
(1993) 12 P&H CK 0032
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 15599 of 1992

All India Textile Janta Union	Vs	APPELLANT
Deputy Labour Commissioner and Another		RESPONDENT

Date of Decision : 03-12-1993

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 18(1), 18(3)

Citation : (1994) 2 LLJ 833 : (1993) 105 PLR 300

Hon'ble Judges : S.K. Jain, J;G.R. Majithia, J

Bench : Division Bench

Advocate : Mahesh Srivastava, for the Appellant; P.S. Kadian, DAG and P.K. Mutneja, for the Respondent

Final Decision : Dismissed

Judgement

1. All India Textile Janta Union through its General Secretary has assailed the validity of order dated November 13, 1992, passed by Deputy Labour Commissioner, Sonapat, in this petition under Articles 226/227 of the Constitution of India.

2. The impugned order contained in letter No. 3582, dated November 13, 1992, reads thus:-

"Sub: Complaint dated 31.10.1992 in respect of M/s. Kapadia Petro Products Ltd. (Ekta Ltd. Gurgaon).

Ref: Reference to the conciliation proceedings held on November 11, 1992.

As it was stated in the conciliation proceedings the management does not intend to negotiate with you and even otherwise settlement under the provisions of Section 12(3) of the Industrial Disputes Act, 1947 is under process with the appropriate authority and during that period no financial demand can be raised. In these circumstances, the complaint on the subject is consigned to the records of this office."

Learned counsel for the petitioner has challenged the settlement referred to in the impugned order on the following grounds:-

- (i) The petitioner-Union was not associated in the settlement;
- (ii) The petitioner-Union represents the majority of the workmen; and
- (iii) The bonus awarded to the workmen under the settlement is inadequate.

A copy of the settlement u/s 12(3) of the Industrial Disputes Act, 1947, arrived at between the Management of respondent No. 2 and Jwala Textile Mills Mazdoor Organization, Jawala Textile Mills Union and Textile Mill Mazdoor Union has been placed on record as Annexure B-2/1. A photostat copy of the same is Appendix "A" to this judgment. A perusal of the settlement reveals that it was made in the presence of the Deputy Labour Commissioner, Haryana, representatives of the three Mazdoor Unions and the Management.

3. The Deputy Labour Commissioner, Haryana, in his written statement has stated that the settlement u/s 12(3) of the Industrial Disputes Act was arrived at between the three Unions and the Management on October 23, 1992. The Unions were representing the majority of the workers. Three demands were raised by the Unions, viz. (i) reinstatement in service of 7 workers: (ii) regularisation of services of temporary workers: and (iii) grant of bonus. The demands regarding reinstatement of 7 workers in service and regularisation of services of temporary workers were referred to the Labour Court for adjudication. The dispute regarding payment of bonus was settled under the agreement and the members of the petitioner-Union and all other workers have been granted bonus @ 20% as stipulated in the settlement.

(P-3) We find that the settlement dated October 23, 1992 is fair and was arrived at with the representatives of the three Unions representing majority of the workers. Merely because the petitioners were not associated in the settlement, the same would not be binding on them is not correct. In this behalf reliance can usefully be placed on the judgment of the Apex Court in *Barauni Refinery Pragatisheel Shramik Parishad v. Indian Oil Corporation Ltd.* and Ors. 1991 I LLJ 46, where it was held thus:- (at PP-50-51)

"Since the High Court has answered the first point in the affirmative i.e. in favour of the workmen, we do not consider it necessary to deal with this aspect of the matter and would confine ourselves to the second aspect which concerns the binding character of the settlement. Section 2(p) of the Industrial Disputes Act, 1947 defines a settlement as a settlement arrived at in the course of conciliation proceedings and includes a written agreement between the employer and the workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to the officer authorised in this behalf by the appropriate Government and the Conciliation Officer, Section 4 provides for the appointment of Conciliation Officer by the appropriate

Government. Section 12(1) says that where any industrial dispute exists or is apprehended the Conciliation Officer may, or where the dispute relate to a public utility service and a notice u/s 22 has been given, shall hold conciliation proceedings in the prescribed manner. Sub-section 2 of Section 12 casts a duty on the Conciliation Officer to investigate the dispute and all matters connected therewith with a view to inducing the parties to arrive at a fair and amicable settlement of the dispute. If such a settlement is arrived at in the course of conciliation proceedings, Sub-section (3) requires the Conciliation Officer to send a report thereof to appropriate Government together with the memorandum of settlement signed by the parties to the dispute. Section 18(1) says that a settlement arrived at by agreement between the employer and the workmen otherwise than in the course of the conciliation proceedings shall be binding on the parties to the agreement. Sub-section (3) of Section 18 next provides as under:-

"A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under Sub-section (3-A) of Section 10A or award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on -

- (a) All parties to the industrial dispute;
- (b) All other parties summoned to appear in the proceedings as parties to the dispute unless the Board, arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;
- (c) Where a party referred to in Clause (a) or Clause (b) is an employer, his heirs, successors or assigns in request of the establishment to which the dispute relates;
- (d) Where a party referred to in Clause (a) or Clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment as the case may be to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part."

It may be seen on a plain reading of Sub-sections (1) and (3) of Section 18 that settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings, and (ii) those arrived at in the course of conciliation proceedings. A settlement which belongs to the first category has limited application in that it merely binds the parties to the agreement but the settlement belonging to the second category has extended application since it is binding on all parties to the industrial dispute, to all others who were summoned to appear in the conciliation proceedings and to all persons employed in the establishment or part of the establishment, as the case may be, to which the dispute related on the date of the dispute and to all others, who joined the establishment thereafter. Therefore, a settlement arrived at in the course of

conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to 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 settlement 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 others. That is why a settlement arrived at in the course of conciliation proceedings is put on par with an award made by the adjudicatory authority. The High Court was, therefore, right in coming to the conclusion that the settlement dated August 4, 1983 was binding on all the workmen of the Barauni Refinery including the members of Petroleum and Chemical Mazdoor Union."

4. For the reasons stated above, there is no merit in the writ petition and the same is dismissed.