
(1971) 12 P&H CK 0015
In the Punjab And Haryana At Chandigarh

Atlas Cycle Industries Ltd.

APPELLANT

Vs

Industrial Tribunal and Others

RESPONDENT

Date of Decision : 21-12-1971

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 12, 18, 19, 2

Citation : (1973) 1 LLJ 182

Hon'ble Judges : Harbans Singh, C.J.;Gurdev Singh, J

Bench : Division Bench

Judgement

Harbans Singh, C.J.—This order will dispose of three writ petitions (Civil Writs Nos. 2858, 2859 and 2860 of 1970), and Letters Patent Appeal No. 84 of 1971. The point involved in all these matters is the same, namely, whether during the currency of a settlement, u/s 12(3) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), which is annexure "A" in Civil Writ No. 2858 of 1970, the facts of which alone will be given in detail, the question whether the dismissal of a workman was proper or otherwise, can be referred to the Industrial Tribunal at the instance of the workman without first exhausting the remedies provided under the settlement.

2. In Civil Writ No. 2858 of 1970, Ram Sarup, workman, was charge-sheeted on 11th January, 1969, and on 3rd April, 1969, he was, dismissed, after an enquiry. The matter was taken by him to the conciliation officer before whom, it is a common case between the parties, an objection was raised by the Atlas Cycle Industries Limited, Sonapat (hereinafter referred to as the management), that there was a settlement u/s 12(3) of the Act in force between the management and "the workmen through the conciliation officer and demand No. 16 of the aforesaid settlement provided for a mode of settlement that has to be tried in the first instance, whenever there is a dispute between a workman and the management, before the matter can be taken to conciliation or reference. In any case, the conciliation officer, having failed to bring about a conciliation between the parties, sent a report to the State Government and on 22nd January, 1970,

vide Annexure "B", reference was made to the Industrial Tribunal to adjudicate upon the question, whether the dismissal was justified.

3. In the written statement before the Industrial Tribunal, the same objection was taken that the remedies provided under demand No. 16 of the settlement had not been exhausted. One of the preliminary objections raised was as follows:

4. Whether the present reference is barred because the workmen has not availed of the machinery set up under the settlement dated August 5, 1968, for dealing with the cases of the workmen?

This is the issue with which we are now concerned.

5. The relevant part of demand No. 16 of the settlement runs as follows:

Demand No 16. Procedure of settlement of disputes.? It is agreed that the following procedure will be resorted to for resolving all future disputes between the management and the workmen from time to time. All matters in dispute arising from time to time between the management and the workmen shall be referred by either party to a settlement board consisting of five representatives of the workmen and five representatives of the management to be nominated by the management. The board will be presided over by an executive to be appointed by the management.

The dispute can be referred to the above mentioned settlement board by any member of the settlement board and an intimation to this effect will be sent to the President of the Board at least fifteen days in advance.

The settlement board will meet at least once a month and will endeavour to take decisions on the disputes referred to the board. If, however, unanimous decision is not possible in any case, the matter would be referred to the executive director/ works director for his decision.

In case the decision of the executive works director is not acceptable to the workmen, it would be open to them to seek any remedy which may be available under any law in force....

6. The argument of the management was that the settlement simply makes it obligatory for the aggrieved workman to take advantage of the procedure and the machinery set up for amicable settlement of the dispute before resorting to legal remedies that are available to him under the Act. The settlement, which was arrived at with the active assistance of and through the conciliation officer while settling a number of demands made by the workmen, was binding on all the workmen who were employed at the time of the settlement or who became employees subsequently during the period that the settlement was in force, vide Sub-section (3) of Section 18 of the Act, and demand No. 16 of the settlement in no way debars the workman from approaching the appropriate authorities under the Act for the redress of his grievances. It only makes it incumbent on him to explore the avenues of settlement, as agreed upon, as a condition precedent for

rushing to the authorities concerned.

7. The Industrial Tribunal was, however, of the view that the power of the Government to make the reference cannot be curtailed simply on the ground that the workman concerned did not first take recourse to the procedure laid down in the settlement dated 5th August, 1968. It was urged that, under Sub-section (1) of Section 10 of the Act, the Government has statutory power to refer a dispute and all that is necessary is that an industrial dispute should exist or should be apprehended and, secondly, the Government should consider it expedient to make a reference. It was, therefore, held that the validity of the reference cannot be challenged. It is against this decision of the Industrial Tribunal that Civil Writ No. 2858 of 1970 has been filed by the management. The other two writs also arise in similar circumstances. So far as L.P.A. 84 of 1971 is concerned, a similar decision was challenged before the learned single Judge in Civil Writ No. 23 of 1970, *Atlas Code Industries Ltd. v. State of Haryana and Ors.* [1970] 40 F.L.R. 14 by the management. The learned single Judge agreed with the contentions of the management and relying on a decision of the Bombay High Court in *Poona Mazdoor Sabha Vs. Dhutia G.K. and Another (Esco Ltd.)*, , and of our own High Court in *Amin Chand Pyare Lal v. Second Punjab Industrial Tribunal* [1955 I L.L.J. 604]; [1957] 12 F.J.R. 206, came to the conclusion that the terms of the settlement are binding on the workmen and during its subsistence no industrial dispute covered by such settlement could be dealt with otherwise than in accordance with the terms of the settlement. In view of the above the writ was accepted and the workman has come up in appeal.

8. Before dealing with the law point as to what is the effect of the settlement arrived at in this case, it would be necessary to refer to the circumstances under which the settlement was arrived at. The opening words of the settlement, Annexure "A", indicate that there was a long term settlement dated 18th July, 1964, between the management and the workmen, which came to an end on 15th July, 1968. On 12th July, 1968, just before the settlement came to an end, the representatives of the workmen made demands which were 16 in number. A copy of these demands is at page 53 of the paper book relating to Civil Writ No. 2858 of 1970. The demands related to the payment of bonus, gratuity, minimum pay, allowance during suspension of a workman, some definite indication in the standing orders as to who would be entitled to take disciplinary action, etc., etc. The last demand was to devise some way to remove the day-to-day grievances. These demands were made, as is clear from the copy of the demands, by a unanimous decision of the workmen at a special gate meeting. The demands were signed by five persons. After mentioning these facts, the settlement, Annexure "A", goes on to say as follows :

Whereas the management asked the five representatives to get authority from the workmen to negotiate on their behalf and come to a binding settlement under the Industrial Disputes Act, 1947.

And whereas after some preliminary discussions, both the management and the

five representatives requested the conciliation officer to intervene and help them to bring about a settlement.

And whereas the conciliation officer intervened and held discussions and conciliation proceedings.

Now, therefore, with the help of the conciliation officer the parties have arrived at the following;.

Then follow the details of the settlement with regard to each one of the 16 demands. Regarding the procedure for settling the day-to-day grievances, the procedure was laid down under demand No. 16, the relevant part of which has been reproduced above. After detailing the fact that the matter would be referred to the settlement board consisting of five representatives of the workmen and five representatives of the management, detailed procedure has been laid down for the settlement of the individual day-to-day grievances of the workmen. It provides that the workman will submit his grievance in writing to the in-charge of the shop in which he works. If that in-charge cannot redress the grievance, he will forward the application to the labour welfare officer. The workman can also do so if he is not satisfied with the decision of the in-charge. In case of failure of the labour welfare officer to decide the matter to the satisfaction of the parties, the matter is to be referred to the factory manager. If he also cannot settle the matter the same can be referred to the settlement board. This can be done through any one of the representatives of the workmen. The matter, when it comes before the settlement board, has to be decided in accordance with the procedure laid down earlier.

9. It was also provided that this settlement will remain in force for five years from the date of the signatures of the parties, which were appended by the representatives of the management, by the representatives of the workmen and by the labour welfare officer-cum-conciliation officer on 5th August, 1968.

10. Clause (p) of Section 2 of the Act defines "settlement" as meaning "a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and 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 an officer authorised in this behalf by the appropriate Government and the conciliation officer."

11. If a settlement is arrived at otherwise than in the course of conciliation proceeding, then, according to Sub-section (1) of Section 18 of the Act, it is binding on the parties to the settlement. However, if the settlement is arrived at in the course of conciliation proceeding, then Sub-section (3) of Section 18 of the Act provides :

A settlement arrived at in the course of conciliation proceedings under this Act...shall be binding on ?

(a) all parties to the industrial dispute ;

(b) * * * (c) * * * (d) where a party referred to in clause (a) ...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.

12. According to Sub-sections (1) and (2) of Section 19 of the Act, such a settlement becomes effective from the date agreed in the settlement or, if there is no date agreed, then from the date the same is signed, and the same is binding for the period agreed upon.

13. There is no manner of doubt that in the present case a settlement was arrived at through the active participation of the conciliation officer. Certain demands were made by the workmen and the conciliation officer intervened to bring about a settlement between the management and the representatives of the workmen. It has been held by the Supreme Court in *The Bata Shoe Co. (P) Ltd. Vs. D.N. Ganguly and Others*, , that a settlement to be binding under Sub-section (3) of Section 18 of the Act, must be a settlement arrived at with the assistance and concurrence of the conciliation officer and it is not enough that the settlement was arrived at during the pendency of the conciliation proceeding. In that case the conciliation officer did not take any step to procure the agreement, but that is not the case here. In the present case not only the conciliation officer intervened to bring about a settlement, but he actually signed the settlement. Thus there can be no manner of doubt that the present settlement is the one which had been arrived at during the course of the conciliation proceeding and through the active participation of the conciliation officer, and is thus binding on the workmen who were employed on the date of the settlement and even on the workmen who got employment subsequently.

14. There is ample authority for the proposition that if a matter is covered by the " settlement, then during the currency of that settlement, no reference can be made on the point. In *Poona Mazdoor Sabha Vs. Dhutia G.K. and Another (Esco Ltd.)*, , which is a Bench decision of the Bombay High Court, a settlement had been arrived at on 11th April, 1955, between the management and the elected representatives of the workmen with regard to the workers' demands relating to wages, dearness allowance, leave facilities, etc. Another union, Poona Mazdoor Sabha, was formed on 1st April, 1955, and was registered on 1st June, 1955. On 23rd June, 1955, the union made certain demands, which were the subject-matter of the settlement already arrived at. On the management's refusal to concede these demands, the union approached the conciliation officer. The conciliation officer declined to initiate conciliation proceedings on the plea that he had no jurisdiction to initiate such proceedings as the settlement was still subsisting. The matter having been taken to the Court, it was observed by Chagla, C. J. on behalf of the Bench, as follows (at p. 172) :

The object of the Industrial Disputes Act is to bring about industrial peace and there is no industrial peace unless there is an agreement between the contending parties which is binding upon them and which they are bound to respect in law...there is no specific provision in the Act which lays down that an industrial dispute cannot be raised with regard to a matter which is the subject of a settlement u/s 12 read with Section 19(2). But, in our opinion, what we have to consider is the effect of the Legislature providing that u/s 19(2) a settlement arrived at in the course of a conciliation shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months.... When the Legislature provides for a particular agreement being binding upon the parties to an industrial dispute, it clearly intends that there is industrial peace with regard to the subject-matter of the agreement for the duration of that agreement, and it is obvious that if there is to be industrial peace for the period contemplated, then neither party to that settlement can be allowed to raise an industrial dispute with regard to that settlement...it is clear in our opinion that neither any industrial dispute can be raised with regard to the settlement nor can matters covered by such settlement form the subject-matter of conciliation proceedings u/s 12.

15. Similar views were expressed by Bishan Narain, J., in *Amin Chand Pyare Lal v. Second Punjab Industrial Tribunal* 1958 I L.J. 604 : [1957] 12 F.J.R. 206. In December, 1955, the workers made certain demands to the management regarding their terms of employment and conditions of labour. Ultimately, a settlement was arrived at on 14th March, 1956, in the presence of the Labour Commissioner, Punjab. Later, on 19th March, 1956, the State Government referred to the Industrial Tribunal inter alia the following question:

Whether the piece-rated workers in the establishments mentioned above should be treated as workmen, as denned in the Industrial Disputes Act?

After holding that the workmen were properly represented at the time of the settlement and that the settlement must be taken to be one having been arrived at during the conciliation proceedings, it was held that the settlement was binding. The learned Judge then went into the objection that in the settlement certain disputes had been referred to another body to settle them and that such a settlement cannot be considered to be one u/s 12(3) of the Act. With regard to this, it was held that there was nothing improper in the parties agreeing to get their disputes decided with the good offices of a labour officer instead of getting these disputes referred for adjudication by the Tribunal. The learned Judge then went on to observe (at p. 210):

It is common ground that if the settlement is binding on the parties, then the reference of the alleged disputes on 19th March, 1956, was not in accordance with law. I may state at this stage that it appears to me on the material on the record that in the present case the dispute is really between the two unions relating to right of representation u/s 36 of the Act rather than between the management and the workmen.

16. In the present case, five representatives were elected by the workmen and they entered into a settlement in the presence and through the instrumentality of the conciliation officer and the settlement board is to consist of five representatives of the workmen along with five representatives of the management. During the course of the arguments by the learned Counsel, it transpired that there also the real dispute is between two unions. Prima facie, there is nothing improper in the disputes being referred to such a settlement board before resort is had to the remedies provided under the Act.

17. The main argument of Mr. Sahni, the learned Counsel for the respondent, was that this was not a settlement as defined under Clause (p) of Section 2 of the Act. He urged that this settlement was not a settlement qua a demand raising an industrial dispute and, secondly, the decision incorporated under demand No. 16 in the settlement is opposed to the whole object of the Act, which prescribes conciliation proceedings by a conciliation officer, and failing that the matter is to be reported to the State Government which can refer the matter to an Industrial Tribunal if it thinks proper. The last argument was that the dispute was not covered by the settlement.

18. As regards the first argument, the whole basis for the same is that, according to the learned Counsel, the settlement must be with regard to an existing dispute. "Industrial dispute" as defined in Clause (k) of Section 2 of the Act means "any dispute or difference... between employers and workmen, ...which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person" and "settlement" means "a settlement arrived at in the course of conciliation proceeding...."

19. Sub-section (1) of Section 12 of the Act runs as under:

Where any industrial dispute exists or is apprehended, the conciliation officer may...bold conciliation proceedings in the prescribed manner.

20. It is, therefore, clear that conciliation proceedings can be initiated not only with regard to an existing dispute, but also with regard to a dispute which is apprehended. As already indicated, a number of demands were made by the workmen when the earlier settlement was about to expire. Obviously, there was no existing dispute with regard to these demands but demands having been made, if the settlement was not arrived at, future industrial disputes were likely to arise. One of those demands was to hammer out a procedure for quick disposal of the grievances of the workmen. It is well-known that when a dispute arises and the conciliation proves abortive and the matter is referred to the Industrial Tribunal, it takes a very long time for the dispute to be finally settled. Thus, there can legitimately be a settlement between the parties providing for a reasonable and quick procedure saving the workmen as well as the management from unnecessary litigation. Thus the settlement with regard to the procedure cannot be said to be outside the purview of the "settlement" as defined in the Act, on the ground that the same did not relate to the existing industrial dispute.

21. As regards the second argument, it has not been possible for us to appreciate the same as to how the procedure laid down in the settlement defeats "the very objects of the Act." It does not place any embargo on a workman resorting to all the remedies available under the Act. All that it provides is that, before resorting to those remedies, the matter may be referred to the settlement board constituted by an equal number of representatives of the management and the workmen so that, if possible, all further resorts to the remedies under the Act may become unnecessary. As was observed by Chief Justice Chagla in Poona Mazdoor Sabha's case (supra) the real object of the Industrial Disputes Act is to bring about peace in the relations of the workmen and the management.

22. So far as the last argument is concerned, that has obviously no force for the simple reason that the matter, how the grievances of the workmen are to be settled in the first instance, is specifically provided in the settlement. In this case, the grievance of the workman was that he was wrongly dismissed. That was certainly a matter which could be referred to the settlement board and if the workmen did not find satisfaction with the decision either by the settlement board or the works director, as provided, it was open to him to proceed under the Act.

23. For the reasons given above, therefore, we feel that there is force in the argument of the learned Counsel for the management that before exhausting the remedies as provided in the settlement, the workman could not approach the conciliation officer and the conciliation officer had no jurisdiction to go into the matter before the procedure laid down in the settlement had been followed. For the same reason, the matter could not be referred to the Industrial Tribunal either. We, consequently, uphold the objection of the management, accept Civil Writ No. 2858 of 1970 and quash the decision of the Industrial Tribunal. It would be open to the workman to approach the settlement board in terms of the settlement before having resort to the remedies under the Act. For the same reasons, Civil Writs Nos. 2859 and 2860 of 1970 are also accepted.

24. Letters Patent Appeal No. 84 of 1971" must also be dismissed, because the learned single Judge has taken the same view as we have taken of the matter, and we order accordingly. Both in the writ petitions as well as in the letters patent appeal, the parties are left to bear their own costs.

Gurdev Singh, J.

25. I agree.