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252. Can a reinstated employee with continuity of service but who did not work during the disputed period claim Privilege/Earned Leave for that time?

Section 79(1) of the Factories Act, 1948 provides that a worker is entitled to annual leave with wages if they have worked for 240 days or more in a factory during a calendar year. The number of days of leave earned is calculated based on the actual number of days worked in the previous year:

- **For adults:** 1 day of leave for every 20 days worked.
- **For children:** 1 day of leave for every 15 days worked.

Key Explanation from Section 79:

- Certain non-working days, such as lay-offs, maternity leave (up to 12 weeks), and previously earned leave taken in the past year, are deemed as days worked for the purpose of computing 240 days.
- However, these deemed working days do not contribute to earning additional leave, meaning that employees do not earn Privilege/Earned Leave (PL/EL) for periods of non-work.

Application to Reinstated Employees:

1. If an employee is wrongfully terminated and later reinstated with continuity of service, the period of wrongful termination is counted for employment continuity purposes.
2. However, since the employee did not actually work during this period, they cannot earn PL/EL for that time.
3. As per Section 79, leave entitlement is calculated based on actual days worked, and a period of wrongful termination does not count as actual work for leave calculation.

Judicial Precedent: Central Bank of India vs. Shri Shyam Lal Jain (Delhi High Court, 2009)

1. Parties to the Case:

- **Petitioner:** Central Bank of India (Employer)
- **Respondent:** Shri Shyam Lal Jain (Employee)

2. Facts of the Case:

- Shri Shyam Lal Jain was appointed as a Clerk in the Central Bank of India on 31.08.1966.
- In 1975, while working at the Madipur Delhi Branch, he was served with a charge-sheet dated 20.06.1975, and a departmental inquiry was initiated.
- As a result, he was placed under suspension, and later, the bank discharged him from service on 14.03.1977.
- Aggrieved by his dismissal, Jain raised an industrial dispute, which was referred to the Central Government Industrial Tribunal (CGIT) for adjudication.

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- On 09.02.1989, CGIT set aside the discharge order and directed the bank to reinstate Jain with continuity of service and 50% back wages.
- The bank challenged this decision in the Delhi High Court, which remanded the case to CGIT for a fresh decision.
- After reconsideration, CGIT on 15.03.1994 again directed the reinstatement of Jain, but this time with 25% back wages.
- Consequently, Jain was reinstated in service on 10.10.1994 and received 25% of the back wages from 14.03.1977 to 10.10.1994.
- He continued working until his retirement on 06.09.1999.
- After retirement, he filed a Legal Claim Application (LCA No. 129/2000) before the CGIT, claiming Privilege Leave (PL) encashment for the period from 14.03.1977 to 10.10.1994.
- CGIT, in its order dated 31.10.2006, directed the bank to calculate and pay for the Privilege Leave accrued to him during that period at his last drawn salary.

3. Major Issue in the Case:

Whether an employee, who was reinstated with continuity of service but did not actually perform work during the disputed period (14.03.1977 to 10.10.1994), is entitled to earn and claim Privilege Leave for that period?

4. Arguments of the Parties:

(A) Arguments by the Petitioner (Central Bank of India):

- The bank, represented by Mr. Ashish Wad, contended that Privilege Leave (PL) is earned only when an employee is in active service.
- As per Clause 13.17 of the Bipartite Settlement, an employee must be in active service to accrue PL.
- Since Jain did not perform any work from 14.03.1977 to 10.10.1994, he was not eligible to claim PL for that period.
- Thus, the CGIT's order granting PL encashment was erroneous and should be set aside.

(B) Arguments by the Respondent (Shri Shyam Lal Jain):

- Jain, represented by Mr. M.K. Tripathy, argued that the CGIT's reinstatement order granted him continuity of service, which means that he was deemed to be in employment throughout the disputed period.
- Since he was deemed to be in service, he should be entitled to all benefits, including Privilege Leave for that period.

5. Court's Findings and Reasoning:

The key question before the court was: **Can deemed continuity of service be equated with actual active service for the purpose of earning Privilege Leave?**

- The court relied on the Full Bench decision of the Andhra Pradesh High Court in Andhra Bank & Another vs. P. Balakrishna (2005 (3) ALT 771).
- In that case, it was held that Privilege Leave is meant for rest and recuperation and is earned by actual working days worked by the employee.

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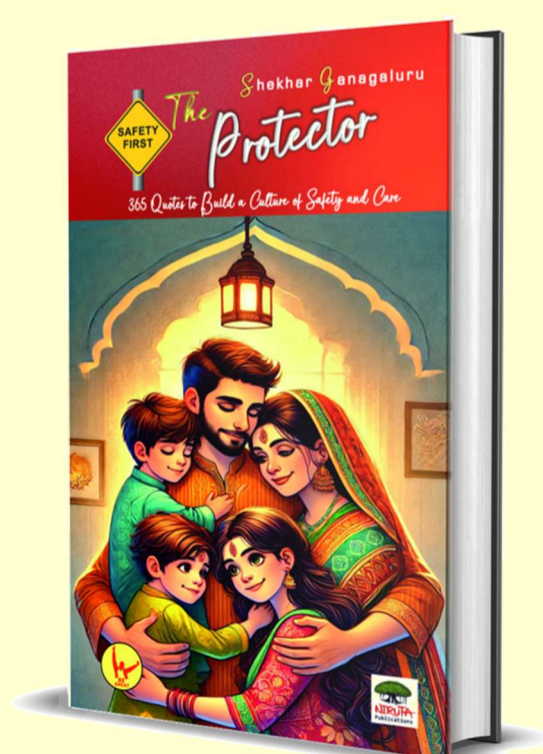
- A person who did not work for a certain period cannot claim PL for that period, even if reinstated with continuity of service.
- Since Jain did not perform any work from 14.03.1977 to 10.10.1994, he was not eligible for PL accrual during that period.
- The respondent's lawyer failed to cite any contrary judgment, which further strengthened the petitioner's case.

6. Final Outcome & Ruling:

- The Delhi High Court set aside the CGIT order dated 31.10.2006 in LCA No. 129/2000.
- The recovery notice dated 22.05.2007, which required the bank to pay PL encashment, was also quashed.
- The court ruled that Privilege Leave is not available for a period of deemed service where no actual work was done.
- The writ petition was allowed, and both parties were directed to bear their own costs.

Difference Between "Deemed Continuity of Service" and "Actual Active Service"

Aspect	Deemed Continuity of Service	Actual Active Service
Definition	A legal concept where an employee is treated as continuously employed despite a break in actual work (e.g., wrongful termination and later reinstatement).	The actual performance of work by an employee during their employment.
Work Performed?	No actual work is performed during the disputed period.	The employee actively works during the employment period.
Effect on Privilege Leave Accrual?	No entitlement to PL for that period since no work was performed.	PL is earned based on actual days worked.
Legal Recognition?	Used to restore employment benefits like seniority, gratuity, and back wages (if awarded).	The basis for calculating PL, promotions, and other benefits.



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