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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No.238 of 2014

1. Coal India Limited, through its Chairman-Cum-Managing Director, 10, Netaji Subhash Road, Calcutta - 700001, West Bengal.
2. South Eastern Coalfields Limited, through its Chairman-Cum-Managing Director, Sipat Road, Bilaspur, Chhattisgarh.

---- Appellants

Versus

Dr. A.K. Verma S/o Shri Dharamnath Prasad Verma, Aged About 58 Years, Cardiac Care, Subham Comples, Near Pratap Talkies, Bilaspur, Chhattisgarh – 495 001.

---- Respondents

For Appellants : Shri Abhishek Sinha, Advocate.
For Respondent : Shri Gary Mukhopadhyay, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice

Hon'ble Shri Justice Parth Prateem Sahu

Judgment on Board

Per Ajay Kumar Tripathi, Chief Justice

24.09.2018

1. Heard counsel for the parties.

2. Appeal is on behalf of the Coal India Limited (for short, 'the CIL') against the order of learned Single Judge dated 14.04.2014 passed in Writ Petition No.2105/1999 giving a direction upon the appellants to pay to the private respondent earned leave and half pay leave as well as interest @ 8% per annum from the date of accrual of the cause within a period of 3 months.

3. The background facts leading to the litigation in question was that the private respondent was initially appointed as a Medical Officer by the CIL by virtue of the appointment letter, dated 31.07.1978. After he accepted the appointment letter he was posted at the headquarters at Kargali as a relieving Doctor to Senior Specialist (Physician). He worked for a period of time and rose to

become a Medical Superintendent, when he chose to resign from his post which was accepted by the appellants-Company on 01.02.1999. It may be noticed that the private respondent initially took recourse to voluntarily retirement, but when the same was refused, he decided to tender his resignation unilaterally without any conditions.

4. On 27.02.1999, the respondent-employee prayed for encashment of his earned leave and half pay leave, but the same was refused vide order dated 12/13.03.1999. A copy of the said order which also became subject matter of challenge is Annexure -P/10 to the writ application.

5. The reason emerging from Annexure -P/10 is the provision of Rule 7.1 relating to Leave Encashment Scheme (for short, 'the Scheme') of CIL which prohibits grant of encashment of any leave at credit to an employee who resigns from service Rule 7.1 of the Scheme of CIL read as under : -

> "7.1 <u>Leave at credit shall not be granted for encashment if an employee resigns from the service.</u>
>
> (emphasis provided)
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> Note : According to para 7.1 of the Leave Encashment Scheme For Executive Cadre Employees, leave at credit shall not be granted for encashment if an employee resigns from the service.
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> A question in this connection has been raised as to whether "resigns from the service" would mean the date on which the resignation is effective i.e. the date of final quitting of service.
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> The matter was examined in consultation with Finance and it is clarified that since there is no restriction on granting of leave to an employee during the period prior to the date of his actual quitting of/release from service on submission of resignation, the words "resigns from service" would mean the actual date of quitting of service and hence the facility of encashment of leave may, if allowed be available before and upto that date and not beyond the date of actual quitting of the service."

6. Submission was made by the private respondent before the learned Single Judge that even in terms of the note appended to Rule 7.1 of the Scheme, an employee can be granted benefit of earned leave up to the date of his actual quitting and not beyond the same. Reliance was also placed on Section 52 sub-section (10) of the Mines Act, 1952 (for short 'the Act, 1952') that he would be entitled to the benefit even if he is terminated or leaves his employment. Alternative argument was built that the Scheme of C.I.L being non-statutory in nature they cannot over ride the statutory provisions as laid down under the Act, 1952.

7. The learned Single Judge, by drawing support from a decision rendered in the case of **Jaswant Singh Gill Vs. Bharat Coking Coal Ltd. & Ors,** reported in **(2007) 1 SCC 663,** made it applicable to the facts and circumstances of the present case and he came to a considered opinion that denial of leave encashment benefit on the basis of resignation by an employee was required to be set aside and a direction in favour of the employee was issued.

8. Argument on behalf of learned counsel for the appellant is that the private respondent, in fact doesn't even come within the definition of "employee" in the mine and, therefore, the Act, 1952 is not applicable to him. To support such an argument reference has been made to the definition clause of the Act, which is Section 2(h) sub-section (vi) which reads as under :-

> " 2(h) a person is said to be "employed" in a mine who works as the manager or who works under appointment by the owner, agent or manager of the mine or with the knowledge of the manager, whether for wages or not –
>
> 2(vi). In any welfare, health, sanitary or conservancy services required to be provided under this Act, or watch and ward, within the premises of the mine <u>excluding residential area</u>: or "

9. Drawing support from the definition clause, it is the stand of the appellants that the private respondent was not employed in the mines and merely because he was appointed as a Medical Officer and posted at the headquarter at Kargali, does not make him a person employed in the mines.

10. Attention of this Court has been further drawn to a specific pleading and averment to Paragraph 5.10 of the writ application, which reads in following words :-

> "5.10. It is most humbly submitted that Service Rules of the petitioner provides for accumulation and encashment of earned leave. The respondents have also made Coal India Executives Leave Rules applicable to all the Executives appointed by respondent No.1 and all its subsidiaries. The relevant provision is reproduced below:
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> The CIL Board of Directors at its 81st meeting held on 16th December, 1986 has approved the proposal for enhancement of limits for accumulation and enhancement of leave to executive from 180 days to 240 days."

11. The submission on behalf of counsel for the appellants is that the private respondent treated himself to be governed by the Scheme made by CIL for its Executives and the benefit which he was looking for was within the Scheme so notified and decided by the Board of Directors of CIL, therefore, it is not open to the employee to claim benefit of the Scheme which suits him and disown or for-sake such provision which creates an embargo from availing the benefit of earned leave and half pay leave.

12. It is also contented on behalf of the appellants that a distinction or a class has been created amongst the employees who will be denied the benefit under the Leave Rules, who have chosen themselves to quit unconditionally. Since resignation of such kind generally entails forfeiture of service, therefore, the private respondent cannot be rewarded beyond the ambit of the Scheme when

the resignation was not under any compelling circumstance but his own decision to part ways, may be looking at a better future awaiting him outside the system.

13. Yet another argument made is that the note appended to Para 7.1 of the Schemes meant for the Executive Cadre Employees has to be understood in the context in which such clarification has been given Rule 7.1 creates a complete embargo when it says that “leave at credit shall not be granted for encashment if an employee resigns from service”. The note was a clarification which was provided by the Finance Department as to what shall be the date which has to be accounted for when an employee quits the service i.e. whether it will be on submission of resignation or acceptance of resignation. This note only certifies that in case where facility of encashment of leave is allowable or available, then the calculation has to be made from the date of acceptance of the resignation. But this note, in no manner overrides Rule 7.1 which contemplates non-grant of encashment of leave, when an employee resigns.

14. Submission of the counsel, therefore, is that the learned Single Judge committed serious error by interpreting the note on if it meant that leave encashment was still payable despite resignation. In our opinion, the submission of the counsel for the appellants seems to be correct. The note has to be understood in the context that where such a benefit is available to an employee, then how the calculation is required to be made. But in no way it takes away the rigours imposed in Rule 7.1, which is a fall out of the decision of an employee to resign from service.

15. To counter such an argument, counsel for the private respondent submits that since he was appointed as a Medical Officer and posted in colliery mines at Kargali, he has to be treated to be an employee employed in the mines and all the provisions of the Act, 1952 will be applicable to him. He relies on Section 49 of the Act which is under Chapter VII dealing with Leave and Wages. Section 49 reads as follows :-

> “[49. Application of Chapter. - The provisions of this Chapter shall not operate to the prejudice of any right to which a person employed in a mine may be entitled under any other law or under the terms of any award, agreement or contract of service:
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> [Provided that if such award, agreement or contract of service, provides for a longer annual leave with wages than that provided in this Chapter, the quantum of leave, which the person employed shall be entitled to, shall be in accordance with such award, agreement or contract of service, but leave shall be regulated in accordance with the provisions of Sections 50 to 56 (both inclusive) with respect to matters not provided for in such award, agreement or contract of service.]]

16. Argument of the counsel on behalf of private respondent is that any other benefit which an employee derives in addition to the provisions of the Act, 1952 by virtue of any other law or terms of an award, agreement or contract of service that cannot be taken away from an employee covered under the Act, 1952 and it is in addition to the benefit which has been contemplated under the Act. Counsel for the private respondent tries to reinforce his argument by placing reliance on Section 52 sub-section (10) to urge that even in case of a person employed in a mine is discharged or dismissed from service or quits his employment, or is superannuated or dies while in service, he or his heirs or his nominees shall be entitled to wages in lieu of leave due to him calculated at the rate specified in sub-section 1.
17. The submission or the stand of the counsel for the private respondent is that Sections 49 & 52 (10) has to be read together and if they are read together, then in no manner can the appellant-Company be permitted to deny or hold back the payment of leave encashment.
18. To counter the above argument, learned counsel for the appellants submits that the Chapter VII specially, Section 49 deals with annual leave with wages. Leave has been defined in Section 50. The calendar year has been defined in Section

51 and the calculation of annual leave and wages has been provided for in detail under Section 52 of the Act, 1952, where also a class is made out between those who are employed below the ground and those who are working above the ground.

19. This argument made on behalf of the private respondent will have to be understood in the context of which Section 49 onwards have been provided for since *prima facie* we are not satisfied that the appointment of the private respondent was employment in the mines. The provisions of the Act, 1952 will have no application to the present set of facts and the background under which the appointment of the private respondent was made and the position he was holding therein.

20. Even otherwise, the stand of the private respondent is that he will be entitled to the benefit which had been provided under the Coal India Executive Leave Rules since it is in addition to the provisions which have been made under Section 49 of the Act, 1952 cannot be accepted as a line of argument for the reason that the application of Section 49, even if for the sake of argument is accepted, it deals with provisions of annual leave with wages and does not talk in terms of earned leave and half pay leave acquired over the years by an employee.

21. In the above background, therefore, the learned Single Judge has committed an error by holding that the private respondent would be governed by the Act, 1952, as well as misreading the provisions under Section 52 (10) of the Act, 1952 read with a note appended to Rule 7.1 of the Scheme of the CIL. The two operate in two different fields. An entitlement of an employee will flow from what is provided for in the scheme, even if it is non-statutory in kind. The advantage thereof can be availed and the impediment created therein cannot be forsaken.

22. In totality, therefore, the appeal is fit to be allowed. The impugned order dated 14.04.2014 passed by the learned Single Judge in the writ petition is set aside.

Sd /-

(Ajay Kumar Tripathi)
Chief Justice

Sd /-

(Parth Prateem Sahu)
Judge

Jamal