
(2009) 04 AHC CK 0007

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6381 of 2008

Bharat Heavy Electricals Ltd. (Bhel), Jhansi

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 10-04-2009

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K, 6B

Citation : (2009) 122 FLR 128

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Ashok Khare and Sandeep Saxena, for the Appellant; Shashi Nandan, K.M. Asthana, Manu Khare and S.C., for the Respondent

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—The petitioner has challenged the orders dated 25th October, 2007 and 15th December, 2007, passed by the Deputy Labour Commissioner, whereby he has restrained the Petitioner from filling up the posts which they had advertised in the newspaper dated 22nd September, 2007.

2. The brief facts, leading to the filing of the present petition, is that a settlement dated 30th March, 2006 was arrived at between the contractor and the contract workers union outside the conciliation proceedings. This agreement has been duly registered under the U.P. Industrial Disputes Act. A perusal of this settlement indicates that the contractor was to provide certain benefits to its workers, namely, uniform, stitching charges, safety shoes, pullovers/sweaters, cycle maintenance allowance, washing allowance etc. etc. Upon the grant of these benefits, the contract labourers were required to withdraw all their claims for the regularisation and the other cases pending in various Labour Courts, or before the Conciliation Officer. The settlement further indicated that upon the fulfillment of the conditions, mentioned in the settlement, the principal employer, namely, the petitioner (BHEL, Jhansi) would give a preference and weight age up to 20% marks, and suitable relaxation in age would be granted to such contract

workers while considering them for regular employment against future vacancies. A perusal of the settlement further indicates that the settlement was signed by the contractors and the contract workers" union in the presence of the representatives of the principal employer BHEL, Jhansi. It is alleged that the contractors had fulfilled their part of the conditions mentioned in the settlement, and in response thereto, the contract workers" union and its members had withdrawn the various claims and adjudication cases from the Labour Court/Tribunal etc., and consequently, upon the fulfilment of the conditions, mentioned in the settlement, the contract workers" union demanded implementation of the settlement by the principal employer to the effect that the contract workers should be regularised and absorbed in the employment of the petitioner.

3. It so transpires that the petitioner issued an advertisement dated 22nd September, 2007 for filling up vacancies on the post of Electrician and Fitters, inviting applications from the general public. Pursuant to the said advertisement the contract workers" union filed an application before the Deputy Labour Commissioner, praying that as per the settlement, the contract workers were liable to be absorbed in the employment of the petitioner, and therefore, the employer should be restrained from filling up the vacancies from outsiders, and that, the posts should be filled up from amongst the contract workers. The petitioner filed their reply, in response to the notice issued by the Deputy Labour Commissioner/denying their liability to fill up the posts as per the settlement. The Deputy Labour Commissioner, after hearing the matter, passed an order dated 22nd September, 2007 restraining the petitioner from filling up the posts till such time as the settlement, arrived at, was not complied by them. The Deputy Labour Commissioner in the said order further directed that if the posts were filled up by the Petitioner in violation of the settlement, the authority would proceed to take action for the prosecution of the employers. The petitioner, being aggrieved, filed a review application, which was rejected by an order dated 15th December, 2007. The petitioner, being aggrieved by the said orders, has now filed the present writ petition.

4. I have heard Shri Ashok Khare, the learned Senior Counsel, assisted by Shri Sandeep Saxena, the learned Counsel for the petitioner and Shri Shashi Nandan, the learned Senior Counsel, assisted by Shri K.M. Asthana, the learned Counsel for respondent No. 3, i.e., the contract workers" union, and Shri Manu Khare, the learned Counsel for the respondent Nos. 4, 5, 6 and 7 (the contractors).

5. Shri Ashok Khare, the learned Senior Counsel submitted that the Deputy Labour Commissioner had no authority, or power, or jurisdiction to restrain the petitioner from filling up the vacancies in question and had no authority to direct the petitioner to enforce the settlement dated 30th March, 2006. The learned Counsel for the petitioner submitted that the petitioner was not a party to the settlement, and that, the settlement was arrived at between the contractor and the contract workers" union, and that, the said parties had signed the document in the presence of the representatives of the petitioner. The learned Counsel

submitted that the settlement was only between the union and the contractors. The learned Counsel further contended that assuming that the settlement was binding upon them, the various terms and conditions, mentioned therein, were not fulfilled either by the contractors or by the members of the union, and therefore, there was no obligation on the part of the petitioner to comply with their part of the terms and conditions of the settlement. The learned Counsel for the petitioner further submitted that the settlement only indicated that weightage of marks and relaxation of age would be granted to the contract workers and that they would be given a preference for consideration of their appointment in the vacancies that may arise in future, whereas the contract workers' union and its members are demanding absorption in the services of the petitioner company, pursuant to the settlement dated 30th March, 2006.

6. On the other hand, Shri Shashi Nandan, the learned Senior Counsel, assisted by Shri K.M. Asthana, the learned Counsel for respondent submitted that undisputably, the contract workers have been working for the principal employer for several years and that the settlement dated 30th March, 2006 was binding upon them, inasmuch as the said settlement was signed by them and that the terms and conditions indicated in the settlement was binding upon them. The learned Counsel submitted that the contract workers had fulfilled their part of the terms and conditions, mentioned in the settlement. Various cases of regularisation and absorption, filed by the contract workers' union and the contract workers, against the principal employer, have been withdrawn, and therefore, the petitioner should comply with their part of the settlement by absorbing the contract workers. The learned Counsel submitted that the Deputy Labour Commissioner has jurisdiction to entertain the settlement, and if the employers do not comply with their part of the settlement, the Deputy Labour Commissioner has the power to restrain the petitioner from filling up the posts. The learned Counsel submitted that the Court should not exercise its discretion in favour of the petitioner when it becomes apparent on the face of the record that the Petitioner are adopting unfair labour practice and are not complying with their part of the terms and condition's of the settlement. The learned Counsel submitted that assuming without admitting that the Deputy Labour Commissioner had no power, the Court should not exercise its jurisdiction in issuing a writ under Article 226 of the Constitution, and when the Petitioner are adopting unfair practice, and are harassing the contract workers, who are working day and night for the last more than one decade. In support of his contentions, the learned Counsel placed reliance upon a decision of the Supreme Court in the cases of Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., and Bharat Heavy Electricals Ltd. v. State of U.P. and others 2003 (98) FLR 826 (SC).

7. The settlement arrived at outside the Court in conciliation proceedings u/s 6-B of the U.P. Industrial Disputes Act can be enforced. The Supreme Court in various cases has held that more sanctity has to be given to a settlement than to an award given by a Labour Court or Tribunal. A settlement arrived at between the

parties partakes the nature of a contract of service between the parties. A perusal of the settlement indicates that the settlement was arrived at between the contractor and the contract workers' union which was signed in the presence of the representatives of the petitioner. According to the petitioner, they were only signatories to the settlement as witnesses, and that, they were not a party to the settlement. According to the contract workers, the settlement was binding on them. According to the petitioner, assuming that the settlement was binding upon them, the terms and conditions, mentioned therein, had not been fulfilled either by the contractor or by the contract workers' union, and therefore, they are not obliged to comply with their part of the terms and conditions. Further, the claim of the respondents was for absorption whereas, there was no such settlement for absorption and only a weightage and preference was to be given to the contract workers in future vacancies.

8. In the light of the aforesaid contentions raised by the parties, this Court is of the opinion that the impugned orders, passed by the Deputy Labour Commissioner, cannot be sustained. The Deputy Labour Commissioner has no power to enforce the settlement arrived at between the parties. The Deputy Labour Commissioner has no power to adjudicate upon the terms and conditions of the settlement, and above all, the Deputy Labour Commissioner has no power to restrain the petitioner from filling up the vacancies so advertised by them in various news papers. The Deputy Labour Commissioner has exceeded its jurisdiction while passing the impugned orders. The Deputy Labour Commissioner functions as the Conciliation Officer under the U.P. Industrial Disputes Act, and if an application is filed by the contract workers' union, his jurisdiction and power is to bring the dispute to an end through a conciliation process and if there is a failure in the conciliation process, he can only submit a failure report, and thereafter it is open to the State Government or its delegated authority to refer a dispute for adjudication u/s 4-K of the U.P. Industrial Disputes Act. If the Deputy Labour Commissioner finds that the settlement was being violated by one of the parties to the settlement, he could prosecute that party by filing an application for prosecution u/s 14-A of the Act. By no stretch of imagination, the Deputy Labour Commissioner can enforce the settlement or restrain the petitioner from filling up the vacancies. The Court further finds that the question as to whether the settlement was a bilateral agreement or a tripartite agreement or whether the terms and conditions, mentioned in the settlement, was binding upon the petitioner, or whether the terms and conditions of the settlement was binding upon either of the parties, or not, and the question whether the settlement gave a right to the workers for absorption are disputed questions, which cannot be adjudicated upon in a writ jurisdiction. Such questions can only be referred for adjudication of the dispute raised before the Industrial Tribunal or a Labour Court.

9. In view of the aforesaid, the Court finds that the impugned orders of the Deputy Labour Commissioner dated 25th October, 2007 and 15th December, 2007 cannot be sustained and are quashed. The writ petition is allowed.

The judgments cited by the learned Counsel for respondent has no application to the present facts and circumstances of the case.