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GHAZIABAD ENGINEERING CO. (P) LTD.

v.

CERTIFYING OFFICER, KANPUR AND ANR.

January 13, 1978

B [V. R. KRISHNA IYER AND JASWANT SINGH, JJ.]

Constitution of India, 1950, *Art.* 136—*Questions of fact cannot be canvassed for invoking the jurisdiction of the Supreme Court.*

Casual leave, concept of and whether has nexus with total number of days leave that a worker is entitled—Value of current trend in a particular area or industry—Industrial Employment (Standing Orders) Act 1946 *r/w S.* 79(1) *of* C *Factories Act,* 1948.

As against the claim of twelve days casual leave (on a paid basis) made by the workmen of the appellant company and for modification of the Standing Orders under the Industrial Employment (Standing orders) Act 1946, and the rules framed thereunder, the certifying officer, taking into consideration (a) the financial position of the appellant's undertaking including it having paid 20% bonus to its workers (b) the prevalent practice in neighbouring industries in that industrial belt of giving paid casual leave, and (c) the current trend in D that particular industrial area, granted the modification reducing the number of days to six, as being fair and reasonable. The appellate authority confirmed the said modification.

Dismissing the appeal by special leave, the Court

HELD : 1. Supreme Court's jurisdiction under Art. 136 cannot be exploited for canvassing pure questions of fact. [535 E]

E 2. Casual leave is not an automatic advantage to the total number of days' leave that a worker is entitled. Casual leave is not a matter of right and it is only in the event of sudden emergencies that casual leave is allowed. Unforeseen circumstances may unexpectedly prop up necessitating sudden absence of an employee, be he in Government service or any other office or in an industrial undertaking. The whole concept of casual leave is calculated to provide for such contingencies. [535 G-H; 536 A]

F 3. A certain number of days' leave prescribed in S. 79(1) is the minimum and not the maximum. Current trend in a particular area or industry has not the force of law. It may have persuasive value but not more, in considering the claim for casual leave.

In the instant case; (i) There is nothing grossly unfair or shockingly violative of fairness or justice warranting interference by this Court by exercise of its special jurisdiction. After all the excess is around three days in a year over the current trend of granting an overall maximum of thirty days, which circumstance the Tribunal has taken note of. [535 F, 536 C-D]

G *Alembic Chemical Works Co. Ltd.* v. *Workmen* [1963] 1 SCR 297 reiterated.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2171 of 1970.

Appeal by Special Leave from the Order dated 30-3-1970 of H the Appellate Authority Allahabad (Industrial Tribunal) in Standing Order Appeal No. 8/69.

K. P. Gupta for the Appellant.

G. N. Dikshit and *O. P. Rana* for Respondent No. 1. A

The Judgment of the Court was delivered by

KRISHNA IYER, J.—This appeal by special leave raises a short question which has been decided adverse to the appellant by the certifying officer, Kanpur and the Industrial Tribunal which is the appellate authority. The narrow point that falls for decision is as to whether the modification of the Standing Orders under the Industrial Employment (Standing Orders) Act, 1946 and the rules framed thereunder was illegally made by the certifying officer. The modification itself related to grant of six days' casual leave (on a paid basis) to the workers in the appellant's factory in Ghaziabad. The certifying officer has considered this grant of casual leave as fair and reasonable having regard to the prevalent practice in the neighbouring industries of this industrial belt and also paying attention to the financial position of the appellant's undertaking. For this purpose he has relied upon the fact that 20% bonus was paid under the Payment of Bonus Act, 1965 and has further stated that certain other factories have been giving paid casual leave for their workers. These facts persuaded him to grant the modification although reducing the number of days to six as against twelve which the workers originally claimed. B C D

The appellate authority concurred by a separate discussion in the same conclusion. We are requested by Shri Gupta to reverse this concurrent refinding of fact on two grounds. He states that the undertaking of the appellant is a losing proposition and relies upon certain balance sheets stated to have been produced before the certifying officer. He also argues that there is no positive material to make out that other industries in the locality are graning casual leave for their workers. E

These are pure questions of fact and this Court's jurisdiction under Art. 136 cannot be exploited for canvassing points such as these. It is clear that the modification was within the jurisdiction of the certifying officer and he has not contravened any provision of the Act or any statute. The Factories Act, 1948 prescribes in s. 79(1) a certain number of days' leave but this is the minimum and not the maximum as has been indicated in this Court's ruling in *Alembic Chemical Works Co. Ltd.* v. *Workmen*(1). Moreover, the model Standing Orders as well as the Schedule to the Industrial Employment (Standing Orders) Act, 1946 deal with casual leave. In this view there is nothing illegal in the order impugned nor are we satisfied that there is anything shockingly violative of fairness or justice. It is a notorious fact that casual leave is not an automatic advantage to the total number of days' leave that a worker is entitled. It is only in the event of sudden emergencies that casual leave is allowed and so the grievance of the appellant is exaggerated, if not imaginary. Apart from this, it is elementary that unforeseen circumstances may unexpectedly prop up necessitating sudden absence of an employee, be he in Government service or any other offices or in an industrial undertaking. The whole concept of casual F G H

(1) [1963] 1 S.C.R. 297.

A leave is calculated to provide for such contingencies. We see nothing unfair in the certifying officer according six days by way of casual leave to the workers. After all the contentment of the workers is an essential component of their efficiency and if the certifying officer and the Appellate Authority who deal regularly with such matters have felt that this step was fair and nothing is shown to our satisfaction that there is anything grossly unfair about this modification, we should not
B interfere by exercise of the special jurisdiction of this Court.

The third point put forward by Shri Gupta was that according to the appellate Tribunal, the current trend is to grant an overall maximum of thirty days leave while in this case if the casual leave is also taken into account it may extend to 33½ days leave. As pointed out earlier, casual leave is not a matter of right and a man may not
C get casual leave unless circumstances are sudden or which in the ordinary course cannot be met by taking regular leave. Secondly, we are not satisfied that the current trend in a particular area or industry has the force of law. It may have persuasive value but not more. That is why after taking note of that circumstance, the Tribunal has still chosen to affirm the claim for six days casual leave. After all the excess is around three days in a year.

D We, therefore, dismiss the appeal, but, in the circumstances, without costs.

S. R. *Appeal dismissed.*