REVISIONAL CIVIL

Before Mehar Singh, C.J.

MESSRS CHAMAN TAXTILE MILLS —*Petitioner.*

versus

TARA CHAND AND ANOTHER,—*Respondents.*

Civil Revision No. 841 of 1966.

October 17, 1968.

Payment of Wages Act (IV of 1936 as amended by LXVIII of 1957)—Section 2(vi) Factories Act (LXVIII of 1948)—Sections 79, 80 and 82—Workman—Whether entitled to wages in lieu of earned leave on termination of service—Such wages—How recoverable—Employer—Whether has the right to forfeit the services of a Workman on dismissal.

Held, that Section 2(vi) of Payment of Wages Act, IV of 1936 has been amended by Act LXVIII of 1957 and expression wages now includes within its meaning and scope, claim for remuneration for any leave period. Under the provisions Sections 79, 80 and 82 of Factories Act, 1948, a workman has a right to his leave period wages and such right can be enforced against the employer under the provisions of Payment of Wages Act. Under the first proviso to sub-section (5) of Section 79 of the Factories Act, 1948, it is thirty days' accumulated leave which is carried forward and to that comes to be added the leave earned during the year in which the service of a worker is terminated. Thus not only are the workman entitled to wages in lieu of earned leave, having regard to Sections 79, 80 and 82 of Factories Act, but the same are recoverable by virtue of the provisions of Section 82 of this Act as also by virtue of definition of expression wages in Section 2(vi) of Payment of Wages Act, 1936. (Para 3)

Held, that there is no provision either in the Payment of Wages Act, 1936, or Factories Act, 1948, or any other law according to which an employer can order forfeiture of service of a workman on his dismissal or termination of his service, thus leading to deprivation of Wages otherwise claimable by him under the provisions of Payment of Wages Act.

(Para 4)

Petition under Section 115 of the Civil Procedure Code and Article 227 of the Constitution of India for revision of the order of Shri Om Parkash, Authority under the Payment of Wages Act, 1936, Amritsar, dated 26th July, 1966.

V. P. SARDA, ADVOCATE, for the Petitioner.

B. S. BINDRA, ADVOCATE, for the Respondents.

JUDGMENT.

MEHAR, SINGH, C.J.—In this application under Article 227 of the Constitution and section 115 of the Code of Civil Procedure by the employer, Chaman Textile Mills, Amritsar, the only question that is for consideration is whether the respondents have been rightly allowed wages in lieu of earned leave of forty-five days in each case by the order, dated July 26, 1966, of the Authority under the Payment of Wages Act, 1936 (Act 4 of 1936) ?

(2) The learned counsel for the applicant has referred to *Narayanaswami Iyer* v. *Vasudeba Iyer* (1), which was followed by me in *Girson Textile Mills, Ludhiana* v. *Chanan Singh*, (2). In the Madras case the learned Judges held that while an employee, when he is entitled to leave with wages and goes on leave, is entitled to claim wages for the leave period, he is not entitled to claim wages for leave period for which he has actually worked and drawn wages and in connection with which he has not gone on leave. It is pointed out by the learned counsel for the respondents that that was a case which concerned leave wages claimed sometime in 1954 and before the amendment of Act 4 of 1936 by the Payment of Wages (Amendment) Act, 1957 (Act 68 of 1957), which, by section 3, amended the definition of the expression 'wages' as in section 2(vi) of Act 4 of 1936. The amended definition of the expression 'wages' in its inclusive part has clause (b), which includes in that expression any remuneration to which the person employed is entited in respect of any leave period. This is now specifically provided by reason of the amendment by Act 68 of 1957. Before that this was not to be found in the definition of the expression 'wages' as in section 2(vi) of Act 4 of 1936. So the Madras case dealt with the meaning of the expression 'wages' before the amendment of that expression by Act 68 of 1957. When I decided *Girson Textile Mills' case* (2) at that time while the Madras case was cited and relied upon on the side of the employer, it was not brought out in the arguments that in the meantime by section 3 of Act 68 of 1957, section 2(vi) of Act 4 of 1936 had been amended and the expression 'wages' now includes within its meaning and scope claim for remuneration for any leave period. So those two cases are of no assistance to the present applicant.

(1) A.I.R. 1958 Mad. 360=(1958)2 Labour Law Journal 310.
(2) C.R. 646 of 1961 decided on 1st February, 1963.

(3) Now, in the Factories Act, 1948 (Act 63 of 1948), section 79 deals with annual leave with wages. Sub-section (5) of this section provides—'If a worker does not in any one calendar year take the whole of the leave allowed to him under sub-section (1) or sub-section (2), as the case may be, any leave not taken by him shall be added to the leave to be allowed to him in the succeeding calendar year: Provided that the total number of days of leave that may be carried forward to a succeeding year shall not exceed thirty in the case of an adult or forty in the case of a child: (there is another proviso which is not material here).' Then sub-section (11) of this very section says that "If the employment of a worker who is entitled to leave under sub-section (1) or sub-section (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 occupier of the factory shall pay him the amount payable under section 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 who quits his employment, on or before the next pay day." Sub-section (1) of section 80 says that "For the leave allowed to him under section 79, a worker shall be paid at a rate equal to the daily average of his total full time earnings for the days on which he worked during the month immediately preceding his leave, exclusive of any overtime and bonus but inclusive of dearness allowance and the cash equivalent of the advantage accruing through the concessional sale to the worker of foodgrains and other articles." In section 82 it is then provided that "Any sum required to be paid by an employer, under this Chapter but not paid by him shall be recoverable as delayed wages under the provisions of the Payment of Wages Act, 1936 (IV of 1936)." It is evident from these provisions of sections 79, 80 and 82 of Act 63 of 1948 that a workman has a right to his leave period wages and such right can be enforced against the employer under the provisions of Act 4 of 1936. The learned counsel for the employer in this case has pointed out that under the first proviso to sub-section (5) of section 79 of Act 63 of 1948, only wages for thirty days can be claimed, but in the present case each respondent has been allowed wages in lieu of earned leave for forty-five days. He, however, forgets that under the first proviso to sub-section (5) of section 79 of Act 63 of 1948, it is

thirty days' accumulated leave which is carried forward and to that comes to be added the leave earned during the year in which the service of a worker is terminated. It is not shown in this case that the thirty days' leave accumulated in the case of each respondent was not added up by another fifteen days' earned leave during the year in which the termination of his service took place. So nothing turns on this argument. Thus not only are the respondents entitled to wages in lieu of earned leave of fortyfive days each having regard to section 79, 80 and 82 of Act 63 of 1948, but the same are recoverable by virtue of the provisions of section 82 of that Act as also by virtue of the definition of the expression 'wages' as in section 2(vi) of Act 4 of 1936 in accordance with the provisions of the last-mentioned Act and that is what has happened in the present case.

(4) The last argument that is urged by the learned counsel for the applicant is that the order dismissing the respondents or terminating their services said that their service has been forfeited, meaning that service for the earned leave period had been forfeited, and in face of such forfeiture, which the learned counsel says has never been challenged before the Authority under Act 4 of 1936, the respondents could not have been allowed wages for fortyfive days' earned leave. This is a matter which was never raised before the Authority. The order terminating the services of the respondents was not placed before it. A copy has been placed with the present application, but that is of no avail to the applicant. Apart from this, the learned counsel for the applicant is unable to show under what provision of law the applicant had the power to order forfeiture of any part of the service of any of the respondents. In substance, if there was such a power in an employer, it would mean denial of earned wages to a workman, but anything which a workman cannot recover as wages is what is stated in the Act itself, and it is stated further clearly what he can recover as wages. The learned counsel for the applicant has not been able to refer to any provision either in Act 4 of 1936, or in Act 63 of 1948, or any other law according to which the applicant could order forfeiture of service of any of the respondents on his dismissal or termination of his service thus leading to deprivation of wages otherwise claimable by him under the provisions of Act 4 of 1936.

(5) In the result, this application fails and is dismissed with costs, counsel's fee being Rs. 60.

K.S.K.