
(2014) 03 UK CK 0081

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 725 of 2012

Awdhesh Kumar Sharma

APPELLANT

Vs

Uttarakhand Power Corporation Ltd.

RESPONDENT

Date of Decision : 26-03-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 18(1), 2(p)

Citation : (2015) 145 FLR 979 : (2014) LabIC 3337 : (2015) 1 UC 322

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Amar Shukla and Gopal Narayan, Advocate for the Appellant; D.S. Patni, Advocate for the Respondent

Judgement

@DELETEUPPERDATA

Sudhanshu Dhulia, J.—The petitioners before this Court are the workmen/employees, who are working in the Uttarakhand Power Corporation Ltd. (hereinafter referred to as "Corporation") as Muster Roll Line Coolie since 1976. At the relevant point of time it was U.P. State Electricity Board. They had not been regularized in service and they claimed regular salary and designation as "Line Coolie" in the Corporation. Since this was being denied to them by the Corporation, they raised an industrial dispute under Section 4K of the U.P. Industrial Disputes Act (hereinafter referred to as "Act"), under which a reference was made before the Labour Court, Haldwani. The Labour Court, Haldwani after giving notices to the parties and calling for their written submissions and after hearing the parties came to the conclusion that the regularization ought to have been made from the date of receiving the reference i.e. 21.05.1992. The award of Labour Court was challenged by the employer/Corporation before the High Court of Judicature of Allahabad and thereafter it has been transferred to this Court under Section 35 of the U.P. Re-Organization Act, 2000 as the matter pertains to the territory of Uttarakhand.

2. The matter was heard by this Court and disposed of the writ petition vide

order dated 27.06.2008, by passing following order:--

"Heard Sri N.S. Negi, learned Counsel for the petitioners and Sri Gopal Narain, learned Counsel for the respondent No. 2.

Learned Counsel for the parties agree that the writ petition may be disposed of finally and that no back wages shall be paid to the workman. Award is modified to that extent.

Writ petition is disposed of accordingly."

3. Against the said order, the employer i.e. Corporation moved a review petition, which was dismissed by the learned single Judge of this Court vide order dated 10.11.2008 by passing following order:--

"Mr. N.S. Negi, learned counsel for the petitioners/review applicants.

Mr. Gopal Narain, learned counsel for the respondent No. 2.

Present application has been filed for recalling/reviewing/modifying the order dated 27.06.2008, whereby the writ petition has been disposed of with the direction that no back wages shall be paid to the workman.

After going through the aforesaid review/recall/modification application supported by an affidavit, I find no force in the same in order to recall, modify or recall the order dated 27-06-2008. Therefore, aforesaid application is rejected along with other pending application(s)."

4. Thereafter instead of implementing the award of the Labour Court, without the back wages (as it is agreed between the parties before this Court), the Corporation started negotiation with these workmen, as a result of which a "settlement" was arrived at between the employer/Corporation and the Workmen, which is presently the bone of contention between the parties. This settlement was arrived at between the parties on 25.02.2009. As per the said settlement arrived at between the workmen and the Corporation, the petitioners were to be regularized in service from the date of their appointment letter, which was subsequently given to them on 16.05.2009. In other words they were not given benefit, as per the award of the Labour Court, which would principally amount to wiping out the benefits of their past services.

5. It must also be noted that the order dated 27.06.2008 was passed by the learned single Judge was on some kind of an agreement between the parties as the said order states, "Learned counsel for the parties agree that the writ petition may be disposed of finally and that no back wages shall be paid to the workman."

6. It is again necessary to state here that the Corporation has not challenged this order before the Hon"ble Apex Court. Under what circumstances then a fresh "settlement" proceedings were initiated is difficult to perceive, as it can only be seen as an attempt, firstly to defeat the order dated 27.06.2008 of this Court and secondly to further pressurize and exhaust the workmen, who had already

underwent a lengthy litigation in the present matter.

7. In any case their "settlement" would be in the eye of law only a settlement "outside the conciliation proceedings" and hence covered by Rule 58(4) of the Industrial Disputes (Central) Act, which is *pari materia* to the Rules 26 and 27 of the U.P. Industrial Disputes Act, 1947 read with Section 6B of the U.P. Industrial Disputes Act, 1947.

8. Section 58(4) of the Industrial Disputes (Central) Rules, 1957 reads as under:--

"58. (4) Where a settlement is arrived at between an employer and his workmen otherwise than in the course of conciliation proceeding before a Board or a Conciliation Officer, the parties to the settlement shall jointly send a copy thereof to the Central Government, the Chief Labour Commissioner (Central) New Delhi, and the Regional Labour Commissioner (Central) and to the Assistant Labour Commissioner (Central) concerned."

9. Sections 26 and 27 of the U.P. Industrial Disputes Rules, 1957

"26. Application for registration of settlement--An application for registration of settlement, arrived at otherwise than in the course of the conciliation proceedings before a Board shall be made in Form XI and shall be sent by the parties to the settlement or any one of them, within one month of the date of settlement, to the Conciliation Officer of the area concerned by registered post acknowledgement due, or by personal delivery. A copy of the memorandum of settlement shall be affixed by the parties to the settlement to a notice-board at or near the entrance or entrances of the establishment concerned, and shall remain so affixed for a period of 15 days before making the application for registration.

27. Procedure for registration of settlement--On receipt of an application for registration of settlement, the Conciliation Officer or the authority notified by the Government in this behalf under Section 6B(3) of the Act, may make an enquiry if he/it considers necessary. If after enquiry, the Conciliation Officer or the authority concerned decides to register a settlement for which an application has been made, under sub-section (2) of Section 6-B, the registration shall be made in Form X, and a certificate of registration shall be issued to all the parties to the settlement in Form XI. If the registering authority refuses to register the settlement under sub-section (3) of Section 6-B, an intimation to this effect, together with reasons for refusal to register, shall be given to all the parties to the agreement. The Authority notified by the State Government for registering a settlement shall also give intimation of registration of settlement, settlement or of the refusal thereof, as the case may be, to the Conciliation Officer of the area concerned and to the Labour Commissioner, Uttar Pradesh."

10. Section 6-B of the U.P. Industrial Disputes Act, 1947 reads as under:-

"6-B Settlement outside conciliation proceedings (1) A settlement arrived at by

agreement between the employer and workmen otherwise than in the course of conciliation proceeding shall except as provided in subsection (4), be binding on the parties to the agreement:

Provided that if the period for which a settlement shall remain in force has not been laid down in such settlement itself, it shall remain in force for one year from the date of its registration.

(2) As soon as settlement referred to in subsection (1) has been arrived at, the parties to the settlement or any one of them may apply to the Conciliation Officer of the area concerned in the prescribed manner for registration of the settlement.

(3) On receipt of an application for registration under sub-section (2) the Conciliation Officer or an authority notified by the State Government in this behalf, either: (i) register the settlement in the prescribed manner, or (ii) refuse registration if it considers it to be inexpedient to do so on public grounds affecting social justice, or if the settlement has been brought about as a result of collusion, fraud or misrepresentation.

(4) Where a settlement under sub-section (1) has been refused registration, it shall not be binding under this Act."

11. Normally a "settlement" between workmen and employer is always welcomed by the Courts because it is something which has been arrived at by mutual consent of both the parties. In a settlement arrived at between the parties during the conciliation proceedings, if the dispute has been raised by the Union, the signature of the Union would be enough, and it would be binding on all the concerned Workmen. However, in a settlement arrived at outside the conciliation proceedings, signatures of all the effected parties are necessary. In other words, only such people are bound by the settlement who are the signatory to the settlement. A person, who has not signed it, is not bound by the agreement. Rule 26 of the U.P. Industrial Disputes Act, 1947 reads as under:--

"26. Application for registration of settlement--An application for registration of settlement, arrived at otherwise than in the course of the conciliation proceedings before a Board shall be made in Form XI and shall be sent by the parties to the settlement or any one of them, within one month of the date of settlement, to the Conciliation Officer of the area concerned by registered post acknowledgement due, or by personal delivery. A copy of the memorandum of settlement shall be affixed by the parties to the settlement to a notice-board at or near the entrance or entrances of the establishment concerned, and shall remain so affixed for a period of 15 days before making the application for registration."

12. There is another provision of law which such a settlement must fulfill in order to become a valid settlement. This "settlement" which is sent to the Labour Commissioner or the Deputy Labour Commissioner, as the case might be, has to be signed "jointly" by both the parties, the employer as well as all the concern

workmen. Rule 26 of the U.P. Industrial Disputes Rules clearly provides that it has to be signed by the "parties to the settlement", which would mean that while it is being sent for registration, it must carry the signatures of both the parties to the settlement. This has not been done in the present case, as at this stage admittedly it does not have the signatures of the petitioners.

13. Moreover, on the face of it this settlement is wholly disadvantageous to the workmen and hugely beneficial to the employer. Apart from that under Rule 27 of the U.P. Industrial Disputes Act, if the Labour Commissioner had any doubt, as evidently, there was no signature of the workmen concerned while sending it for registration, he ought to have conducted an enquiry in the matter. Another factor which cannot be overlooked in the present case that in spite of the order of this Court dated 27.06.2008 in which the employer/Corporation had agreed to give all the benefits in view of the award of the Labour Court to the workmen except the back wages.

14. Learned counsel for the petitioners has relied upon a judgment of Delhi High Court in Co-operative Store Ltd. Vs. Ved Prakash Bhambri, . The relevant paragraph 9 of the said judgment reads as under:--

"9. The settlement in question, copy of which is annexure P-3 to this writ, shows that a cheque for Rs. 9,849.33 has been received by the employee in full and final settlement of his claim including all retrenchment benefits and it also records that workman withdrew the dispute raised by him regarding termination of his services and he undertook to send a copy of this to the Presiding Officer, Additional Industrial Tribunal, Tis Hazari, and to the Labour Commissioner and that after the receipt of the said amount he had been left with no claim against the Super Bazar on any account. One Sri M.L. Malik, Chief Cashier of the Super Bazar, made an endorsement that Ved Prakash Bhambri had received the said cheque in his presence. The settlement is admittedly not signed by any authorised person on behalf of the management. It is also witnessed by any two witnesses. So, strictly speaking, the settlement is not in accordance with Form "H" or in accordance with the definition of "settlement" given in Section 2(p). The very definition of "settlement" requires that the same must be in writing to be signed by both the parties. The requirement of Rule 58(4) also is not met because the same made it incumbent that both the parties jointly should send copies of the settlement to the appropriate authorities. It may be that the authorities mentioned in that Rule are not the concerned authorities as far as the present employee was concerned, still the authorities, i.e., Presiding Officer, Industrial Tribunal, and the Conciliation Officer and the Labour Commissioner should have been forwarded with the copies of the settlement jointly by the Workman and the Management which admittedly has not been done. In the rejoinder, the petitioner had taken up the plea that it was the Workman who had taken up the responsibility of sending the copies of the settlement to the said concerned authorities and if the Workman had not complied with the undertaking, the Management should not be allowed to suffer on that score. The

question which arises for consideration is whether the said Rule 58 and Form "H" have to be strictly followed before a settlement could be considered valid. Section 2(p) clearly contemplates a settlement to be executed in accordance with the rule and the form prescribed. So, Rule 58 and the Form - "H" are statutory provisions which have to be given full effect before a settlement could be considered valid. Counsel for the workman has cited *Workmen of Delhi Cloth and General Mills Ltd. Vs. The Management of Delhi Cloth and General Mills Ltd.*, . The Supreme Court while noticing the provisions of Section 18(1) the definition of "settlement", as given in Section 2(p), clearly held that a plain reading of the Rule and the Form shows that the settlement has to be in compliance with the statutory provisions. In the cited case, it appears that the settlement was arrived at during the course of conciliation proceedings but as the settlement was not entered into with the concurrence of the Conciliation Officer and also as provisions of Rule 58(4) were not complied with, the settlement was held to be invalid. It is true that in the present case the settlement was not arrived at during the pendency of the conciliation proceedings, yet the settlement has to be in accordance with the statutory provisions before it can be held to be valid. It has been observed in this very judgment that the provisions of Rule 58 demand full compliance in order to clothe the settlement with a binding character."

15. It is true that in the Uttar Pradesh Industrial Disputes Rules, the word used is "shall be sent by the parties" whereas under the Central Industrial Disputes Act under Rule 58(4) on which the above judgment has been given, the language is "shall jointly send a copy thereof. However, the meaning in both the cases is the same i.e. parties to the agreement shall jointly send the agreement. This provision of law, which is mandatory in nature, has not been complied with, and therefore, the settlement "is no settlement in the eyes of law". Under the aforesaid situation, the writ petition succeeds. The respondents are hereby directed to implement the award dated 30-05-1998 passed by the Labour Court whereby the petitioners were entitled for regularization from the date of reference i.e. 21-05-1992, within a period of six weeks from today. No order as to costs.