HIGH COURT OF GUJARAT *(D.B.)*

SUHRID GEIGY LIMITED, BARODA
V/S
STATE OF GUJARAT

Date of Decision: 20 April 1978

Citation: 1978 LawSuit(Guj) 36

Hon'ble Judges: B J Divan, D P Desai

Eq. Citations: 1978 GLR 963, 1979 (1) LLJ 311, 1979 (38) FLR 100, 1978 LabIC 1600

Case Type: Special Civil Application

Case No: 1858 of 1977

Subject: Labour and Industrial

Head Note:

Factories Act (LXIII of 1940) - S.79(3_,S.79(ii) (as amended in 1976) - Encashment of earned leave - Persons quitting employment not only entitled to accumulated leave from previous calendar year but also to leave attributable to the period of work during the calendar year.

As a result of the amendment in the factories Act in 1976 instead of encashment of earned have which was available in a restricted number of cases under sub-sec. (11) of sec. 79 now the encashment is available in a much wider category of cases namely discharge or dismissal from service quitting of employment superannuation or death while in service. The concept of current years period being also counted for leave with wages which existed under old sub-sec. (3) in the case of a worker who was discharged or dismissed has now been made applicable under the new sub-sec. (3) in the case of not merely discharged or dismissed employees but also employees quitting the service being

superannuated or dying while in service and thus the encashment which was available only to restricted categories is made available to all such persons This is the benefit which has bean conferred on a much larger category of workers than was applicable under the encashment scheme set out in sub-sec. (11). The result is that now after the amendment which came into effect on October 26 1976 the worker concerned is governed by a much more beneficial scheme of encashment of leave than was available under the restricted categories under sub-sec. (11). The retention of sub-sec. (11) on the statute book makes no difference to the result which follows from the plain language of sub- sec. (3). Why the Legislature has not deleted sub-sec. (11) when a much wider and far ranging provision is made in sub-sec- (3) of sec. 79 does not become clear; but the fact that it is retained cannot detract from full scope being given to the clear language of sub-sec. (3) of sec. 79 as enacted by the Amendment Act of 1976 (Para 2) In view of the interpretation of sec. 79 sub-sec. (3) it is obvious that all workers who quit their employment would be entitled not only to accumulated leave from previous calendar years but also to leave attributable to the period of work during the calendar year in which they quit their employment (Para 3)

Acts Referred:
Factories Act, 1948 Sec 79(11), Sec 79(3)

Final Decision: Petition dismissed

Advocates: K S Nanavati, R M Christie, M I Hawa, Bhaishankar Kanga, Girdharlal

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Judgement Text:-

B J Divan, C J

[1] The petitioner herein is a Limited Company and has its Registered Office at Ahmedabad. The petitioner is engaged in the business of manufacturing filaments, dyes and chemicals. The Company has got two factories, one at Wadi Wadi locality in Baroda and the other at Ranoli village in Baroda District. The petitioner Company is governed by the provisions of the Factories Act, 1948, and holds a valid licence for running the factories issued under the Factories Act separately for the two factories. Under the factories Act provisions have been made for leave with wages to which every workman

is entitled. The Factories Act, 1948, has been amended by the Factories (Amendment) Act, 1976, which came into force on and from October 26, 1976. Sec. 79 of the Act as it stood prior to the amendment provided for annual leave with wages. Under sub-sec. (1) of sec. 79, 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 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; and (2) if a child, one day for every fifteen days of work performed by him during the previous calendar year. Under the Explanation to sub-sec. (1) of sec. 79, for the purpose of sub-sec. (1), any days of lay off, by agreement or contract or as permissible under the Standing Orders and in the event of a female worker, maternity leave for any number of days not exceeding twelve weeks, and 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 purpose of computation of the period of 240 days or more, but he shall not earn leave for these days. Under Explanation 2, the leave admissible under sub-sec. (1) shall be exclusive of all holidays whether occurring during or at either end of the period of leave. Under sub-sec. (2) a worker whose service commences otherwise than on the first day of January shall be entitled to leave with wages at the rate laid down in clause (i) or, as the case may be, clause (ii) of sub-sec. (1) if he has worked for two-thirds of the total number of days in the remainder of the calendar year. Under sub-sec. (3) as it stood prior to the amendment of 1976, if a worker was discharged or dismissed from service during the course of the year, he was to be entitled to leave with wages at the rates laid down in sub-sec. (1), even if he had not worked for the entire period specified in sub-sec. (1) or sub-sec. (2) entitling him to earn leave. The provisions from sub-Secs. (4) to (10) are not material for the purposes of this judgment.Under sub-sec. (11) of sec. 79, if the employment of a worker, who is entitled to leave under sub-sec. (1) or sub-sec.(2), as the case may be, is terminated by the occupier before he has taken the entire leave to which he is entitled, or if having applied for and having not been granted such leave the, worker quits his employment before he has taken the leave, the occupierof the factory shall pay him the amount payable under sec. 80 in respect of the leave not taken, and such payment shall be made, where the employment of the worker is terminated by the occupier, before the expiry of the second working day after such termination, and where a worker quits his employment on or before the next pay day.

[2] It is clear from the provisions of sec. 79 as they stood prior-to the amendment of sub-sec. (3) of sec. 79 that sub-Secs. (1) and (2) speak of the entitlement because of

the work put in the previous calendar year or the previous year. As regards sub-sec. (3), if a worker was discharged or dismissed by the employer from service during the course of the year, he was to be entitled to leave with wages not only in respect of previous-calendar year's work or accumulated leave but he was to be entitled to leave with wages at the rates laid down in sub-sec. (1) even-if he has not worked for the entire period specified in sub-sec. (1) or sub-sec. (2) entitling him to earn leave. The result was that in the case of an employee who was discharged or dismissed from service even the current year's work was to be taken into account for the purpose of calculating leave with wages. Under sub-sec. (11) encashment of earned leave was provided prior to amendment in two classes of cases. If the services of the worker had been terminated by the occupier, before he has taken the entire leave to which he is entitled, then the entire period of leave could be encashed. Since cases of termination would he either by way of discharge or dismissal so far as the termination of the employer is concerned, it would necessarily follow that if a worker was discharged or dismissed from service in the course of the year, then over and above the accumulated leave of the previous calendar year or years, he would also be entitled to leave calculated at the rate laid' down in sub-sec. (1) for the current year's work also. Apart from the eases of workers whose services were terminated by the employer, encashment was provided- in sub-sec. (11) m the case of a worker who having applied for leave had not been granted Such leave. If such a worker quit his employment before he had taken the leave, the occupier of the factory had to pay him encashment for the leave which was not taken, that is, leave which was not enjoyed. In other Words, the encashment would be under sub-sec. (11) for the entire period of leave standing to the credit of the employee who quit his job. After the amendment, sub-see. (3) of sec. 79 was entirely substituted by a new tub-section. The new sub-sec. (3) is the material sub-section for our purposes and it provides that if a worker is discharged or dismissed from inveigh or quitting of his employment or is superannuated or dies while in service, during the course of the calendar year, be or his heir or nominees, as the case maybe, shall be entitled to wages in lieu of the quantum of leave to which he was entitled immediately before his-discharge, dismissal, quitting of employment, superannuation or death calculated at the rates specified in sub-sec. (1), even if be had not worked for the entire period specified in sub-sec. (1) or sub-sec. (2) making him eligible to avail of such leave, and such payment shall be made. It is true, as Mr. Nanavati for the petitioner, emphasizes before us, sub-sec. (11) of sec. 79 still remains on the statute book but sub-sec. (11) does not in any way detract from the fall effect of sub-sec. (3) of sec. 79 which had been inserted by the amendment of 1976. As a result of that amendment, instead of encashment of earned leave which was available in a restricted number of cases under sub-sec. (11),

now the encashment is available in a much wider category of cases, namely, discharge or dismissal from service, quitting of employment, superannuation or death while in service. The concept of current year's period being also counted for leave with wages which existed under old sub-sec. (3) in the case of a worker who was discharged or dismissed has now been made applicable under the new sub-sec. (3) in the case of not merely discharged or dismissed employees but who employees quitting the service, being superannuated or dying while in service and thus the encashment which was available only to restricted categories is made available to ail such persons. This is the benefit which has been conferred on a much larger category of workers than was applicable under the encashment scheme set out in sub-sec. (11). The result is, that now after the amendment which came into effect on October 26, 1976), it worker concerned is governed by a much more beneficial scheme of encashment of leave than was available under the restricted categories" under sub-see. (11). The retention of sub-sec. (11) on me statute book makes no difference to the result which follows from the plain language of sub-sec. (3). Mr. Nanavati is right when he contends that after the insertion of new sub-sec. (3) in sec. 79 by the Amendment Act of 1976, sub-sec. (11) of sec. 79 has become superfluous because every case which is covered by sub-sec. (11) of sec. 79 would fall within the new sub-sec. (3) of sec. 79. Why the Legislature has not deleted sub-sec. (I 1) when a much wider and far-ranging provision is made in sub-sec. (3) of sec. 79 does not become clear; but the fact that it is retained cannot detract from full scope being given to the clear language of sub-sec. (3) of sec. 79 as enacted by the Amendment Act of 1976. Sub-sec. (5) merely provides for the accumulation of earned leave and to what extent accumulation can be made. The petitioner Company has challenged the order made by the Factory Inspectorate in con' action with a worker Chandrakant Parshotlamdas who resigned on February 24, 1977 and it appeared that as on January 1, 1977 he bad a balance of 19 days of earned leave. Out of that, prior to his resignation which took effect from February 24, 1977, he had enjoyed 6 1\2 days of earned leave and thus there was & balance of 122 days of earned leave. For the days of work put in upto February 24, 1977 he would be entitled to two more days of earned leave and hence he would be entitled to encashment of 14; days of earned leave. It was pointed out that the amended Factories Act, sec. 79 sub-sec. (3) should be applied in the case of encashment of workers who resigned from their Jobs and that it was compulsory on the employer that is, the occupier, to pay encashment of earned leave on the basis of the amended Factories Act. That direction was given, as shown in Annexure "A" to the petition, and thereafter correspondence seems to have taken place where the Factory inspectorate insisted and the Inspector of Factories has been making

endorsements that the full farce of sec. 79 sub-sec. (3) was not being given to employees who were quitting their employment and written explanation for this breach of sec. 79 sub-sec. (3) was called for.

[3] In view of the interpretation of sec. 79 sub-sec. (3), it is obvious that all workers who quit their employment would be entitled not only to accumulated leave from previous calendar years but also to leave attributable to the period of work during the calendar year in which they quit their employment. Under these circumstances the contentions urged by the petitioners fail and the stand taken by the Factories Act administration and the Inspectorate is correct.

[4] This Writ Petition, therefore, fails and is dismissed with costs. Rules is discharged.

Petition dismissed.