
(2000) 11 BOM CK 0025

In the Bombay High Court

Case No : Writ Petition No. 2930 of 1999

Capt. S.C. Adhikari and Others

APPELLANT

Vs

Air India and Others

RESPONDENT

Date of Decision : 14-11-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10, 18(3)

Citation : (2001) 2 ALLMR 17 : (2001) 2 BomCR 269 : (2001) 2 BOMLR 27 :
(2001) 88 FLR 793 : (2002) 4 LLJ 409

Hon'ble Judges : B.P. Singh, C.J.; S. Radhakrishnan, J

Bench : Division Bench

Advocate : Mr. K.T.S. Tulsi, Mr. Sultan Singh and Mr. Shreyas Patel, instructed by M/s. Eastley Lam and Co, for the Appellant; Mr. I.M. Chagla, Mr. S.K. Talsania, Mr. K.B. Swamy and Ms. Jyothi Saigal, instructed by M/s. Bhasin and Co., Mr. K.P. Anilkumar, Mr. B.M. Chatterjee and Mr. M.S. Karnik, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Singh, C. J.

1. The Petitioners herein. 14 in number, are pilots of the 1995-96 batch, holding Air-Lines Transport Pilot Licence (hereinafter referred to as A.L.T.P. Licence). They joined the Respondent No. 1 Company (Air India) in the year 1996-97 along with other trainee pilots holding Commercial Pilot Licence (hereinafter referred to as the C.P.L.). In this Writ Petition, the Petitioners have challenged only clause 7(c) of the settlement brought about in the course of conciliation between the employer. Respondent No. 1 (Air India) and Respondent No. 2, India Pilots Guild, representing the pilots of Respondent No. 1, who are "workmen" within the meaning of the Industrial Disputes Act. The aforesaid settlement arrived at in the course of conciliation proceedings on 3rd January, 1998 deals with a variety of subjects and a mere perusal of the said settlement would disclose that large number of disputes, touching the various issues, were settled. Clauses 7(c) and (d) of this tripartite settlement provide as follows :-

"(c) Based on these discussions, the seniority of Trainee Pilots/Co-Pilots has been determined as a one time exercise as indicated in the Seniority List contained in Exhibit "D" and this will not be cited as a precedent in future".

"(d) Clause 3D of Schedule of Memorandum of Settlement dated July 21, 1989 stands deleted. Henceforth Line Seniority of Co-pilots joining the Company will be based on the date of entry of the Pilot in the grade of a First Officer."

The Petitioners have challenged only clause 7(c) of the settlement which determines their seniority vis-a-vis C.P.L. holders as a one time exercise, and not clause 7(d) which lays down the principle for determination of seniority in future. It may here be noticed that there was an earlier memorandum of settlement dated July 21, 1989 with effect from 1st October, 1985 and valid upto 31st August. 1990. As the settlement came to an end on 31st August. 1990, Respondent No. 2, Indian Pilots Guild, terminated the said settlement by notice dated 1.9.1990. Clause 3(d) of Schedule 2 of the earlier settlement dated July 21, 1989 provided as under:-

"(d) The pilot joining the Corporation with A.L.T.P. will always have higher line seniority over a Co-pilot who is already in the employment of the Corporation without A.L.T.P."

2. The issue pressed by Mr. Tulsi, Senior Advocate, in this Writ Petition is that the terms of the tripartite settlement dated 3rd January, 1998 insofar as it deletes clause 3(c) of Schedule II of the Memorandum of Settlement dated July, 21, 1989 is bad as being arbitrary and unreasonable since it deprives the Petitioners of their vested right of seniority based on higher technical qualification. It may also be noticed, at this stage, that the settlement dated 3rd January, 1998 determines the seniority of trainee pilots/co-pilots only as a one time exercise as indicated in the seniority list contained in Exhibit "D" to the said Memorandum of Settlement, which is not to be cited as a precedent in future. The said seniority list, as prepared by Respondent No. 2 - Guild, has been accepted by the management of Air India and incorporated in the Memorandum of Settlement dated 3rd January, 1998. The seniority list has been prepared by the Indian Pilots Guild itself, and not by the management of Air India. Of course, the seniority list has been described as a one time exercise, not to be cited as a precedent in future.

3. The case of the Petitioners is that A.L.T.P. licence is the highest category of Commercial Pilot Licence, since it is granted only after a pilot has flying experience of 1500 hours of which 500 hours must be in command. On the other hand, for acquiring the C.P.L., the flying hours required is only 250 hours with 150 hours in command. The Senior Commercial Pilot Licence (S.C.P.L.) is granted to pilots who complete 750 flying hours with 200 hours in command of aircraft upto 21000 kgs. weight. So far as A.L.T.P. Licence is concerned, there is no limit on the weight and type of aircraft.

4. The relevant facts are that pursuant to an advertisement dated 14th February

1995, issued by Respondent No. 1 - Air India, the Petitioners applied for the post of co-pilot for which they were eligible. They were selected for appointment as co-pilot, holding A.L.T.P. Licence, but in the letters of appointment issued to them on 16.10.1996, it was stated that the seniority of the Petitioners as co-pilot would be determined and intimated to them separately. It is significant that the Petitioners were appointed at a time when the earlier settlement had come to an end and stood terminated, and no fresh settlement had been recorded, though a character of demands had been submitted on November 1, 1990. According to the Petitioners, earlier a memorandum of settlement was reached between the management of Air India and the Indian Pilots Guild on 21.7.1989, which related to settlement of all claims and proposals/demands etc., with effect from 1.10.1985. This settlement was to remain in force till 31.8.1990. Paragraph 3(d) of Schedule II thereof provided that the pilots joining Respondent No. 1 with A.L.T.P. Licence will always have higher line seniority, over a co-pilot already in the employment of Respondent No. 1 without A.L.T.P. By a notice dated 1st December, 1990, the Indian Pilots Guild terminated the settlement dated 21st July, 1989, and forwarded an advance copy of the charter of demands dated 1st November, 1990 with a request to initiate negotiations to arrive at a new settlement. According to the Petitioners, the matter was under consideration of Respondent No. 1 and the Ministry of Civil Aviation. The thinking was in favour of maintaining the seniority of A.L.T.P. Licence holders over the C.P.L. holders even if the latter had been appointed earlier.

5. A Writ Petition was filed by the pilots holding C.P.L., being Writ Petition No. 2365 of 1992 before this Court, inter alia, praying that the Petitioners therein be treated as confirmed in the post of co-pilot on the completion of one year of their Initial employment as co-pilot without insisting upon the acquisition of A.L.T.P. Licence by such pilots. It was also prayed that the seniority of the Writ Petitioners vis-a-vis other co-pilots be determined solely on the basis of their date of appointment in the post of co-pilot and without taking into consideration or giving any weightage, for the possession of A.L.T.P. Licence. That Writ Petition was dismissed by this Court by its order dated 11th February, 1993. This Court negatived the submission urged on behalf of the Writ Petitioners that the obtaining of A.L.T.P. Licence was wholly irrelevant for their confirmation as co-pilot. This Court held that, in the first place, the terms of contract had been accepted by the co-pilots, and hence, they were estopped from challenging the same. Further, it was held that this was a matter falling in the realm of a policy decision, and justification for introduction of this clause was provided in the affidavit of the Industrial Relations Manager, Operations Department of Air India. On perusing the material on record, this Court noticed nothing arbitrary or discriminatory in this clause. In this view of the matter, the Writ Petition was summarily rejected.

6. Between the years 1992 and 1994, several batches of co-pilots were recruited which included pilots holding A.L.T.P. Licence, but the appointment letters issued to them stated that their seniority as co-pilots shall be determined and intimated

to them separately. Thereafter, the Petitioners applied in response to an advertisement issued on 14th February, 1995, to which we have referred earlier in this judgment. The Petitioners were also appointed with a similar intimation given to them in the letters of appointment that their seniority as co-pilot shall be determined and intimated to them separately.

7. According to the Petitioners, the Seniority Settlement Committee, appointed by the Management, which included various senior members of the Indian Pilots Guild, recommended in favour of the pilots joining with A.L.T.P. Licence maintaining their seniority over pilots with C.P.L. They have referred to the reports dated 16th January, 1996 and 2nd April 1996. However, on 16th December, 1996, the co-pilots holding A.L.T.P. Licence, requested the Director of Operations for the fixation of their seniority claiming that they should be placed above the pilots holding C.P.L. On 16th September, 1997, a news-letter was issued by Respondent No. 2 - Guild in which the Petitioners were shown below the co-pilots earlier appointed irrespective of the type of licence held by them. The seniority was fixed on the basis of the date of joining the service of the management. This, naturally, led the Petitioners to represent to the management with a request that their seniority should be determined in accordance with the memorandum of settlement dated July, 21, 1989. Since the representation was not responded to, the Petitioners were compelled to file a Writ Petition in this Court being Writ Petition No. 1615 of 1997. In its order dated 16th October, 1997, while rejecting the Writ Petition, this Court observed as follows :-

"Present Petition seeks to enforce M.O.S. dated 21.7.1989 which has already been terminated on 1.11.1990. Petitioners, therefore, cannot claim enforcement of a non-existing settlement. Negotiations were there in progress between Air India and Indian Pilots Guild, which is a recognised trade union. No settlement has so far been arrived at. Petitioners, if aggrieved by any settlement, which may be arrived at, can raise a dispute before the Conciliation Officer. In case of failure of conciliation, the dispute can be referred to the National Industrial Tribunal. There is also a pending reference before the National Industrial Tribunal. It is always open to the Petitioners to join in the said reference and raise their demands. Petitioner, in the circumstances, have an alternate and efficacious remedy. They, in the circumstances, cannot resort to writ jurisdiction. Rejected."

Aggrieved by the order of this Court rejecting the Writ Petition, the Petitioners moved the Supreme Court by way of SLP but the same was withdrawn on 26.10.1998. The Supreme Court made the following observations while permitting the Petitioners to withdraw the said SLP :-

"Learned Counsel for the Petitioner states that since the petition before the High Court was premature, they wish to withdraw the present SLP so that they may take appropriate steps later."

8. Even before the disposal of the SLP by the Supreme Court, a Memorandum of Settlement was arrived at between Respondent Nos. 1 and 2 purporting to settle

large number of disputes between the management and the workmen including the Petitioners. So far as the determination of seniority is concerned, the relevant clause of the Memorandum of Settlement contained in Part II of the settlement are the following:-

"7. SENIORITY OF PILOTS

(a) The issue of seniority of Trainee Pilots/Co-Pilots was discussed with reference to the following letters :-

(b) 4-47/2415 dated July 12, 1995,

(c) Based on these discussions, the seniority of Trainee Pilots/Co-Pilots has been determined as a one time exercise as indicated in the Seniority List contained in Exhibit "D" and this will not be cited as a precedent in future.

(d) Clause 3D of Schedule of Memorandum of Settlement dated July 21, 1989 stands deleted. Henceforth Line Seniority of Co-pilots joining the Company will be based on the date of entry of the Pilot in the grade of a First Officer.

(e) The Management will lay down guidelines in this regard.

(f) The seniority of Contract Pilots will be regulated as per letter No. 4-1/3586 dated May 15, 1997 which is enclosed to the Settlement at EXHIBIT "E".

(g) The Management and the I.P.G. agrees that there shall be no retrospective claims for the period upto and including 31st December, 1997 financial or otherwise, arising out of the above said fixations of seniority.

(h) Command training will be offered as per Line Seniority only to pilots possessing A.L.T.P. Licence. Any pilot bypassed for Command Training due to non-possession of A.L.T.P., cannot have any claim on his/her original seniority on obtaining A.L.T.P.

9. The Petitioners have, therefore, challenged only that part of the settlement which relates to one time determination of seniority, namely, clause 7(c). This settlement, as noticed earlier, is a tripartite settlement arrived at in the presence of the Conciliation Officer, and is, therefore, binding upon the management as well as the workmen u/s 18(3) of the Industrial Disputes Act. It binds not only the union which has entered into the settlement with the management, but also all persons who are employed in the establishment or part of the establishment, as the case may be, to which the disputes related on the day of the dispute, and all persons who subsequently became employed in the establishment or part. The Petitioners have not challenged the settlement recorded in respect of the other issues and disputes including those relating to the enhanced wages and allowances paid. It is also not disputed before us that the petitioners are getting the benefits under the settlement, including the enhanced wages and allowances, and they have not sought to challenge the entire settlement. It may also be clarified at this stage that the Petitioners were also members of Respondent No. 2 - Guild, but, as stated by their Counsel before us, they resigned from the Guild

on 30.9.1996 and again joined the Guild on 11.1.1998. The Petitioners have challenged the tripartite settlement on several grounds.

10. It has been submitted that the impugned memorandum of settlement is arbitrary and irrational inasmuch as it treats lesser qualified persons at par with those having higher qualification which has relevance to the post held by them. Thus, the memorandum purports to treat unequals as equals and purports to depart from a well established method of determination of seniority. Secondly, it is submitted that the earlier settlement of July 21, 1989 continued to govern the terms and conditions of service of the Petitioners as to their seniority at the time of their appointment, even though the settlement had come to an end. Therefore, the Petitioners were entitled to seniority over pilots holding only C.P.L. in accordance with the earlier memorandum of settlement. Thirdly, it is submitted that the Petitioners have locus standi to challenge a part of the settlement dated 3rd January, 1998 on the ground of it being unfair and unjust. Fourthly, that part of the settlement dated 3rd January, 1998 which has been impugned is also bad on the ground that it is arbitrary, irrational and contrary to public policy and public safety. Fifthly, that the one time settlement of line seniority under the impugned memorandum of settlement is unfair, unjust and adversely alters the conditions of service of the Petitioners with retrospective effect. Lastly, it is submitted that the office orders passed on 2nd February, 1998 and 21st/24th January, 2000 are completely irrational, arbitrary and liable to be struck down.

11. Mr. Chagla, Senior Counsel appearing on behalf of the Respondents, contended that so far as the grievance of the Petitioners is concerned, it relates only to the fixation of seniority under the memorandum of settlement and no question of public safety etc., is involved in the instant Writ Petition. The pilots holding C.P.L. are undoubtedly eligible to be appointed as co-pilot and, therefore, the only question is the manner in which the seniority of pilots holding A.L.T.P. Licence and those holding C.P.L. should be determined. He further submitted that the memorandum of settlement arrived at in the course of conciliation is a settlement binding upon all workmen of Respondent No. 1, Air India. The settlement does not merely deal with the question of seniority, but with a host of other disputes. Large number of disputes have been settled which include a scheme for enhanced monetary package to the workmen. The Petitioners are not entitled to challenge only a part of the settlement by adopting a pick and choose method. The settlement must either be accepted or rejected as a whole because it offers a package to the workmen which they may or may not accept. In any event, they are not entitled to pick and choose because it would be unfair that they should, after accepting various benefits under the impugned settlement, be permitted to challenge only a portion of the settlement as unfair and unjust. He further submitted that this Court has already decided in the earlier Writ Petition filed by the Petitioners that they could not seek enforcement of an earlier settlement which had already been terminated on 1st November, 1990. In effect, in the instant Writ Petition, the Petitioners are again seeking the same relief viz.,

the determination of seniority in accordance with Clause 3(d) of Schedule II of the earlier settlement, which has been deleted under the impugned tripartite settlement. The SLP filed by the Petitioners against the order of this Court was withdrawn and, therefore, the order of this Court attained finality and binds the parties. In the instant Writ Petition, the Petitioners are again suing on the same cause of action which is not permissible in law. In any case, they cannot seek enforcement of a non-existent settlement. He pointed out that the SLP was withdrawn after the impugned settlement was arrived at on 3rd January, 1998. In any event, the impugned settlement, being a settlement arrived at in the course of conciliation, is binding upon all the workmen whether they were members of the union or not which arrived at a settlement with the management, in the presence of the Conciliation Officer. It is well settled that sub-section (3) of Section 18 of the Industrial Disputes Act departs from the ordinary laws of contract and gives effect to the principle of collective bargaining. The terms of settlement, after collective bargaining, get incorporated in the usual contract of service and become conditions of service. Such a settlement arrived at in a conciliation proceeding between the management and the workmen would be binding on all the parties to the dispute.

12. Mr. Chagla also submitted that so far as fixation of seniority is concerned, that has been done by the Indian Pilots Guild, and this was made clear to the Petitioners by letter dated 17th June, 1999 (Exhibit "T" to the Petition) wherein it has been stated that the re-fixation of seniority took place after bilateral negotiations between the Indian Pilots Guild and the management before signing the memorandum of settlement dated 3rd January, 1998. Since the Indian Pilots Guild had prepared the seniority list, the Petitioners were directed to take up the matter with the said Guild. He, therefore, submitted that so far as the management of Air India is concerned, as a part of the settlement, it had simply accepted the seniority list as prepared by the Indian Pilots Guild, of which the Petitioners are also members. Having regard to the overall interest of the Industry and industrial peace, the management had arrived at a settlement with its workmen in the presence of the Conciliation Officer and, therefore, individual members of the union should not be permitted to raise disputes challenging the settlement arrived at in the course of conciliation proceedings. Once the Indian Pilots Guild was in the picture, individual members cannot be permitted to agitate these issues as that would completely destroy the every concept of collective bargaining.

13. It was further submitted on behalf of Respondent No. 1 that a Writ Petition filed by individual workmen should not be entertained by this Court when it seeks to challenge a settlement arrived at in the course of conciliation proceedings which is binding upon all workmen u/s 18(3) of the Industrial Disputes Act. Moreover, there was no justification for the Petitioners to say that the settlement was unfair and unjust. Pilots are recruited from both streams, those possessing A.L.T.P. Licence and those with C.P.L. as both are qualified for appointment as co-pilots. On account of the unrest that prevailed, the

management had decided to resolve the disputes and virtually conceded to the demands of the pilots. By the settlement, both the categories of pilots have been put at par, and there was really no justification for interference by this Court. Moreover, it is not as if the pilots holding A.L.T.P. Licence have no advantage over those who do not possess that licence. Clause (h) of paragraph 7 of the agreement itself provides that command training will be offered as per line seniority only to pilots possessing A.L.T.P. Licence. Any pilot bypassed for command training due to non-possession of A.L.T.P., cannot have any claim on his/her original seniority on obtaining A.L.T.P. It is, therefore, obvious that for command training, the possession of A.L.T.P. Licence is a must. He referred to the settlement and pointed out that several matters were settled. Obviously, any principle of determination of seniority will benefit some and will be to the disadvantage of some others. If the principle for determination of seniority is finalised under a tripartite settlement, that should not be permitted to be challenged by those who are dissatisfied with the principle made applicable. A similar prayer made in the earlier Writ Petition was also rejected by this Court. What is, however, surprising is that the Petitioners have not challenged the principle laid down in sub-paragraph (d) of paragraph 7 of the settlement which provides that henceforth, line seniority of co-pilots who join the Company shall be based on the date of entry of the pilot in the grade of a First Officer. The Petitioners have only challenged sub-paragraph (c) of paragraph 7 Part II of the settlement which refers to the seniority list contained in Exhibit "C" which determines the seniority of trainee pilots/co-pilots as a one time exercise, not to be cited as a precedent in future.

14. Counsel appearing on behalf of Respondent No. 2, the Indian Pilots Guild, submitted that having regard to the facts and circumstances as they then prevailed, in the larger interest of the pilots, this principle of determination of seniority was evolved. The seniority of pilots holding C.P.L. is protected only for the period of five years during which period they were expected to secure A.T.L.P. Licence failing which they may lose their seniority. Only 14 out of about 321 pilots feel aggrieved by the settlement which itself demonstrates that the settlement is in the larger interest of pilots.

15. The moot question that arises for consideration in this Writ Petition is whether this Court in exercise of its Writ Jurisdiction should interfere with the settlement brought about between the management of Respondent No. 1 and its workmen in the course of conciliation proceeding, at the instance of some of the workmen only, who also, at one time, were members of the Indian Pilots Guild, Respondent No. 2 herein.

16. The Petitioners contend that even though they are members of Respondent No. 2 Guild, they resigned from the Guild on 30th September, 1996, but again joined the Guild on 11th January, 1998. Since the settlement was arrived at on 3rd January, 1998, they were not members of the Guild on that day. This, to our mind, makes no difference in view of the express provision of Section 18(3) of

the Industrial Disputes Act, which makes such a settlement binding upon all workmen. Mr. Tulsi, however, relying upon two decisions of the Supreme Court, submitted that even such a settlement may be challenged in the High Court by way of a Writ Petition on the ground that the same is unjust, unfair, not bona fide, and has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements. The correctness of this proposition has been challenged by the counsel for the Respondents, who contend that there is a limited scope for interference by the High Court in exercise of Writ Jurisdiction, and the facts of this case do not justify interference by this Court in exercise of Writ Jurisdiction.

17. The first decision, relied upon by Mr. Tulsi is the one in *National Engineering Industries Ltd. v. State of Rajasthan & Ors.*. The facts of that case were that in the establishment of the appellant-Company, there were three unions, viz., the Labour Union, the Staff Union and the Worker's Union. The Labour Union had majority of the workers on its roll, and was recognised as the representative union and registered as such under the Industrial Disputes Act, as amended by the Rajasthan Industrial Disputes (Amendment) Act, 1958. All the three unions made their charter of demands and ultimately a tripartite settlement was arrived at between the management, the labour union and the staff union. In respect of the demands made by the worker's union, failure report was submitted and the workers' union thereafter made a representation to the State Government for referring the disputes for adjudication. In view of the tripartite settlement already reached, the request was declined by the State Government. Since the settlement was operative till September. 1986, all the three unions made fresh charter of demands in 1986. Conciliation proceedings followed and a failure report was submitted by the Conciliation Officer in respect of the proceedings regarding the workers' union. However, a conciliation settlement was arrived at with the labour union and the staff union. The said settlement was to be in operation for a period of three years, ending 30th September, 1989. All employees of the Appellant, including the members of the worker's union, accepted the benefits under the tripartite agreement.

Since the State Government did not pass any order on the demand of the workers' union for referring the disputes for adjudication, the workers' union filed a Writ Petition in the High Court, requiring the State Government to make reference of their disputes to the Industrial Tribunal. By order dated 23rd March, 1989, the High Court directed the State Government to decide the question on the failure report of the Conciliation Officer whether to make or not to make the reference within two months. The appellant was also permitted to raise all contentions before the State Government which was to make an order only after hearing the parties. However, even before the decision of the High Court, the State Government issued a Notification dated 17th March, 1989, referring the disputes relating to the demands raised by the workers' union. The appellant submitted a representation to the State Government, drawing its attention to the decision of the High Court, and requesting that the State Government might

withdraw the reference and take a fresh decision after hearing the appellant. This was not acceded to which led the appellant to a Writ Petition in the High Court, challenging the validity of the reference. The Writ Petition filed by the appellant was dismissed by a learned Judge of the High Court and an Appeal filed by the appellant was also dismissed by the Division Bench. The matter was taken to the Supreme Court by Special Leave. In the Supreme Court, the Notification making the reference was challenged on several grounds, inter alia, on the ground that there was no dispute pending at the time which could be the subject matter of the reference inasmuch as under the tripartite settlement, the members of the workers union had also already taken advantage of the benefits thereunder. The State Government had thus no Jurisdiction to make the reference.

After considering the submissions urged on behalf of the appellant, and noticing the authorities on the subject, the Court upholding the contention of the appellant, declared the law in the following terms :-

"It will be thus seen that the High Court has Jurisdiction to entertain a writ petition when there is an allegation that there is no industrial dispute and none apprehended which could be the subject matter of reference for adjudication to the Industrial Tribunal u/s 10 of the Act. Here, it is a question of jurisdiction of the Industrial Tribunal, which could be examined by the High Court in its writ jurisdiction. It is the existence of the Industrial Tribunal (sic dispute] which could clothe the appropriate Government with power to make the reference and the Industrial Tribunal to adjudicate it. If there is no industrial dispute in existence or apprehended the appropriate Government lacks power to make any reference. A settlement of dispute between the parties themselves is to be preferred, where it could be arrived at, to industrial adjudication, as the settlement is likely to lead to more lasting peace than an award. Settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature of that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements. It could be the subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the Conciliation Officer must be fair and reasonable. A settlement which is sought to be impugned has to be scanned and scrutinised. Sub-sections (1) and (3) of Section 18 divide settlements into two categories, namely, (1) those arrived at outside the conciliation proceedings, and (2) those arrived at in the course of conciliation proceedings. A settlement which belongs to the first category has a limited application in that it merely binds the parties to the agreement but the settlement belonging to the second category has an extended application since it is binding on all the parties to the industrial disputes, 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. 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 the minority union which had objected to the same. The recognised union having the majority of members is expected to protect the legitimate interest of the labour and enter into a settlement in the best interest of the labour. This is with the object 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. When a settlement is arrived at during the conciliation proceedings, it is binding on the members of the workers' union as laid by Section 18(3)(d) of the Act. It would ipso facto bind all the existing workmen who are all parties to the industrial dispute and who may not be members of unions that are signatories to such settlement u/s 12(3) of the Act. The Act is based on the principle of collective bargaining for resolving industrial disputes and for maintaining industrial peace. This principle of industrial democracy is the bedrock of the Act," as pointed out in the case of *P. Virudhachalam v. Lotus Mills*. In all these negotiations based on collective bargaining the individual workman necessarily recedes to the background. Settlements will encompass all the disputes existing at the time of the settlement except those specifically left out."

18. The above observations leave no manner of doubt that though the High Court has jurisdiction to entertain a Writ Petition when there is an allegation that there is no industrial dispute, and none apprehended which could be the subject matter of reference for adjudication, as that would raise the question of jurisdiction of the Industrial Tribunal, in the case of a settlement arrived at between the parties, the settlement could be subject matter of yet another Industrial dispute, and that too only in cases when there is a dispute that the settlement is not bona fide or it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption or other inducements. Their Lordships have also emphasised the fact that there is an underlying assumption that the settlement reached with the help of the Conciliation Officer must be fair and reasonable. So far as the settlement arrived at in the course of conciliation proceedings is concerned, it is held that the same was 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. Thus, 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 the minority union which had objected to the same. The object is to uphold the sanctity of the settlement reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement. The act is based on the principle of collective bargaining for resolving industrial disputes and for maintaining industrial peace. In all these negotiations

based on collective bargaining, the individual workman necessarily recedes to the background. It, therefore, follows that a settlement arrived at in the course of conciliation proceeding is binding upon all workmen. The question as to whether an order of reference made by the State Government to the Industrial Tribunal, when there is no industrial dispute pending or apprehend, is certainly a matter which can be gone into by the High Court in exercise of writ jurisdiction as it relates to the question of jurisdiction of the Industrial Tribunal. However, if a settlement is challenged in the ground that it is not bona fide or that it is vitiated by fraud, misrepresentation or concealment of facts or even corruption and other inducements, the same could be the subject matter of yet another industrial dispute, and such a settlement cannot be challenged before the High Court in exercise of writ jurisdiction. More so, in a case where a settlement is arrived at in the course of conciliation proceedings, which is binding upon all workmen, regardless of the fact that the concerned workman or the union to which he belongs, did not agree to the terms of the settlement.

19. Mr. Tulsi, therefore, does not appear to be right in submitting that the decision lays down the law that the question of settlement being unfair, unjust and not bona fide or being vitiated by fraud, misrepresentation or concealment of facts can be challenged before a High Court by way of a Writ Petition.

20. The decision in the case of *New Standard Engineering Co. Ltd. v. N. L. Abhyankar Ors.*, upon which Mr. Tulsi placed reliance also does not support his contention. In that case, the State Government referred to the Industrial Tribunal the dispute between the appellant-Company and its workman for adjudication u/s 10 of the Industrial Disputes Act by order dated 9th August, 1966. The appellant-Company challenged the award in the High Court under Articles 226 and 227 of the Constitution, which was fixed for hearing on 30th July, 1973. An application for adjournment was rejected and the High Court commenced dictation of the judgment on 31st July, 1973 which was concluded on 1st August, 1973. From the facts of the case, it appears that a settlement was arrived at between the appellant-company and Respondent No. 3 - Union on 31st July, 1973, i.e. before the dictation of the judgment was concluded and signed. The appellant-Company had sought adjournment on the ground that a settlement had been arrived at with Respondent No. 3 - union and some workers had already accepted the settlement and some more may accept it. The prayer for adjournment was opposed by Respondent No. 2 -union and some others. Though the High Court took notice of the fact that Respondent No. 3 claimed to represent a substantial number of workers who supported the settlement, it held that the settlement was not a settlement u/s 2(p) of the Act and it was not open to it to take notice of the said settlement in proceedings under Articles 226 and 227 of the Constitution. It, therefore, proceeded to dispose of the Petition on merits. The Company appealed to the Supreme Court by Special Leave, and the Court by consent order dated 28th September, 1978, remitted the matter to the Industrial Court for recording findings on the issues framed in the order. The Tribunal found that the settlement dated 31st July 1973 was a settlement u/s 2(p) of the Act,

that the same was entered into voluntarily and that the workmen who had signed and/or accepted the settlement had done so voluntarily and lastly that the settlement was just and fair. The Tribunal also found that out of 1328 workmen who were in service on that date, 995 workmen had signed the settlement and had already accepted their dues thereunder while 242 workmen had already accepted their dues under the settlement by signing receipts though they had not signed the settlement. The Court found that there was no scope for challenging the findings recorded by the Tribunal and the only question which remained to be considered was whether the settlement dated 31st July 1973 was just and fair. After considering the material on record, the Supreme Court came to the conclusion that there was no reason why the Tribunal's findings that the settlement was just and fair should not be accepted.

21. The case had its own special facts, and the decision of the Supreme Court must be understood in the light of the special facts and circumstances of that case. The question as to whether the justness and fairness of a settlement can be considered by the High Court in exercise of writ jurisdiction was not really the issue before the Supreme Court. The peculiar facts of the case were that though an award had been made by the Industrial Tribunal upon a reference being made by the State Government, while the matter was being heard by the High Court, a fresh settlement had been arrived at in respect of the same disputes which the appellant had brought to the notice of the High Court, but of which the High Court did not take notice and proceeded to dispose of the Writ Petition, dismissing the challenge to the award by the appellant-Company. Before the Supreme Court, by consent the matter was remitted to the Industrial Tribunal which was required to record its findings on the issue framed by the Supreme Court in its order dated 28th September, 1973. One of the issues was whether the settlement was just and fair. This issue was, therefore, to be determined first by the Industrial Tribunal, and after the Tribunal recorded its findings, the same were examined by the Supreme Court in the appeal pending before it.

22. In these facts and circumstances, it cannot be said that the Supreme Court, as a matter of law, has laid down that the question whether a settlement is just and fair can be examined by the High Court in its exercise of writ jurisdiction. In that case, the settlement was arrived at after the Tribunal had made its award and the said settlement was not examined by the High Court though it was brought to its notice. Before the Supreme Court, the parties agreed that the findings of the Tribunal may be called for on certain Issues, including the issue as to whether the settlement was just and fair. Pursuant to the direction of the Supreme Court, the Tribunal recorded its findings which were upheld by the Supreme Court which was seized of the appeal pending against the judgment of the High Court. The Supreme Court, in the first instance, directed the Tribunal to consider the issues and to record its findings thereon. After the Tribunal had recorded its findings, the Supreme Court considered the findings of the Tribunal and affirmed the same, finding no reason to take a different view.

23. In these facts, it cannot be contended that the judgment is an authority for the proposition that the justness and fairness of a settlement can be examined by the High Court itself in exercise of its writ jurisdiction in all cases. The procedure followed by the Supreme Court in this case, in fact, is consistent with the judgment in National Engineering Industries Ltd., (supra), wherein it was observed that if the settlement was challenged on certain grounds, it could be the subject matter of yet another industrial dispute which the appropriate Government may refer for adjudication. Both the judgments relied upon by Mr. Tulsi, therefore, do not support his contention that the Supreme Court has laid down that a settlement arrived at u/s 18 of the Industrial Disputes Act is liable to be challenged in the High Court by way of a Writ Petition on the ground that the same is unjust, unfair, not bona fide, and has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements. In the instant case, the settlement is not even challenged on the ground of lack of bona fide, or fraud, misrepresentation, etc.

24. Mr. Chagla, appearing on behalf of Respondent No. 1 submitted that the same principle was reiterated by this Court when it rejected the Writ Petition being Writ Petition No. 1615 of 1997, preferred by the Petitioners by order dated 16th October, 1997. In the aforesaid order of this Court, it is observed that the Petitioners could not claim enforcement of a non-existing settlement. The Court also took notice of the fact that negotiation between Respondent No. 1 and Respondent No. 2 was in progress, and that no settlement had been arrived at till then. The Court proceeded to observe that the petitioners, if aggrieved by the settlement, which may be arrived at, can raise a dispute before the Conciliation Officer, and in case of failure of conciliation, the dispute can be referred to the National Industrial Tribunal. Though the order of this Court was challenged before the Supreme Court, the SLP was withdrawn on 26th October, 1998. According to him, the order of this Court attained finality and the Petitioners cannot be permitted to agitate the same question before this Court in the instant Writ Petition.

25. We do not feel inclined to reject this Writ Petition on this technical objection because the settlement having been arrived at on a date subsequent to the dismissal of the writ petition by this Court, the Petitioners may be justified in contending that a fresh cause of action had arisen. They could not have earlier challenged clause 7(c) of the settlement which in point of time was subsequent to the order of this Court dated 16th October, 1997, rejecting the Writ Petition. We have, therefore, examined the legal position as to whether this Court may exercise its writ jurisdiction to consider the challenge to clause 7(c) of the settlement and we find that the decisions of the Supreme Court cited on behalf of the Petitioners do not support the contention of the Petitioners. The Petitioners may challenge clause 7(c) of the settlement, if so advised, and if they are entitled to do so, by raising an industrial dispute. The question as to whether the settlement is just, fair and bona fide or that it is vitiated by fraud, misrepresentation or concealment of facts, in the first instance, must be

examined by the Industrial Tribunal on a reference being made to it by the State Government. Of course, the award of the Tribunal may be challenged in a proceeding under Article 227 of the Constitution of India on the grounds permissible in law.

26. Having come to the conclusion that this Court should not interfere with the settlement arrived at in the course of conciliation proceedings in exercise of writ jurisdiction, we are not inclined to examine the other submissions urged on behalf of the Petitioners because those questions may have to be raised in an industrial dispute which may be referred for adjudication by the Tribunal. It is not as if the settlement is so blatantly arbitrary, unreasonable or irrational that the same should be quashed by this Court without anything more. While, on the one hand, the Petitioners contend that they have higher proficiency since they hold A.L.T.P. licence, and, therefore, they should always have higher line seniority over co-pilots who do not possess A.L.T.P. licence, the Respondents contend that those possessing C.P.L. are also eligible for appointment as co-pilot as much as those possessing A.L.T. P. licence. If both are eligible for appointment, there is no justification for granting seniority to a pilot possessing A.L.T.P. licence over and above the pilots who are C.P.L. holders and who may have been appointed even earlier than those possessing A.L.T.P. licence.

27. Similarly, the contention of the Petitioners that they should be governed by the earlier settlement which granted them seniority, is challenged by the Respondents on the ground that by the time the Petitioners were appointed, the earlier settlement had come to end, and the Petitioners were told clearly in their letters of appointment that the question of their seniority will be decided later. This was fully justified in view of the fact that a charter of demands was pending consideration and the parties were negotiating a settlement. The Petitioners had, therefore, not acquired any vested right of seniority. Similarly, while the Petitioners contend that the interest of public policy and public safety require that in a high risk and high-tech area like air transportation of passengers, the most qualified people ought to be assigned the task of piloting the aircraft, the Respondents contend that no question of public safety is involved because both the A.L.T.P. licence holders and the C.P.L. holders are eligible for appointment as co-pilot. The settlement also takes into account the higher qualification of A.L.T.P. licence holders and clause 7(h) of the settlement provides that Command Training will be offered as per Line Seniority only to pilots possessing A.L.T.P. licence. Any pilot bypassed for Command Training due to non-possession of A.L.T.P., cannot have any claim on his/her original seniority on obtaining A.L.T.P. Thus, possession of A.L.T.P. licence is a must before a co-pilot is sent for Command Training.

28. Having regard to the submissions urged before us, we feel that these are matters which may require deeper consideration, and it cannot be said that the settlement, on the face of it, is so arbitrary and unreasonable that it should be quashed forthwith by this Court in exercise of its writ jurisdiction. We cannot also

lose sight of the fact that the Petitioners have not challenged the entire settlement but have challenged only one clause which relates to a one time determination of seniority of co-pilots. The settlement is in the nature of a package deal, and it is doubtful whether the Petitioners can claim the benefits under the settlement including monetary benefits, and at the same time, challenge only a particular clause of the settlement. Counsel for Respondent No. 1 also contended that all the pilots have accepted the monetary benefits under the settlement, arrived at on 3rd January, 1998.

29. Having regard to the facts and circumstances of the case, we find no reason to interfere with the settlement dated 3rd January, 1998 which has been arrived at in the course of conciliation proceedings, and which is binding upon all workmen. Only 14 out of 321 pilots feel aggrieved by only one clause of the settlement, namely, clause 7(c). It is doubtful, if the Petitioners can challenge only one clause of the settlement, namely, clause 7(c) which deals with determination of seniority while accepting the monetary package offered to them under the settlement. In any event, the Petitioners must seek their remedy under the provisions of the Industrial Disputes Act instead of invoking the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India. This Writ Petition is, therefore, dismissed.