respondent/employer that the same will be considered sympathetically in respect of accumulation of earned

leave. No costs.