R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF MARCH, 2025

BEFORE

THE HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

WRIT PETITION NO.19984 OF 2014 (LB-RES)

BETWEEN:

THE MANAGEMENT OF BHARAT
EARTH MOVERS LTD.,
PRESENTLY KNOWN AS BEML LTD
CORPORATE OFFICE NO.23/1,
SAMPANGIRAMA NAGAR,
BANGALORE - 560 027,
REPRESENTED BY ITS
ASSISTANT GENERAL MANAGER (LEGAL),
SRI M K VIDHYADHARAN.

...PETITIONER

(BY SRI PRADEEP SAWKAR, ADVOCATE)

AND:

1. THE GENERAL SECRETARY,
   BHARATH EARTH MOVERS
   EMPLOYEES ASSOCIATION,
   BANGALORE COMPLEX,
   SRI M VISHVESHARAIAH BHAVAN,
   DR RAJKUMAR ROAD,
   NEW THIPPASANDRA POST,
   BANGALORE - 560 075.

2. THE GENERAL SECRETARY,
   BHARATH EARTH MOVERS
   EMPLOYEES ASSOCIATION,
   BEML NAGAR POST, KGF - 563115.

3. THE GENERAL SECRETARY,
BHARATH EARTH MOVERS
EMPLOYEES ASSOCIATION,
BELAVADI POST,
MYSORE - 570 018.

4. THE GENERAL SECRETARY,
BHARATH EARTH MOVERS
EMPLOYEES ASSOCIATION,
NO.31, 5TH FLOOR,
UNITY BUILDING, J.C.ROAD,
BANGALORE - 560 002.

…RESPONDENTS

(BY SRI K B NARAYANASWAMY, ADV. FOR R1 TO R3,
SRI V R DATAR, ADV. FOR R4)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE AWARD DATED 11.09.2013 VIDE ANN-H PASSED BY INDUSTRIAL TRIBUNAL, BANGALORE IN I.D.NO.69/2007.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 05TH FEBRUARY, 2025 AND COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

CAV ORDER

The petition is filed assailing the award dated 11.09.2013 in I.D. No.69/2007 on the file of Industrial Tribunal, Bangalore.

2. In terms of the said award, the notice dated 21.07.2006 issued under Section 9A of the Industrial Disputes Act, 1947 (for short the 'Act of 1947') is held to be illegal.

3. The petitioner-Establishment is a Public Sector Undertaking. Respondent No.1 is the Union of employees of the petitioner. Rest of the respondents are the office bearers of respondent No.1.

4. Under *'BEML Encashment of Vacation Leave Rules And Procedure'* that came into effect on 18.03.1978, the employees of the petitioner-Establishment were entitled to vacation leave (equivalent to earned leave). The vacation leave was computed by dividing 30 (days) from the monthly wage to arrive at the wage per day. Said Rule is marked at Annexure-E (Ex.M1 before the Tribunal).

5. In addition, to providing the procedure for leave encashment, paragraph No.5 of the said Rule reads as under:-

> ***"Management reserves the right to interpret, modify, amend or withdraw the above scheme if circumstances so warrant".***

6. In terms of the order dated 25.05.1982, the management of the establishment amended Para No.3(vii) of the Rules referred to above, and the vacation leave was ordered to be calculated by taking "26" as the divisor instead of "30". This new Rule came into effect from 27.04.1982. From 01.09.1982 till 21.07.2006, the workmen had the benefit of availing the vacation leave as per the formula provided under the amended Rule taking "26" as the divisor.

7. The petitioner-Establishment issued the notice dated 21.07.2006, allegedly under Section 9A of the Act of 1947 reverting to divisor “30” instead of “26".

8. This led to an industrial dispute before the Tribunal. The Tribunal ruled in favour of 1st respondent - Union. Hence, this petition by the establishment.

9. Sri Pradeep Sawkar, learned counsel appearing for the petitioner-Establishment raised the following contentions:-

i) The petitioner is a Public Sector Establishment. The Public Sector Units across India, like the petitioner, have

adopted “30” as the divisor for calculating the vacation leave. This change is made also taking into consideration the objection raised by the Central Government based on the report of the Comptroller of Audit.

ii) The decision of 1982, choosing “26” as a divisor is not under any binding law, and the same cannot confer any right in favour of the workmen of the petitioner-establishment.

iii) There is no contract between the petitioner and respondent No.1-Union to choose divisor "26" to calculate the vacation leave. Without any such contract, the gratuitous or erroneous concession provided by the management does not confer any right in favour of the workmen.

iv) Assuming that there was a contract between the petitioner-Establishment and respondent No.1-Union, the same can be terminated and the same is terminated by invoking Section 9A of the Act of 1947.

v) The Industrial Tribunal erroneously placed reliance on the judgment dated 19.12.2006 of ***Workmen of Bharat***

Electronics Limited vs The Bharat Electronics Limited, in W.P. No.8743/2006 C/w WP. No.8653/2006. In the said case, this Court remitted the matter to the Tribunal for fresh consideration and has not given a finding that "26" is the appropriate divisor to calculate the vacation leave.

vi) Under the Standing Orders certified by the competent authority, the management of the employer is competent to take the decision relating to the appropriate divisor to determine the vacation leave. The decision authorised under the Standing Orders taken by the management need not be approved by the Board as the Board itself has authorised the management to take appropriate decisions.

vii) The Rules applicable in Karnataka do not mandate the issuance of ***individual notice*** to each workman under Section 9A of the Act of 1947 and publication of notice in the Notice Board, and the service of notice on the Secretary of the Union through registered post is sufficient compliance with the provision.

viii) The requirements of Section 9A being duly complied with, the Industrial Tribunal erred in invalidating the notice and revision of vacation leave.

10. Sri V.R.Datar, learned counsel for respondent No.4 raised the following contentions:-

i) Section 9A of the Act of 1947 mandates issuance of ***individual notice*** to every workman, who is affected by any change in service conditions.

ii) Rule 35 of the Industrial Disputes (Karnataka) Rules, 1957(for short "Rules, 1957") mandates notice to each workman and also mandates notice to the registered Union. Combined reading of Section 9A and Rule 35 referred to above would suggest that individual notice to both workman and the Union is mandatory.

iii) Admittedly, individual notices are not issued under Section 9A read with Rule 35 to each of the workman as such, the procedure adopted in changing the divisor for calculating the leave encashment is erroneous.

iv. To change the methodology adopted to calculate the leave encashment, there has to be a decision by the Board. In the year 1982, the Board took the decision to change the divisor from "30" to "26" and the said procedure was not followed in the year 2006 and the divisor is sought to be changed without the Board's approval**.**

vi. The petitioner-Establishment is a separate entity registered under the Companies Act and not under the control of the Central Government as such, the officer of the Central Government or the Comptroller of Audit is not competent to issue direction to the petitioner-Establishment. Reliance is placed on ***Suresh Chandra Singh And Others vs Fertilizer Corporation of India Ltd. And Others (2004 1 SCC 59).***

vii. The definition of "employer" under the Act of 1947 is different from the definition of "employer" in the Standing Orders. Section 9A of the Act of 1947 refers to the term "employer". Thus, the decision to change the service condition invoking Section 9A has to be by the

"employer" as defined in the Act of 1947 and not by the "employer" in the Standing Orders. The notice under Section 9A, under scrutiny is not by the employer as defined in the Act of 1947, thus it is invalid.

11. The learned counsel for respondent No.4 has also relied on the judgment of the Apex Court in ***Babu Verghese and others vs Bar Council of Kerala and others***[1], to urge that in case, law requires something to be done in a particular manner, the same shall be done as prescribed, or else it should not be done at all.

12. Referring to the judgment of the Constitutional Bench of the Hon'ble Apex Court in the case of ***Syed Yakoob vs K.S. Radha Krishnan*** [2], Sri V.R.Datar also urged that the finding of fact arrived at by the Tribunal in paragraph No.25, cannot be brushed aside as the finding is supported by the evidence on record.

13. Learned counsel for the petitioner-Establishment by way of reply would contend that the definition of the word

[1] AIR 1999 SC 1281(1)
[2] AIR 1964 SC 477

"employer" found in Section 2(g) of the Act of 1947 is not exhaustive. Standing Orders are certified following the procedure. Standing Orders provide for expansion of the definition of the word "employer". The Standing Orders of petitioner–establishment are not called into question and the Deputy General Manager who is also an employer as per the definition of the "employer" found in the Standing Orders has issued the notice to change the divisor.

14. This Court has considered the contentions raised at the bar and perused the records. The following points arise for consideration:

(i) Whether Section 9A of the Act of 1947 and Rule 35 of Rules, 1957 mandate ***'individual notice to each workman'*** to change the formula to calculate the vacation leave ***when the proposed change affects all workmen in an establishment having registered Union or Association of workmen***?

(ii) Whether the notice under Section 9A, issued to change the 'formula to calculate the vacation leave' by the

officer covered under the definition of the "employer" in the certified Standing Orders of the petitioner-Establishment can be termed as notice issued by the "employer" referred to in Section 9A of the Act of 1947.

15. The Industrial Tribunal has held that the notices under Section 9A of Act of 1947 is invalid on two grounds:

(a) The officer who issued the notice has no authority to issue the notice proposing to change the formula to calculate the vacation leave. The Industrial Tribunal took a view that the decision to change the officer can only be taken by the Board of Directors of the petitioner-Establishment and not by the officer who issued notice under Section 9A.

(b) The individual notices under Section 9A of the Act of 1947 to each workman is not issued.

16. The Industrial Tribunal relied on the judgment of the co-ordinate bench of this Court in Writ Petition No.8743/2006 to arrive at conclusion (a) referred to above.

17. **Discussion on point No. (i):**

There is no dispute that the condition relating to leave encashment is a service condition which can be changed by the employer by following the prescribed procedure. To effect changes in the formula to calculate leave encashment, the employer has to follow the procedure prescribed under Section 9A of the Act of 1947. In the State of Karnataka, the procedure is also governed by Section 9A of the Act of 1947 r/w Rule 35 of Rules, 1957.

18. The relevant portion of Section 9A of the Act of 1947 reads as under:

> *"9A.* ***Notice of change*** *- No, employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change -*
>
> *(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or*
>
> *(b) within twenty-one days of giving such notice:*
> *xxx-"*
>
> (Emphasis supplied)

19. On a reading of Section 9A of the Act of 1947 particularly, the expression *"a notice in the prescribed manner of the nature of the change proposed to be effected*", it is evident that there must be a notice to workmen in the manner prescribed.

20. Respondents contend that the expression "*without giving to the workmen likely to be affected by such change"* in Section 9A mandates that notice has to be given to all workmen. What is required to be noticed is Section 9A by itself does not exhaustively prescribe the mode of service. The procedure is found only in Rule 35. Section 9A read with Section 38 (power to make Rules) provides for the procedure to be framed in the Rules**.** Thus, ***manner*** (not just the format) of giving notice is to be understood with reference to Rule 35 and not Section 9A alone. However, Section 9A is also required to be read along with the relevant Rules.

21. Rule 35 of the Rules, 1957 reads as under:

"35. ***Notice to change*** *- Any employer intending to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule to the Act shall give notice of such intention in Form 'E'. The notice shall be displayed conspicuously by the employer on a notice board at the main entrance to the Establishment and in the Manager's office:*

Provided that where any registered trade union of workmen exists, a copy of the notice shall also be served by registered post on the Secretary of such Union."

(Emphasis supplied)

22. Rule 35 prescribes notice in Form E. Rule 35 further provides that notice shall be displayed conspicuously by the employer on the notice board at the main entrance to the Establishment and in the Manager's office.

23. The proviso also provides if the registered Trade Union of the workmen exists, the copy of the notice shall also be served by **registered post on the Secretary of such Union**.

24. Form-E, prescribed in Rule 35 is as under:

[FORM E]

[See Rule 35]

Notice of change of service conditions proposed by an employer

Name of the employer ……

Address……
…….

Dated the ……. day of ……19……

In accordance with Section 9-A of the Industrial Disputes Act, 1947, I/We hereby give notice to all concerned that it is my / our intention to effect the change/changes specified in the annexure, with effect from ……. on the conditions of service applicable to workmen in respect of the matters specified in the Fourth Schedule to the said Act.

Signature
Designation

ANNEXURE

(Here specify the change/changes intended to be effected)

Copy forwarded to: -

1. The Secretary of registered trade union, if any.

2. The Conciliation Officer (here enter office address of the Conciliation Officer in the Local area concerned),
3. The [Assistant Labour Commissioner/Labour Officer](here enter office address of the [Assistant Labour Commissioner/Labour Officer] in the Local Area concerned).
4. The Labour Commissioner in Karnataka, Bangalore]

25. Form-E in its format, does not provide for mentioning the name of the workmen. It refers to Section 9A of the Act of 1947. It mandates a copy to be forwarded to the Secretary of Registered Trade Union, Conciliation Officer and Assistant Labour Commissioner/Labour Officer in the local area and also a copy to the Labour Commissioner in Karnataka.

26. Though the learned counsel appearing for the respondents would urge that the proviso to the Rule also mandates notice to registered Trade Union (in case exists), and the word ***"also"*** appearing in the proviso leads to the conclusion that the individual notice to each workman is a must, the contention cannot be accepted to hold that each

individual workman is to be served either by post or service of similar nature in a situation where the proposed change affects all workmen and the workmen have a registered Union or Association. The reasons are not far to seek. The interpretation canvassed by the Union runs contrary to requirement of Rule 35 and Form-E.

27. When a main provision of law is required to be interpreted with corresponding Rule or any other thing prescribed in the provision or the Rule, (Form-E in this case) one should interpret them in such a way, that purpose of both, the main provision, and the Rule, is not defeated.

28. Section 9A as already noticed mandates notice in a prescribed manner. The mode of service of notice is not prescribed in Section 9A. However, Rule 35 prescribes the procedure/mode of service of notice and provides for the format of the notice. The expression used is *"Any employer intending to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule to the Act shall give notice of such intention in Form 'E"*. The legislature does not use the

expression "*shall give notice of such change* ***personally/or through post to workman affected***. This Court is not saying that the Rule should have been only in the same way illustrated above, to hold that personal notice to workman is a must. By using some other expression also, it is possible to legislate that the notice to each workman is a must. However, this Court is of the view that from the language employed in Rule 35, one can conclude that a notice to workmen though is a must, is not required to be sent ***individually or personally***. Individual notice through registered post is ***specifically*** prescribed to be served on the Secretary of the Trade Union and not workmen.

29. The conclusion arrived above also appears to be justified from one more perspective. In terms of notification dated 12.08.1960, Rule 36 which prescribed the procedure for service of notice is omitted.

30. Rule 36 as it stood before omission read as under.

"Manner of service of Notice of Change*.-*

(1) Where there are numerous workmen affected by a notice of change and the majority

of such workmen are members of any trade union or association the service of notice on the Secretary, or where there is no Secretary, on the principal officer of the trade union or association shall be deemed to be service on all such workmen. The employer shall, at the same time, arrange to exhibit the notice by affixing it to a notice board in the manner specified in sub-rule 92):

Provided that if the Secretary or the principal officer refuses to receive the notice or that for any other reason the notice cannot be served on the Secretary or the Principal Officer, the exhibition of the notice in the manner in sub-rule (2) shall be deemed to be service on all such workmen.

(2) Where there are numerous workmen affected by a notice of change and the majority of such workmen are not members of any trade union or association, the employer shall, where personal service is not practicable, cause the service of any such notice to be made by affixing the same to a notice board at or near the entrance or entrances of the Establishment concerned and the notice shall remain so affixed for a period of twenty-one days. The notice shall be in English, the regional language and

the language understood by the majority of the workmen in the Establishment concerned.

(3) A copy of the notice shall simultaneously be forwarded by the employer to the conciliation Officer concerned and the Labour Commissioner."

(Emphasis supplied)

31. Rule 36 which is omitted took note of two kinds of situation. In a situation where change proposed does affect majority of the workmen who are the members of the Union and a situation where majority of the workmen who are affected by the change are not members of the Union. In later situation, Rule 36 suggests as far *as practicable personal* notice to workmen and if it is not practicable then by affixture to a notice board near the main entrance of the establishment. The requirement of personal notice to workmen can be inferred from Rule 36(2) because of the use of the expression, "*the employer shall, where personal service is not practicable, cause the service of any such notice to be made by affixing the same to a notice board at or near the entrance or entrances of the Establishment concerned"*.

32. Rule 36 was omitted on 12.08.1960 and simultaneously Rule 35 is amended and the provision relating to display of notice in conspicuous part of the main entrance of the establishment is introduced in Rule 35. In addition, the proviso to Rule 35 is introduced, which mandated notice through registered post to the Secretary of the registered Union. Rule 36, which indicated personal notice under certain circumstance is not found in Rule 35 which is amended. Thus, logical conclusion would be that the legislature wanted to dispense with the procedure of personal notice to workmen at least where proposed change affected all workmen in an establishment having registered Union.

33. In Rule 35 of Rules, 1957, the legislature seems to have consciously adopted two different modes of service of notice under Section 9A of Act of 1947. One is the notice to workmen by way of display in a notice board and another is to the registered Union through registered post.

34. It is further relevant to note that the format does not provide for mentioning the name of the individual

workman. In other words, individual notice to workman is not contemplated. Thus, the notice to the workman is presumed to be served if the notice is displayed conspicuously by the employer, on the notice board at the main entrance of the Establishment and in the Manager's office. Thus, the notice if published on the main entrance of the establishment and at the manager's office, and if the copy of the notice is also sent to the Trade Union through registered post, then, such notice would comply with requirement of Section 9A of the Act of 1947.

35. In the instant case, the respondents have not raised a contention that the management has not published the notice on the notice board at the main entrance and the manager's office. It is not their grievance that the notice is not sent to the Trade Union. At the same time, it is also required to be noted that the Trade Union has raised the dispute on receipt of the notice. Thus, the contention relating to non-compliance of Section 9A of the Act of 1947 has to be rejected and accordingly, rejected.

36. For the reasons recorded, this Court is of the view that if proposal to change the service conditions affects ***all workmen*** and if the Establishment has the Registered Union and if the notice is published on the main entrance of the Establishment, and at the manager's office and if the copy of the notice is also sent to the Trade Union through registered post in Form-E, then, such notice would comply with requirement of Section 9A of the Act of 1947.

37. The further contention based on the decision of the Apex Court in the case of ***Babu Verghese*** *supra* that when a law requires something to be done in a particular manner, it has to be done in the same manner else it should not be done at all has also no application to the present case as the decision is taken in the manner prescribed under Section 9A read with Rule 35.

38. **Discussion on point No.(ii):**

It is an admitted factual position in this case that there is no Statute which governs the issue relating to calculation of vacation leave by reckoning the number of ***'working days'*** in a month in contrast to number of ***'days'*** in a month.

39. However, the objection is on the premise that the Deputy General Manager has the authority to issue notice under Section 9A and the notice can be only by an employer as defined in the Act of 1947. At this juncture, it is necessary to refer to clause No.2.3 of the certified Standing Orders of the petitioner which reads as under.

> *'Employer' means Managing Director of the Company and includes the General Manager, Deputy General Manager of the Factory Division or Branch or any other Officer to whom powers and functions may be delegated in this behalf. And whenever the expression 'Management' is used it shall mean the 'Employer'.*

40. The definition of "employer" in the certified Standing Orders include many officers including the Deputy General Manager, if authorised. It is noticed from the evidence that the authority is issued to the Deputy General Manager to take the decision.

41. It is further relevant to note that the Standing Orders which are certified, provide for the exercise of certain powers of the employer by the officer named in the definition

of "employer" in the Standing Orders. The Deputy General Manager has taken steps under Section 9A of the Act of 1947. This being the position, the contention that the decision is taken by the person who has no authority is also not acceptable.

42. Section 25-J of the Act of 1947 deals with effect of laws inconsistent with the Chapter-VA of the Act of 1947. The said provision provides for overriding effect of the provisions contained in Chapter-VA, over the provisions of any other law including Industrial Establishments (Standing Orders) Act, 1946, which are inconsistent with the provisions of Chapter-VA of the Act of 1947. Section 9A of the Act of 1947 is in Chapter-IIA. The definition of Employer in Section 2(g) is found in Chapter-I of the Act of 1947. Hence, this Court is of the view that the definition of "Employer" in Certified Standing Orders can be read into the definition of "Employer" in Section 9A of the Act of 1947 in appropriate cases.

43. Respondents contend that there is no decision by the Board to change the formula to calculate the vacation leave and such change is suggested by the Comptroller of

Audit and the Deputy General Manager was under no obligation to change the service conditions.

44. It is not in dispute that the employer has the power to change the service conditions. Only requirement is the procedure prescribed is to be followed. Merely because the decision is taken based on the objections raised by the Comptroller of Audit, it cannot be said that the decision is erroneous. As long as the power to change the formula relating to leave encashment is available to the employer, the Court has to consider whether the procedure prescribed for effecting such change is followed or not. In such a situation, the reason for such change, even if it is suggestion by an outsider, (Comptroller of Audit in this case as urged) does not matter much, given the fact power to effect changes is with the employer. The question is whether such change is impermissible or not.

45. It is also relevant to note that the merit of the decision to change the divisor to "30" from "26" is not called into question except by contending that the divisor "26" was chosen by considering "26" working days in a month which is

the yardstick for computing the gratuity. The divisor chosen to compute the gratuity is based on the expression “working days” found in the Payment of Gratuity Act, 1972 (for short " the Act of 1972"). The said Act does not apply to the fact situation. This is already held so in earlier Judgment. Thus, essentially, the dispute is on the procedure adopted and the authority of the officer who decided to change the divisor. The Act of 1972 is a special enactment which deals with payment of gratuity and the said Act, itself provides for payment of gratuity by reckoning the number of working days in a month. The said analogy cannot be applied to calculate vacation leave unless the Statute mandates such mode of calculation based on number of working days.

46. This Court has also considered the order passed in Writ Petition No.8743/2006 referred to by the Industrial Tribunal. In the said judgment, the coordinate Bench of this Court has taken a view that the approval of the Board of Directors is necessary to change the Leave Encashment Rules. However, it is to be noticed that in the said case, the coordinate Bench has proceeded to take such a view on the

premise that it is *admitted* that the Board of Directors have to take the said decision. In fact in this case, such a proposition is not admitted by the petitioner. In fact, it is asserted by the petitioner that the person issued notice under Section 9A is competent to take such a decision.

47. It is further noticed that there is no reference to the Certified Standing Orders and the definition of 'Employer' as found in the Certified Standing Orders. Under these circumstances, this Court is of the view that the decision impugned has to be taken by the Board of Directors is not the correct legal position insofar as the petitioner is concerned.

48. It is also to be noticed that there is nothing on record to hold that the Board has objected to the said decision. On the other hand, the Establishment has defended the decision before the Tribunal and is prosecuting the petition. Thus such, it can be safely concluded that the Board has approved the said decision assuming that the Board is required to give the approval.

49. The Tribunal has proceeded to hold that the decision taken earlier in changing the formula to calculate the leave encashment was by the Board and later, the decision was taken without the Board's approval. The finding that the Board has not given approval is incorrect since the Establishment has defended the action of the employer defined in the Standing Orders who has taken the decision.

50. Though learned counsel appearing for the respondents by referring to the judgment of the Apex Court in ***Syed Yakoob*** supra and ***Indian Overseas Bank vs I.O.B. Staff Canteen Workers' Union and Another***[3] has urged before this Court that the finding of fact arrived at by the Industrial Tribunal based on evidence cannot be brushed aside in exercise of jurisdiction under Article 227 of the Constitution of India. This Court is of the view that the said judgment does not support the case of the respondents however, it does support the case of the petitioner. It is relevant to note that in the judgment in ***Syed Yakoob*** supra, the Apex Court in terms of paragraph No.7 has held as under:

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[3](2000)4 SCC 245

> "……. An error which is apparent on the face of the record can be corrected by a writ but not an error of fact, however grave it may appear to be……".

51. As already noticed, the requirements of Section 9A read with Rule 35 referred to above have not been considered at all by the Industrial Tribunal. The impugned award cannot be said to be one supported by evidence or law. The award proceeds on the assumption that the Board alone is competent to take such a decision and the Board has not taken the decision. The finding that the Board alone could have changed the divisor is incorrect from the reading of the Standing Orders and the Tribunal overlooked the fact the Establishment is defending the decision which speaks about the Board's approval even if it is required.

52. The findings of the Board of Directors must give approval for the decision is also an erroneous finding rendered without noticing the definition of the employer in the Certified Standing Orders.

53. Further contention of the learned counsel for the respondent referring to the judgment of **Suresh Chandra**

Singh supra also does not come to the aid of the respondents. In the said case, the Apex Court has held that each public sector enterprise has an independent body/entity and is free to formulate its own service conditions.

54. In the instant case, the petitioner-Establishment has taken a decision to change the divisor applicable to calculation of vacation leave. Though the decision appears to be prompted by the report of the Comptroller General of Audit, it cannot be said that the decision is one without jurisdiction. At the end of the day, it is the petitioner-Establishment which has taken the decision. It is also relevant to note that when the divisor was changed from "30" to "26", the petitioner-Establishment reserved the right to modify the service conditions in relation to Leave Encashment. The relevant portion of *'BEML Encashment of Vacation Leave Rules And Procedure'* reads as under:

> ***"Management reserves the right to interpret, modify, amend or withdraw the above scheme if circumstances so warrant".***

The rest of the judgments cited by the learned counsel for the respondents would be on the requirement of issuance of notice under Section 9A of the Act of 1947.

55. This Court has not taken a view that there is *no need to issue notice* under Section 9A in respect of matters covered under Section 9A of the Act of 1947 and it is not the case of the petitioner either. The dispute is relating to mode of service of notice. The judgments cited by the learned counsel for the respondents on the requirement of Section 9A are not the judgments interpreting Section 9A with reference to Rule 35 of the Rules, 1957. Thus, there is no need to elaborately discuss the said judgments. Suffice it to say that those judgments do not cover the issue raised in the petition relating to service of notice under Section 9A.

56. For the reasons recorded above, this Court concludes as under:

(i) Notice under Section 9A of the Act of 1947 read with Rule 35 of the Rules, 1957 is not required to be served to each individual workman through post or other modes of

similar nature if the proposed change affects all workmen and the establishment has a registered Union or Association;

(ii) In the situation referred to above, publication of notice under Section 9A of the Act of 1947 on the main entrance of the establishment on a notice board, and the manager's office amounts to a valid notice to the workmen, and a notice through registered post to the secretary of the Registered Union is valid service of notice to all workmen.

(iii) The "employer" named or defined in the certified Standing Orders of the petitioner-Establishment is competent to issue notice to change the formula to calculate the vacation leave of the employees if he is so authorised under the Standing Orders to issue such notice.

(iv) This Judgment should not be construed as having laid down a law to the effect that, notice under Section 9A of the Act of 1947 need not be served to individual workman in any circumstances. In a situation where the proposed change does not affect all the workmen of the establishment and only affects some of them or few of them, whether individual

notice to such affected workman is required or not is not answered as such question did not arise in this petition.

57. Thus, this Court is of the view that the impugned award is erroneous. Since the Tribunal has held that Notice under Section 9A of the Act of 1947 is invalid, the impugned award is to be set aside.

58. Hence, the following:

ORDER

(i) Writ Petition is ***allowed.***

(ii) The impugned award dated 11.09.2013 in I.D.No.69/2007 on the file of Industrial Tribunal, Bangalore is set-aside. The notice dated 21.07.2006 issued under Section 9A of the Industrial Disputes Act, 1947 held to be valid.

(iii) The reference is answered in favour of the petitioner-Establishment.

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

CHS/BRN