

(2011) 02 MAD CK 0453

In the Madras High Court

Case No : Writ Petition No's. 9332 of 1998, 36131 of 2002 and 89 of 2004

A. Kari and Others

APPELLANT

Vs

Needle Industries Ltd. and Others

RESPONDENT

Date of Decision : 02-02-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 12(3), 18(1), 18(2), 18(3), 33C(2)

Citation : (2011) 1 CTC 811 : (2011) 129 FLR 240 : (2011) 3 LLJ 423

Hon'ble Judges : M.M. Sundresh, J;C. Nagappan, J

Bench : Division Bench

Advocate : V. Prakash and G. Ramapriya, for the Appellant; Sanjai Mohan, for Ramasubramaniam and Associates, for the Respondent

Judgement

C. Nagappan, J.—The Writ Appeal is preferred against the order dated 26.7.2002 allowing the Writ Petition in W.P. No. 16177 of 1995 by the learned Single Judge. Respondents 2 to 15/workmen are the Appellants in the Writ Appeal.

2. The Management filed the Writ Petition in W.P. No. 9332 of 1998 seeking for issuance of a Writ of Certiorari to quash the order 22.4.1998 made in CP. Nos. 1219 to 1228, 1230 and 1231 of 1996 on the file of the First Respondent Labour Court, Coimbatore.

3. The Management filed another Writ Petition in W.P. No. 36131 of 2002 seeking for issuance of a Writ of Certiorari to quash the Order 18.4.2002 made in CP. No. 121 of 2001 on the file of the First Respondent Labour Court, Coimbatore.

4. Since the subject matter in the Writ Appeal and both the Writ Petitions pertains to the claim made by the workmen u/s 33-C(2) of the Industrial Disputes Act, 1947, against the Management for different periods, they are heard together and a common judgment is rendered.

5. Briefly, the facts are as follows:

(i) Needle Industries Limited has its factory at Nilgiris engaging 595 workmen and it has a recognised union called "Needle Makers" Union". The Management arrived at a wage settlement with the said recognised Union on 11.12.1993 u/s 18(1) of the Industrial Disputes Act, 1947, and the settlement was to take effect from 1.11.1994 onwards. Before the settlement, conciliation proceedings were commenced before the Labour Officer on 2.12.1993 by the other Union and the same was pending. The General Secretary of the Labour Progressive Federation Union sent a letter dated 14.12.1993 to the Company stating that the new wage Revision settlement has been imposed by the Management arbitrarily and it will not bind them and they will not accept the same. On 18.12.1993 the Management displayed a circular stating that the workmen, who are not party to the 18(1) Settlement, may give their consent to the terms of the settlement to get revised wage benefit in the monthly salary. 185 workmen gave their individual consent to be covered by the terms of the Settlement. By a letter dated 20.1.1994, the workmen numbering 87 including the workmen herein informed the Management that they were not interested in accepting the Section 18(1) Settlement and the benefits arising therefrom need not be extended to them. By letter dated 29.4.1994 a request was made by the Labour Progressive Federation Union to extend the revised wage benefits to the members of the Union since they have accepted the Settlement as far as wage revision is concerned. On 5.5.1994, 9.6.1994, 14.6.1994, 7.7.1994 and 11.8.1994 some workmen among 87 workmen, who had refused in writing to accept the terms of settlement, came forward and entered into Section 18(1) settlement. The other workmen were left out because they did not give their consent in writing to be bound by the terms of the Settlement.

(ii) The Appellants in W.A. No. 89 of 2004 filed CP. No. 197 of 1994 before the Labour Court, Coimbatore, u/s 33-C(2) of the Act stating that they ought to be paid revised wages from 1.1.1994 to 31.8.1994. The Labour Court, after trial, has proceeded to compute the amounts allegedly payable u/s 18(1) of the Settlement dated 11.12.1993, from 1.4.1994 onwards on the basis that the workmen were entitled to the said claim because of the advice made by the Special Deputy Commissioner of Labour in his proceedings dated 28.4.1994. Challenging the said Order, the Management preferred W.P. No. 16177 of 1995 and after hearing both sides, this Court held that the claimants/workmen refused to accept the terms of settlement and in the absence of any existing right, the impugned order granting relief to them suffers from error apparent on the face of the record and quashed the impugned order by allowing the Writ Petition. Challenging the said order, R2 to R15/workmen preferred the Writ Appeal.

(iii) 12 workmen filed Computation Petitions in CP. Nos. 1219 to 1228, 1230 and 1231 of 1996 before the Labour Court, Coimbatore u/s 33-C(2) of the Act and they submitted that they ought to be paid revised wages from September, 1994 to July, 1996 and the Labour Court by Order dated 22.4.1998 allowed the Computation Petitions as prayed for. Challenging the same, the Management has preferred the Writ Petition in W.P. No. 9332 of 1998.

(iv) 9 workmen filed Computation Petition in CP. No. 121 of 2001 before the before the Labour Court, Coimbatore u/s 33-C(2) of the Act and they submitted that they ought to be paid revised wages from September, 1996 to August, 1998 and the Labour Court by Order dated 18.4.2002 allowed the Computation Petition as prayed for. Challenging the same, the Management has preferred the Writ Petition in W.P. No. 36131 of 2002.

6. The learned Counsel for the Management submitted that the Appellant No. 1-A. Kari; No. 4-B.J. Krishnamurthy and No. 11-T. Bhojraj in W.A. No. 89 of 2004 have settled their accounts fully and unreservedly by Section 18(1) Settlements, dated 17.7.2006, 5.4.2003 and 25.11.1997 respectively and mentioned the receipt of ex gratia in their individual Affidavits dated 25.9.2008 filed before this Court and nothing survives in the matter of their claim is concerned. The above submission which is not disputed is recorded. It is also represented by the learned Counsel for the Management that Appellant Nos. 1, 2, 5 to 7, 10, 12 and 14 in August, 1998 had given letter accepting the Settlement dated 11.12.1993 and they were granted benefits prospectively on the basis of their acceptance. The said submission is also not disputed and the same is also recorded.

7. Mr. V. Prakash, learned Senior Counsel appearing for the Appellants/workmen in the Writ Appeal and the Respondents in the Writ Petitions, submitted that the recognised union as the sole bargaining agent has signed the Section 18(1) settlement and the effect is to give benefit of wage revision to all workmen irrespective acceptance or non-acceptance and the claimants herein have accepted the Settlement in the year 1994 and the learned Single Judge ought not to have interfered with the Order granting benefit to the claimants though they were not parties to the settlement under the Section 18(1) settlement. In support of his claim, the following decisions were relied:

(1) Balmer Lawrie Workers' Union, Bombay and Another Vs. Balmer Lawrie and Co. Ltd. and Others, (2) Food Corporation of India Staff Union Vs. Food Corporation of India and others, (3) K.C.P. Limited Vs. Presiding Officer and Others, and (4) MRF United Workers Union Vs. Government of Tamil Nadu and Others, .

8. Per contra, Mr. Sanjay Mohan, learned Counsel appearing for the Management/ Respondent in the Writ Appeal, submitted that the settlement arrived at u/s 18(1) of the Industrial Disputes Act merely binds the parties to the agreement and there can be no extended operation and the contention that the recognised union has signed Section 18(1) settlement and it clothed all workmen with an existing right irrespective of membership in signatory Union, if accepted would amount to re-writing the provision u/s 18(1) of the Act and virtually Section 18(1) Settlement transcends to Settlement u/s 12(3) of the Act in effect. The Counsel further contended that there is no law for granting recognition to the Trade Union in the State of Tamil Nadu and when the sole bargaining Agent is elected or selected in accordance with statute only then the Settlement arrived at by it would be binding on all workmen and the signatory Union is the sole

bargaining agent has to be established on evidence and in the present case, there is no pleading that the recognised union, which entered into Section 18(1) Settlement, has acted as sole bargaining agent and no such plea was raised either before the Labour Court or before the learned Single Judge or in the Memorandum of grounds in the Writ Appeal and such plea cannot be raised for the first time during argument. It is his further contention that the claimants/workmen herein refused to accept the terms of Settlement and even after 29.7.1994, Conciliation proceedings continued and the Government refused to refer the dispute to the Tribunal in G.O. Ms. No. 622, dated 21.7.1997 and that was not challenged and in such circumstances, the conclusion that in the absence of any existing right, the impugned order of the Labour Court granting relief to the claimants suffers from error apparent on the face of the record, is sustainable both on facts and in law.

9. It is an admitted fact that there is no law for Recognition of Trade Union in the State of Tamil Nadu, it is brought to our notice that in some of the States there are specific statutory provisions relating to recognition of Trade Unions, such as in the States of Maharashtra, Gujarat and Madhya Pradesh and the Statute provides the method of deciding the collective bargaining agent.

10. In decision in Balmer Lawrie Workers' Union, Bombay and Another Vs. Balmer Lawrie and Co. Ltd. and Others, the Apex Court was concerned with the validity of the provisions of the Maharashtra Act and it was observed that the Union having the largest membership of the workman must be clothed with the status of recognised Union and consequently, as the sole Bargaining Agent. In Tamil Nadu the recognition of a Trade Union remains an issue. In fact, the First Bench of this Court in the decision in MRF United Workers Union Vs. Government of Tamil Nadu and Others, observed that there should be recognized Union and when there is an inclination of the State Government to accept a particular procedure the correct course will be to give a direction to the Commissioner of Labour to call upon the two Unions to submit their membership details as per the Code of Discipline and examine their membership as provided under the Code over a period and there should be a factual determination. It is also brought to our notice that the Appeal was preferred against the said decision and the matter is pending before the Honourable Supreme Court.

11. The Supreme Court in the decision in Food Corporation of India Staff Union Vs. Food Corporation of India and others, observed that when in an establishment there are more than one registered Trade Unions, the sole bargaining agent with whom the employer should bargain has been a matter of discussion and some dispute and in that case, the method of selection of sole bargaining agent was decided by the Court.

12. In the facts of the case in which the decision in K.C.P. Limited Vs. Presiding Officer and Others, arose, the Settlement arrived at between the parties was not during Conciliation proceedings and the Supreme Court held that such a Settlement u/s 18(1) of the Act would remain binding on the parties to the

Settlement. For better appreciation, the relevant observation is extracted below:

25... The difference between the Settlement arrived at under the Act during Conciliation proceedings by parties and the Settlement arrived at otherwise than during Conciliation proceedings has been succinctly brought out by the decision of this Court in *Barauni Refinery Pragatisheel Shramik Parishad v. Indian Oil Corporation Ltd.* 1990 (61) FLR 302 (SC) : (1988) SCLJ 598 wherein Ahmadi, J. (as His Lordship then was) spoke for the Court to the following effect:

Settlements are divided into two categories, namely, (i) those arrived at outside the conciliation proceedings Section 18(1) and (ii) those arrived at in the course of conciliation proceedings Section 18(3). A Settlement which belongs to the first category has limited application in that it merely binds the parties to the agreement. But a Settlement arrived at in the course of Conciliation proceedings with a recognised majority union has extended application as it will be binding on all workmen of the establishment, even those who belong to the minority Union which had objected to the same. To that extent it departs from the ordinary law of contract. The object obviously is to uphold the sanctity of Settlements reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the Settlement. There is an underlying assumption that a Settlement reached with the help of the Conciliation Officer must be fair and reasonable and can, therefore, safely be made binding not only on the workmen belonging to the union signing the Settlement but also on the others. That is why a Settlement arrived at in the course of conciliation proceedings is put on par with an award made by an Adjudicator Authority.

26. As in the present case the Settlement arrived at between the parties was not during Conciliation proceedings, it would remain binding to the parties to the Settlement as per Section 18(1) of the Act.

13. In the present case, the Settlement arrived at was one out side the Conciliation proceedings and it would bind only the parties to the Settlement. The claimants were not the members of the recognised Union and they belong to another Union. The recognised Union entered into 18(1) Settlement and the other Union did not accept the Settlement and pressing over their demand in the Conciliation proceedings, which was in progress. The Union which signed Section 18(1) Settlement was not recognised as the sole Bargaining Agent with exclusive right to represent the workmen. There is neither pleading nor evidence adduced to that effect. Moreover, the other Union is also not a party to the present proceedings. In such circumstances, the contention of the learned Senior Counsel for the Appellant/workmen that Section 18(1) Settlement entered into by the recognised Union as Sole Bargaining Agent and it would bind all workmen, is devoid of merit and liable to be rejected.

14. The next contention of the learned Senior Counsel appearing for the Appellant is that the claimants herein having done the same work as others, are

claiming wages on par with others, and there cannot be two different sets of payments amongst workmen doing the same kind of work under the same employer, whether or not they are signatories to the Settlement, and therefore, they are entitled to get the same wages.

15. Per contra, the learned Counsel appearing for the Respondents/Management submits that the claim is based on the Settlement u/s 18(1) of the Act and if the Settlement does not apply, it cannot be made applicable indirectly by this contention. It is his further contention that wage Revision as per Section 18(1) will be applicable only to the signatories to the Settlement and the concept of equal pay for equal work will not arise since there is distinction among the workers. The learned Counsel also pointed out that the claimants herein did not accept all the terms and conditions of the 18(1) Settlement and they restricted it to wage revision alone and also further qualified it, by terming it as without prejudice to other demands pending before the Labour Authorities and hence, they are not equals and there is no unfair advantage to the Management.

16. It is true that the Labour Progressive Federation Union to which the claimants belong, in their letter dated 29.4.1994 addressed to the Management, accepted the terms and conditions of the 18(1) Settlement dated 11.12.1993 as far as wage revision is concerned and it is further stated in the letter that this is without prejudice to other demands pending before the Labour Authorities. The Supreme Court in the decision in K.C.P. Limited Vs. Presiding Officer and Others, has laid down that the Settlement has to be accepted or rejected as a whole. Hence, there can be no Settlement either under protest or without prejudice as it settles the dispute by consent. As already seen, the Conciliation proceedings continued till the refusal to refer the dispute to the Tribunal in the Government Order dated 21.7.1997. The observation made by the learned Single Judge that the Management could not enforce Section 18(1) Settlement against non-signatories, correspondingly, the workmen unless sign the Settlement could not seek enforcement of the same, is the proposition of law as laid down by the Honourable Supreme Court. Hence, this contention of the learned Senior Counsel for the Appellants lacks merit and cannot be accepted.

17. The last contention of the learned Senior Counsel for the Appellants is that this Court cannot exercise its discretionary jurisdiction under Article 226 of the Constitution of India in a case where substantial justice is being done. In support of his submission, the learned Senior Counsel also relied on the decisions of the Supreme Court. None of those decisions deal with the jurisdiction of the Labour Court from which the impugned order emanates. The claimants were not parties to the Settlement u/s 18(1) of the Act and in the absence of any existing right, claim u/s 33-C(2) of the Act cannot be legally sustained and the Order granting relief to them suffers from lack of jurisdiction error apparent on the face of the record and hence, liable to be set aside.

18. It is also brought to our notice that subsequently several Settlements have been entered into between the Management and the recognised Union and all

workmen including the Appellants have accepted those Settlements.

19. The learned Counsel for the Management further submits that in the Writ Appeal the Management was directed to deposit Rs. 45,000/- and the workmen were permitted to withdraw 50% of the deposited amount and they have also withdrawn the said amount. The learned Counsel further represents that at the time of granting stay in W.P. No. 9332 of 1998, this Court directed the Management to deposit a sum of Rs. 3,00,000/- and the workmen were permitted to withdraw a sum of Rs. 1,50,000/- and they have also withdrawn the said amount. To met the ends of justice, at this distant point of time, the Management shall not effect recovery of the amounts withdrawn by the workman.

20. In the result,

(i) W.A. No. 89 of 2004 is dismissed. No costs. Consequently, .W.A.M.P. No. 125 of 2004 is dismissed.

(ii) W.P. Nos. 9332 of 1998 and 36131 of 2002 are allowed as prayed for. No costs.