

(1994) 06 P&H CK 0018
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 1791 of 1994

Ballarpur Industries Ltd.

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 03-06-1994

Acts Referred:

Industrial Disputes Act, 1947 — Section 10A, 19(1)

Citation : (1995) 70 FLR 650 : (1995) 1 LLJ 184 : (1994) 108 PLR 73

Hon'ble Judges : N.K. Sodhi, J

Bench : Single Bench

Advocate : O.P. Malhotra and Arun Walia, for the Appellant; S.K.R. Grover, for the Respondent

Final Decision : Allowed

Judgement

N.K. Sodhi, J.—What is challenged in this petition under Article 226 of the Constitution is the award of the Presiding Officer, Labour Court, Ambala whereby he directed the re-instatement of respondent No. 2 with continuity of service but without back-wages.

2. Shri S.K. Grover (for short "the workman") was employed on November 11, 1983 by the petitioner-Company as a Junior Officer Trainee at its Shree Gopal Unit at Yamuna Nagar on a probation for two years. It is alleged that he mis-conducted himself during the probationary period as a result whereof his services were terminated on April 9, 1986. This termination gave rise to an industrial dispute between the parties which was referred for adjudication to the Presiding Officer, Labour Court, Ambala u/s 10(1) of the Industrial Disputes Act, 1947 (hereinafter called the Act). On receipt of the reference, the Labour Court issued the usual notices to the parties who appeared and filed their respective statements of claim. The management later moved an application for the amendment of its written statement with a view to plead the existence of a settlement dated January 18, 1985 between the petitioner-Company and its workmen which was stated to have been arrived at in the course of conciliation

proceedings u/s 12(3) of the Act. The amendment was allowed and the pleadings of the parties gave rise to the following issues:

1) Whether the termination of the services of Shri S.K. Grover is valid and justified? If not, to what relief is he entitled?

1-A) Whether there was any settlement dated January 18, 1968 ? If so, the terms and effect thereof? OPM

1-B) Whether the workman was a Trainee? If so, to what effect? OPM

1-C) Whether the settlement dated January 18, 1985 stands superseded by agreement dated February 12, 1988? If so, to what effect? OPW

1-D) Whether the agreement dated February 12, 1988 cannot be invoked by the management? OPW

1-E) Whether the agreement dated January 18, 1985 is not enforceable for want of publication in the official gazette? OPW

3. The first preliminary objection taken by the management in its amended written statement was with regard to a subsisting settlement dated January 18, 1985 u/s 12(3) of the Act which laid down the procedure for the settlement of individual disputes and since that procedure had not been followed, the reference made to the Labour Court was challenged as not legally tenable and bad in law. The workman filed a replication to the amended written statement and his reply to the first preliminary objection was as under:-

"a) That the settlement dated January 18, 1985 was executed by the Management with two workers" Union, namely, Shree Gopal Paper Mill Labour Union (Regd.), Yamuna Nagar and Shree Gopal Karamchari Union (Regd.), Yamuna Nagar and the workman/plaintiff is neither the member of these Unions nor he has got anything to do with the affairs of the said Unions. The workman/plaintiff was never a signatory to the Charter of Demands dated July 26, 1984 raised by the above two unions which led to the formation of the alleged settlement dated January 18, 1985."

From the aforesaid reply filed by the workman before the Tribunal it is clear that he did not dispute the existence of a settlement as alleged by the management. All that he contended was that the said settlement was not binding on him as he was neither a member of either of the unions with which the settlement was signed nor was he a signatory to the charter of demands that led to the signing of the settlement. The Labour Court after recording evidence of the parties held that the services of the workman had been terminated for some alleged misconduct on his part but since the management had not served him with any charge sheet nor held any enquiry against him, the principles of natural justice stood violated. It was further held that even though the management alleged that his work was not satisfactory during the period of probation yet nothing was placed on the record to show that it was so and, therefore, the order of

termination was not valid. Issue No. 1 was decided against the management. Under issue No. 1 -A the Labour Court recorded a finding that the settlement dated January 18, 1985 did exist between the management and the workers through their unions but since the order of termination was being set aside for non-compliance with the principles of natural justice, the settlement relied upon by the management was of no effect. The other issues were not pressed before the Labour Court and consequently, the management was directed to reinstate the workman with continuity of service but without back wages.

4. As per the finding recorded by the Labour Court under issue No. 1-A supported as it is by the averments of the workman, a settlement dated January 18, 1985 was arrived at between the management and the workman of the Company. What happened was that the workmen of the petitioner-Company represented by Shree Gopal Paper Mills Labour Union (Regd.) and Shree Gopal Karamchari Union (Regd.), Yamuna Nagar served a charter of demands dated July 26, 1984 on the management. The matter was taken up in conciliation and as a result of prolonged negotiations and inducement and guidance received by the parties from the Labour-cum-Conciliation Officer, Yamuna Nagar during the conciliation proceedings, the settlement was signed by them u/s 12(3) of the Act on January 18, 1985. The effect of a settlement that is concluded or signed through the intervention of a conciliation officer is that it is binding not only on all parties to the industrial dispute but also on all persons who were employed in the establishment to which the dispute relates on the date of the dispute and on all persons who subsequently become employed in that establishment. This is clear from a plain reading of, Sub-section (3) of Section 18 of the Act. The workman was admittedly in the employment of the petitioner on the date on which the settlement was arrived at and, therefore, bound by same. The fact that he was not a member of either of the unions with which the settlement was negotiated and signed or that he was not a signatory to the charter of demands that led to the signing of the settlement is of no consequence. The settlement that was signed between the parties in the instant case consisted of two parts. Part I dealt with the various demands raised by the workmen while Part II contained the general terms of the settlement as also the period of its operation. The settlement was operative w.e.f. June 1, 1984 and was to remain in force till June 30, 1987. It may be mentioned that even after the expiry of the period of operation, a settlement continues to bind the parties thereto till it is replaced by a fresh settlement. Clause 5 of Part II of the settlement dealt with individual disputes whatsoever of any individual workman arising during the currency of the settlement and prescribed a procedure for their settlement. The said clause reads as under:-

"That in case of an individual dispute whatsoever of any individual workman arising during the currency of this settlement, Party No. 1 and Party No. 2 shall have direct negotiations to settle the same and if the parties do not come to any mutual settlement, such individual dispute shall be settled in the following manner:-

Both the parties will jointly refer the individual disputes to the arbitration of two nominees of the Managing Director of Ballarpur Industries Limited and two nominees of Party No. 2 (one each of Shree Gopal Paper Mills Labour Union and Shree Gopal Karamchari Union), whose majority decision will be final and binding on the parties hitherto. In the event of arbitration being equally divided in their opinion and there is no majority decision, both the parties will refer the dispute to Shri L.M. Thapar, Managing Director of Ballarpur Industries Ltd., who shall be the sole arbitrator. The decision of the sole arbitrator shall be final and binding on both the parties hereto."

5. It is common case of the parties that when the workman in the instant case raised an industrial dispute which gave rise to the impugned award, the procedure prescribed in Clause 5 of the settlement was not followed. Admittedly, the dispute raised by the workman is an individual dispute and the settlement was binding on all persons who were employed in the establishment including the workman.

6. The question that arises for consideration is whether the workman could raise an industrial dispute u/s 10(1) of the Act without first exhausting the procedure prescribed by the settlement which was binding both on the management as well as on the workman. The answer to the question has to be in the negative. The law is well settled that if there is a binding settlement which has not been terminated in accordance with the procedure laid down in the Act, no industrial dispute can be raised with regard to the items which form the subject matter of the settlement. Such matters cannot be the subject matter of conciliation proceedings u/s 12 or of reference u/s 10 of the Act. The dispute of the workman regarding his termination being an individual dispute is covered by the settlement and Clause 5 of Part II of the settlement makes it obligatory for the aggrieved workman to take advantage of the procedure and the machinery set up for the amicable settlement of the dispute before resorting to the remedies that are available to him under the Act. Thus, the settlement being binding on the workman, it was incumbent upon him to first explore the avenues available under the settlement before rushing to raise an industrial dispute under the Act. The matter is not res integra, A similar question arose before a Division Bench of this Court in *Atlas Cycle Industries Ltd. Vs. Industrial Tribunal and Others*, . In that case a settlement between the parties had been arrived at u/s 12(3) of the Act providing for the procedure for the settlement of disputes. The workman there was charge-sheeted and dismissed from service after an enquiry. He raised an industrial dispute by taking the matter before the conciliation authorities without resorting to the mode of settlement provided in the settlement. The employer raised an objection in the conciliation proceedings but, nevertheless, a reference was made for adjudication u/s 10(1) of the Act. Even before the Industrial Tribunal, the same objection was raised challenging the validity of the reference on the ground that the workman had not taken re-course to the procedure laid down in the settlement. The Tribunal rejected the contention on the ground that the State Government had the statutory powers to refer a

dispute u/s 10(1) of the Act and therefore, the reference could not be challenged. When the matter came up before this Court, a learned Single Judge accepted the contention of the employer. Relying on a decision of the Bombay High Court in *Poona Mazdoor Sabha Vs. Dhutia G.K. and Another (Esco Ltd.)*, and of this Court in *Amin Chand Pyare Lal v. Second Punjab Industrial Tribunal 1958 I LLJ 604*, his Lordship held that the terms of the settlement were binding on the workman 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. The view of the learned Single Judge was accepted by the Division Bench and the Letter's Patent Appeal was Dismissed. Another argument that was raised before the Division Bench was that the settlement providing for a mode to resolve the dispute amicably in a man-ner different from the one provided in the Act was opposed to the whole object of the Act. This argument was rejected by the learned Judges with the following observations *Atlas Cycle Industries Ltd. Vs. Industrial Tribunal and Others*, :

"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 workman 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."

7. In the present case, it cannot be disputed that the dispute raised by the workman is squarely covered by the settlement which provides for the mode in which it had to be settled. This mode not having been resorted to, the workman could not resort to the remedies under the Act. The reference made by the State Government u/s 10(1) of the Act to the Labour Court was, therefore, illegal and without jurisdiction. When this objection was taken before the Tribunal it brushed aside the same without deciding it holding that the settlement did exist between the parties but it was no consequence as the service of the workman had been terminated without complying with the rules of natural justice. This approach of the Tribunal was not correct and the impugned award cannot, therefore, be sustained.

8. Faced with this situation Shri Grover, who appeared in person, submitted that Clause 5 of Part II of the settlement provided for compulsory arbitration by two nominees of the Managing Director of the Company and two nominees (one each of the two Unions) whose majority decision was to be final and binding on the parties. The argument is that the aforesaid clause of the settlement amounted to an agreement to refer disputes to arbitration and was required to be published by the State Government under Subsection (3) of Section 10A of the Act. It was

urged that not having been so published, the clause is inoperative and, therefore, the reference in the instant case was valid. The argument is being noticed only to be rejected. Arbitration was the mode agreed to between the management and its employees for the settlement of individual disputes in future and formed a part of the settlement which was binding on the parties. This clause in the settlement cannot be equated with an agreement to refer disputes to arbitration u/s 10A of the Act. If parties to a dispute agreed to refer the same to arbitration, the arbitration agreement will have to be published and the arbitrator will have the jurisdiction to decide the matter provided the State Government had by then not exercised its powers u/s 10(1) of the Act. On the other hand, a settlement arrived at in the course of conciliation proceedings containing arbitration as the mode for determining the disputes cannot be said to be an agreement to refer a dispute for arbitration u/s 10A of the Act.

9. Since I am upholding the first contention raised on behalf of the petitioner, it is not necessary for me to consider the other objections raised by Shri O.P. Malhotra, Senior Advocate, against the impugned award.

10. In the result, the writ petition is allowed and the impugned award set aside leaving the parties to bear their own costs. It will, however, be open to the workman to resort to Clause 5 of the settlement and have his dispute settled in the manner provided therein.