



W.P(MD)No.18462 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 11.04.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.18462 of 2020

Kudankulam Nuclear Power Employees Union,
Rep. by its General Secretary,
Kudankulam Nuclear Power Project,
Radhapuram Taluk,
Tirunelveli District.

... Petitioner

Vs.

1.Government of India,
Ministry of Labour,
Rep. by its Secretary,
Shiram Sakthi Bhawan Rafi Mag,
New Delhi – 110 001.

2.The Site Director,
Kudankulam Nuclear Power Project,
Nuclear Power Corporation of India Ltd.,
Radhapuram Taluk,
Tirunelveli District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Certiorarified Mandamus, calling for the records pertaining to the order No.L.42011/143/2019-IR (DU) dated 9.1.2020 issued by the 1st respondent quash the same and consequently direct the 1st respondent to refer to the dispute raised by the petitioner



W.P(MD)No.18462 of 2020

union with regard to the demand for overtime wages and compensatory off for the work done by the workmen in the 2nd respondent on the declared holiday, that is 14.4.2018 for adjudication to the Central Government Industrial Tribunal Cum Labour Court, Chennai-600006 within a specified time frame as may be fixed by this Court, Award costs.

For Petitioner : Mr.S.Arunachalam

For Respondents : Mr.S.Jeyasingh,
Senior Panel Counsel for R1.
Mr.Krishna Srinivasan, Senior Counsel,
For Mr.S.Ramasubramaniam and Associates for R2.

ORDER

A group of college students organized an 18-hour study marathon at Mumbai as a tribute to Dr.Ambedkar on his 126th birth anniversary. Babasaheb tirelessly studied for long hours in libraries. The same trait of toiling hard continued till the very end as he took up the cause of social emancipation as his life mission. Like Bharat Ratna Shri.A.P.J.Abdul Kalam, he too would have said “Don't declare holiday on my death, instead work an extra day, if you love me”. We, however, subscribe to sentiments and symbolism. Courtesy rather than efficiency is our hallmark. Whenever references are held in memory of departed Judges,



W.P(MD)No.18462 of 2020

the Court bell will go at 03.15 p.m. The function will conclude at around 03.45 p.m. with the Hon'ble Chief Justice solemnly announcing suspension of the Court work for the rest of the day as a mark of respect for the departed soul. There is similar loss of 90 minutes of working time when farewell functions are organized. Public servants are like school children. Grant of holidays and exemption from work are always welcome.

2.In the year 2018, the Central Government issued notification under Section 25 of the Negotiable Instruments Act, 1881 declaring April 14, the birth anniversary of Dr.Ambedkar as national holiday. Many of the 'round-the-clock shift workers' employed in the second respondent corporation of course had to work on the said date also ie., 14.04.2018. They are members of the petitioner-trade union. They demanded that they should be paid twice the wages for having worked on the said date. The management took the stand that 14.04.2018 happened to be second Saturday; since the workers had already been granted the benefit for having worked on a holiday, they cannot be given double benefit. Espousing their cause, the petitioner demanded reference under Section



W.P(MD)No.18462 of 2020

10 of the Industrial Disputes Act, 1947. The request was rejected by the Ministry of Labour on the ground that they did not consider the dispute fit for adjudication. Challenging the impugned communication dated 09.01.2020 issued by the first respondent, the present writ petition came to be filed.

3.The learned counsel for the petitioner as well as the learned senior counsel for the management submitted that the legal issue raised by the petitioner can be decided by this Court.

4.14th April 2018 happened to be a second Saturday. It was already a declared holiday. Where a holiday falls on an already declared holiday, the employee will not be entitled to claim double benefit. Section 5(2)(b) of the Tamil Nadu Industrial Establishments (National and Festival Holidays) Act, 1958 is as follows:-

“(b) Where an employee works on any holiday allowed under section 3, he shall, at his option, be entitled to-

(i) twice the wages; or

(ii) wages for such day and to avail himself of a substituted holiday with wages [on one of the three days immediately before or after the day on which he so works.]”



W.P(MD)No.18462 of 2020

A plain reading of the aforesaid statutory provision would lead anyone to the conclusion that the employee must have worked on a holiday to claim the benefit conferred by the provision. The expression employed is “any holiday”. It only means that the day concerned should have been a working day but for its declaration as a holiday. If it is already a holiday, the aforesaid provision cannot be invoked for claiming double benefit. If an employee had worked on any holiday allowed under Section 3 of the Act, he will be entitled to the benefit set out in the provision.

5. In the case on hand, it is stated that as far as the 'round-the-clock shift workers' are concerned, the second Saturday is very much working day as per their shift-roster. It is their assertion that they are not asking for double benefit. They only seek benefit as contemplated in Section 5(2)(b) of the Tamil Nadu Industrial Establishments (National and Festival Holidays) Act, 1958. As far as the 'round-the-clock shift workers' are concerned, there is no concept of second Saturday. 14th April 2018 became a holiday only on account of declaration of Dr. Ambedkar Jayanthi as national holiday. Any 'round-the-clock shift worker' who had worked on 14th April 2018 would be entitled to the



W.P(MD)No.18462 of 2020

benefit set out in Section 5(2)(b) of the Act. As far as such workers are concerned, it was not a case of working on a holiday falling on a holiday.

6.In this view of the matter, the 'round-the-clock shift workers' working in the second respondent corporation shall be entitled to the benefit sought for. The second respondent will confer the monetary benefit on them accordingly.

7.This writ petition is disposed of accordingly. No costs.

11.04.2023

NCC : Yes/No
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W.P(MD)No.18462 of 2020



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W.P(MD)No.18462 of 2020

G.R.SWAMINATHAN, J.

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W.P(MD)No.18462 of 2020

11.04.2023
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