Bareilly Holdings Ltd vs Their Workmen on 16 February, 1979

Equivalent citations: 1979 AIR 1211, 1979 SCR (3) 236, AIR 1979 SUPREME COURT 1211, 1979 LAB. I. C. 600, 1979 UJ (SC) 356, 54 FJR 326, 1979 (1) LABLN 516, 1979 SCC (L&S) 262, (1979) 1 LABLJ 352, 1979 (3) SCC 257, (1979) 1 SCWR 295, (1979) 38 FACLR 275, (1979) 2 SCJ 339

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Bench: Y.V. Chandrachud, Ranjit Singh Sarkaria, N.L. Untwalia, O. Chinnappa Reddy, A.P. Sen

PETITIONER:
BAREILLY HOLDINGS LTD.

Vs.

RESPONDENT:
THEIR WORKMEN

DATE OF JUDGMENT16/02/1979

BENCH:
CHANDRACHUD, Y.V. ((CJ)
BENCH:
CHANDRACHUD, Y.V. ((CJ)
SARKARIA, RANJIT SINGH
UNTWALIA, N.L.
REDDY, O. CHINNAPPA (J)
SEN, A.P. (J)

CITATION:
1979 AIR 1211 1979 SCR (3) 236
1979 SCC (3) 257

ACT:
Employees State Insurance Act, 1948, Section 72 and Regulation 97 framed under Section 97(1) of the E.S.I., Act, 1948, purpose and effect of-Whether the deduction of half day's wages corresponding to the sickness benefit to which the workmen were entitled under the E.S.I. Act, in the event of their not availing themselves of the benefits under the E.S.I. scheme in order.

HEADNOTE:
By virtue of the award in Adjudication case No. 33 of

1952 given by the State Tribunal Allahabad, respondents were entitled to fifteen days' sick leave on full wages as a condition of their service. The appellant adopted the Employees State Insurance Act in 1957. The appellant, therefore, paid to the workmen full wages for two day's sick leave out of 15 days' sick leave for the reason that the workmen did not get cash benefit for the first two days of the waiting period of sickness on account of the provisions of section 49 of the E.S.I. Act. For the balance of the thirteen days only half the wages' were paid. In the industrial dispute referred for adjudication to the Industrial Tribunal under section 4(k)of the U.P. Industrial Disputes Act, the award went in favour of the workmen.

Dismissing the appeal by special leave, the Court,

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HELD : 1. The general purpose and effect of section 72 is to deny to the employers the right or power to reduce or discontinue the benefit payable to the workmen under their conditions of service on the ground that the benefits available under the conditions of service and under the E.S.I. Act being similar the workmen would not be entitled to a double benefit. [240 A-B]

Section 72 provides in terms that the mere circumstance that an employer is liable to make a contribution under the E.S.I. Act will not entitle him, directly or indirectly, to reduce the wages of an employee or, in so far as the Regulation permits, discontinue or reduce the benefits payable to him under the conditions of his service even if those benefits are similar to the benefits conferred by the E.S.I. Act. The purpose of Section 72 is evidently to discourage employers from using the benefits provided under the E.S.I. Act as an excuse or justification for reducing or discontinuing the benefits available to the workmen under their conditions of service on the ground of similarity between the two types of benefits. The case of the appellant before the Industrial Tribunal was that it was making a contribution to the E.S.I. Corporation for the benefit of its employees and if any individual employee chose not to avail of the benefits due to him from the Corporation on account of the sickness benefit, it is he who ought to suffer and there would be no justification for obliging the employer to spend for his sickness benefit twice over. It is precisely this type of argument and attitude that the legislature anticipated and guarded against by incorporating the particular provision in section 72. [240 B-E]

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2. The contention that it is enough for justifying the deduction from wages due to the workmen for sick leave that the employee is covered by the E.S.I. Act is not correct. In the first place, section 46 of the E.S.I. Act would show that employees who are covered by the E.S.I. Act are entitled to certain benefit subject to the provisions of the

E.S.I. Act. It is, therefore, not as if the workmen are entitled to the benefits absolutely and without compliance with the conditions laid down by the Act or the Regulation. Secondly, the proviso to Regulation 97 says that the employer shall be entitled to deduct from the leave salary of the employee, "the amount of benefit" to which he may be entitled under the E.S.I. Act for the corresponding period of his sickness. A workman does not become entitled to the "amount" payable to him by way of sickness benefit unless, in the first instance, he chooses to avail himself of the sickness benefit. That benefit cannot be forced on him. This would show that the employer's right to make a deduction from the employee's sick leave wages can only be exercised in respect of those days of sickness leave for which the workmen has actually availed of the sickness benefit. [240 F, H, 231 A-C]

3. Benefits which are available under the E.S.I. Act are not intended as substitutes for benefits to which the workmen are entitled under the conditions of their service. A workman becomes entitled to sickness benefit only if he is qualified for it and he gets a cash benefit only if he avails himself of the sickness benefit. Thus it is only when a workman, in fact obtains or receives a cash benefit that the employer can exercise his right to make a deduction from wages due to him by way of leave salary. In providing for periodical payments to an insured worker in case of sickness, the legislature did not intend to substitute any of those benefits for the workmen's right to get leave on full pay on the ground of sickness. [241 B-D, F]

Hindustan Times Ltd. v. Their Workmen, [1964] 1 SCR 234 applied in part.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1606 of 1970.

From the Award dated 28-11-1969 of the Industrial Tribunal (II) Lucknow in Adjudication Case No. 120 of 1968 published in U.P. Gazette dated 21-3-1970.

G.B. Pai, D.N. Misra and Shri Narain for the Appellant. Gobind Das (A.C.) and Mrs. Sunanda Bhandare for the Respondent.

The Judgment of the Court was delivered by CHANDRACHUD, C.J. This appeal by special leave arises out of the award of the Industrial Tribunal, Lucknow, U.P. dated November 28, 1969. On September 7, 1968 the Government of U.P. referred the following dispute for adjudication to the Industrial Tribunal under section 4 (K) of the U.P. Industrial Disputes Act, 28 of 1947.

> "Whether the action of the employers in deducting half wages corresponding to the sickness benefit to which workmen are entitled under the E.S.I. Act in the event of the workmen not availing the services of the E.S.I. is legal and/or justified ? If not, to what relief are the workmen entitled and with what details ?"

The respondent-workmen contended that the Employees State Insurance Act, 1948 (hereinafter called the E.S.I. Act) was adopted by the appellant, M/s Bareilly Electricity Supply Co. Ltd., in 1957, that the workmen used to enjoy, prior to 1957, 15 days' sick leave with full wages every year in accordance with the terms of an award given by the State Tribunal, Allahabad, in Adjudication Case No. 33 of 1952, that under that award, the workmen were entitled to sick leave on full wages as a condition of their service, that they also became entitled to sickness benefit under the Employees State Insurance Scheme and that the appellant was not justified in reducing the wages to the extent of a half day's wages in respect of employees availing of sick leave.

The appellant contested the demand of the workmen on the grounds, inter alia, that its action in deducting half wages corresponding to the sickness benefit to which the workmen were entitled under the Act in regard to the sick leave was in accordance with the provisions of Regulation 97 of the Employees State Insurance (General) Regulations 1950, that if any individual employee choose not to avail of the benefit due to him from the E.S.I. Corporation on account of his sickness, a deduction of half the wages corresponding to the sickness benefit could be made by the employer and that the sickness benefit provided under the E.S.I. Act and the Scheme was in substitution of the benefits provided by the employer and not in addition thereto. The appellant raised an objection to the maintainability of the reference on the ground that the dispute referred by the State Government to the Tribunal was not an industrial dispute and contended further that the subject matter of the dispute fell within the exclusive jurisdiction of the Employees State Insurance Court set up under section 74 of the E.S.I. Act, as a result of which the Industrial Tribunal had no jurisdiction to deal with the dispute.

The objection to the maintainability of the reference and to the jurisdiction of the Industrial Tribunal to deal with it not having been pressed by the appellant's counsel, the only question which we have to consider is whether the appellant can deduct half-day's wages corresponding to the sickness benefit to which the workmen are entitled under the E.S.I. Act, in the event of their not availing themselves of the benefits under the E.S.I. Scheme.

Before dealing with this question, it may be mentioned that the appellant has no objection to paying full wages for two days of sick leave to the workmen and in fact, it has been paying full wages for two days out of 15 days' sick leave due to the workmen. The reason for this course seems to be that the workmen do not get cash benefit for the first two days of the waiting period of sickness by reason of the provisions of section 49 of the E.S.I. Act. The dispute in this appeal is, therefore, confined to a period of 13 days of sick leave only, for which the workmen are being paid half wages by the appellant.

To justify the deduction of half wages from 13 days of sick leave, the appellant relies on the provisions of section 72 of the E.S.I. Act and Regulation 97 framed under section 97(1) of the E.S.I.

Act. Section 72 reads thus :

> "Employer not to reduce the wages. No employer by reason only of his liability for any contributions payable under this Act shall directly or indirectly reduce the wages of any employee, or except as provided by the regulations, discontinue or reduce benefits payable to him under the conditions of his service which are similar to the benefits conferred by the Act."

The relevant part of Regulation 97 is as follows:

> "Discontinuance or reduction of benefit. An employer may discontinue or reduce the benefits payable to his employees under conditions of their service, which are similar to the benefits conferred by the Act to the extent specified below, namely :
>
> (a) from the date of commencement of the first benefit period following the appointed day for his factory or establishment-
>
> (i) sick leave on half pay to the full extent;
>
> (ii) such proportion of any combined general purposes and sick leave on half pay as may be assigned as sick leave but in any case not exceeding 50 per cent of such combined leave;
>
> (b) .....

Provided that where an employee avails himself of any leave from the employer for sickness, maternity or temporary disablement, the employer shall be entitled to deduct from the leave salary of the employee the amount of benefit to which he may be entitled under the Act for the corresponding period."

The general purpose and effect of section 72 is to deny to the employers the right or power to reduce or discontinue the benefits payable to the workmen under their conditions of service on the ground that the benefits available under the conditions of service and under the E.S.I. Act being similar, the workmen would not be entitled to a double benefit. Section 72 provides in terms that the mere circumstance that an employer is liable to make a contribution under the E.S.I. Act will not entitle him, directly or indirectly, to reduce the wages of an employee or, in so far as the Regulation permits, discontinue or reduce the benefits payable to him under the conditions of his service even if those benefits are similar to the benefits conferred by the E.S.I. Act. The case of the appellant before the Industrial Tribunal was that it was making a contribution to the E.S.I. Corporation for the benefit of its employees and if any individual employee chose not to avail of the benefits due to him from the Corporation on account of the sickness benefit, it is he who ought to suffer and there would be no justification for obliging the employer to spend for his sickness benefit twice over. It is precisely this type of argument and attitude that the legislature anticipated and guarded against by incorporating the particular provision in section

72. The purpose of that provision is evidently to discourage employers from using the benefits provided under the E.S.I. Act as an excuse or justification for reducing or discontinuing the benefits available to the workmen under their conditions of service on the ground of similarity between the two types of benefits.

That leads to the question as to whether Regulation 97 can justify the deduction made by the appellant. Regulation 97 provides that an employer may discontinue or reduce the benefits payable to his employees under the conditions of their service which are similar to the benefits conferred by the E.S.I. Act but only to the extent specified in clauses

(a) and (b) of the Regulation. We are not concerned with clause (b) and sub-clauses (i) and (ii) of clause (a) have no application in the instant case. The appellant relies strongly on the proviso to Regulation 97 under which, where an employee avails himself of any leave from the employer for sickness, the employer shall be entitled to deduct from his leave salary the amount of benefit to which he may be entitled under the Act for the corresponding period. The case of the appellant is that it is enough for justifying the deduction from wages due to the workmen for sick leave that the employee is covered by the E.S.I. Act or the E.S.I. Scheme. It is not possible to accept this submission. In the first place, section 46 of the E.S.I. Act would show that employees who are covered by the E.S.I. Act are entitled to certain benefits subject to the provisions of the E.S.I. Act. It is, therefore, not as if the workmen are entitled to the benefits absolutely and without compliance with the conditions laid down by the Act or the Regulation. Secondly, the proviso to Regulation 97 says that the employer shall be entitled to deduct from the leave salary of the employee, "the amount of benefit" to which he may be entitled under the E.S.I. Act for the corresponding period of his sickness. A workman does not become entitled to the "amount" payable to him by way of sickness benefit unless, in the first instance, he chooses to avail himself of the sickness benefit. That benefit cannot be forced on him. This would show that the employer's right to make a deduction from the employee's sick leave wages can only be exercised in respect of those days of sickness leave for which the workman has actually availed of the sickness benefit. Benefits which are available under the E.S.I. Act are not intended as substitutes for benefits to which the workmen are entitled under the conditions of their service. As stated earlier, a workman becomes entitled to sickness benefit only if he is qualified for it and he gets a cash benefit only if he avails himself of the sickness benefit. Thus, it is only when a workman, in fact, obtains or receives a cash benefit that the employer can exercise his right to make a deduction from wages due to him by way of leave salary.

The decision of this Court in Hindustan Times Ltd. v. Their Workmen(1) is not directly in point but it can be cited in support of our reasoning to the extent which it holds that in providing for periodical payments to an insured worker in case of sickness, the legislature did not intend to substitute any of those benefits for the workmen's right to get leave on full pay on the ground of sickness.

For these reasons, we confirm the award of the Industrial Tribunal and dismiss the appeal with costs.

V.D.K. Appeal dismissed.