

(1999) 03 AHC CK 0094
In the Allahabad High Court
Case No : C.M.W.P. No. 15747 of 1998

Central Institute for Subtropical Horticulture, Lucknow	APPELLANT
Vs	
Presiding Officer, Central Industrial Tribunal-cum-Labour Court, Kanpur and others	RESPONDENT

Date of Decision : 16-03-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2, 33C(2)

Citation : (1999) 2 AWC 1426 : (1999) 2 UPLBEC 852

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : Rakesh Tiwari, for the Appellant; Siddharth, for the Respondent

Final Decision : Dismissed

Judgement

O.P. Garg, J.—By means of this writ petition under Article 226 of the Constitution of India the order dated 28.1.1998 (Annexure-14) passed by the Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Kanpur in L.C.A. Nos. 174 to 265 and 267 of 1992 u/s 33C(2) of the Industrial Disputes Act (hereinafter referred to as "the Act"), has been challenged.

2. Counter and rejoinder-affidavits have been exchanged and with the consent of the learned counsel for the parties, this writ petition is being disposed of finally at this stage under the Rules of the Court.

3. The respondent Nos. 2 to 94 (hereinafter referred to as "workmen") were engaged as unskilled labourers with the petitioner's establishment, namely, Central Institute for Subtropical Horticulture, Lucknow (hereinafter referred to as "the petitioner institute") for the past more than 15 years. Though, they were assigned the duties which were being performed by the regular employees of the institute, the wages were being paid to them treating them to be daily rated labourers. The cause of the workmen was espoused by the Krishi Karmachari Sabha by raising an industrial dispute in connection with regularisation of

services of the workmen and payment of equal wages at par with the regular workmen at the same place of work performing the same nature of duties. During the course of conciliation proceedings before the Assistant Labour Commissioner (Central) Kanpur, a settlement was arrived at between the parties on 6th June, 1985. The relevant clause 2 is reproduced as below :

"2. The employer shall regularise these enlisted workers within five months from the date of signing this settlement and in any case these workers shall be deemed to have been regularised after expiry of six months from the date of signing the settlement."

4. It appears that the institute failed to honour the settlement and challenged its validity before this Court by filing a Writ Petition No. 18719 of 1985 which was ultimately transferred to the Central Administrative Tribunal, Lucknow, where it was registered as Original Application No. 1982 of 1987. The plea taken by the petitioner institute to challenge the settlement was that it was obtained under duress and that the person who had acted and signed the settlement on behalf of the institute was not legally entitled and competent to finalise and sign the settlement. The Central Administrative Tribunal dismissed the petition filed by the institute on 7.3.1991 and upheld the validity of the settlement by observing that the settlement dated 6.6.1985 is a legally valid and enforceable contract between the workmen and the employer (C.I.H.N.P.).

5. The workmen filed applications u/s 33C(2) of the Act. Each one of the workmen claimed the difference of wages right from 1.1.1986 to 31.12.1989, the total amount of which came to Rs. 37,872 per workman. The institute paid the amount of difference of wages but withheld the amount of wages for the gazetted and weekly holidays. After the receipt of the amount of difference of wages, each one of the workmen reduced the claim from Rs. 37,872 to Rs. 10,200. By the impugned order dated 28.1.1998, a copy of which is Annexure-14 to the writ petition, respondent No. 1 has allowed a sum of Rs. 10,200 to each of the workmen reckoned on the basis of 68 holidays per year (52 Sundays and 16 Gazetted holidays in a year).

6. The petitioner-institute has challenged the impugned order on the ground that the respondent No. 1 has no jurisdiction to rely upon the settlement dated 6th June, 1985 which was void and inoperative and that the respondent No. 1 has committed a grave illegality in holding that the workmen became the regular employees of the petitioner-institute in terms of the settlement aforesaid particularly keeping in view the fact the workmen have accepted the position of temporary status in accordance with the Casual Workers (Grant of Temporary status and Regularisation) Scheme (hereinafter referred to as "the Scheme") and, therefore, they have no right to demand wages and the payment of wages for weekly and gazetted holidays. At the initial stage, when the petition was taken up for hearing. Sri Rakesh Tewari, learned counsel for the petitioner urged that the petitioner-institute is engaged purely in research activities and since it has been established by the Indian Council of Agricultural Research for doing

research on different subjects relating to agriculture, it is not an industry carrying on trade or business and therefore, the Labour Laws were not applicable to the petitioner institute. Reliance was placed on the decision of the Apex Court rendered in the case of Physical Research Laboratory Vs. K.G. Sharma,

7. On behalf of the workmen, it has been pleaded that the petitioner-institute is not a purely research institute but is carrying on commercial activities involving profits as the fruits, vegetables, flowers and the food grain produced by it are sold both to the farmers and other growers and, therefore, the law laid down in K. C. Sharma's case (supra) is not applicable to the facts of the present case. In a detailed counter-affidavit filed separately by the workmen, it has been further pleaded that the petitioner-institute has violated the terms of clause (2) of the settlement dated 6.6.1985 by not paying the full wages and the grant of temporary status to the workmen was an unfair labour practice adopted by the petitioner-institute with a view to deprive the workmen of their legitimate claims : that the scheme is meant to negate the intent and purpose of the settlement arrived at between the parties. According to the workmen, the petitioner-Institute cannot challenge the validity or otherwise of the settlement time and again and since the settlement has been held to be binding, the petitioner-Institute is liable to pay the amount of wages and to extend the benefits and privileges as are available to the regular workmen.

8. Heard Sri Rakesh Tewari, learned counsel for the petitioner-institute and Sri Siddharth, appearing for the workmen (respondent Nos. 2 to 94) at considerable length.

9. A short and swift reference may be made to the plea of the petitioner-institute that the settlement dated 6.6.1985 is not enforceable as it was arrived at under duress and correction and came to be executed by a person who did not have the authority to enter into the negotiation and to sign the settlement. This controversy cannot be allowed to be raked up by the petitioner all over again. This aspect of the matter stands concluded on account of the decision of the Writ Petition No. 18719 of 1985 which was later on converted as O.A. No. 1892 of 1987 decided by the Central Administrative Tribunal. As pointed out, above the petitioner institute had remained unsuccessful in challenging the validity of the settlement, and it has been finally decided that the settlement dated 6.6.1985 is legally enforceable. The petitioner institute cannot be allowed to wriggle out of the legal position that the binding settlement is to be honoured and the terms contained in clause 2 had to take effect ipso facia after the expiry of the period stipulated therein. This legal position has been accepted by the ICAR, which is the controlling body of the petitioner-institute by adopting and approving the scheme, a copy of which is Annexure-9 to the writ petition. This Scheme was adopted with a view to give benefit to 106 casual labourers who were party to the settlement dated 6.6.1985. In clause (1) of the scheme. It has been specifically provided that the scheme is applicable to 106 casual labourers who were party to the settlement dated 6.6.1985 entered into by the petitioner, i.e..

C.I.H.N.P., Lucknow. In terms of clause (2) of the settlement, the scheme was to come into force w.e.f. 6.12.1985. Not only this, the petitioner-Institute has made payment of the difference of wages to the workmen for the period 1.1.1986 to 31.12.1989. In view of these stark realities, one cannot escape from the finding that the settlement dated 6.6.1985 has. In fact been accepted, acknowledged and acted upon by the petitioner institute and now it is otiose the canvass legality or otherwise of the said settlement before this Court. The case has to be viewed from the angle that the settlement dated 6.6.1985 is binding on the petitioner-institute and is enforceable.

10. The controversy in the present writ petition lies in a very narrow compass. Originally all the workmen who were party to the settlement filed separate applications u/s 33C(2) of the Act claiming a sum of Rs. 37,872 as wages for the period 1.1.1986 to 31.12.1989 on parity with the regular workmen of their category. Payment of the wages for the aforesaid period was made by the petitioner-institute except that the benefit of wages for gazetted and weekly holidays in a year comes to 52 Sundays and 16 gazetted holidays. In this manner, wages for 68 days in a year were denied and for the period aforesaid, the amount of wages per workman comes to Rs. 10,200. Now the question is whether the petitioner institute was justified in denying the wages to the workmen for the gazetted and weekly holidays.

11. By the impugned order dated 28.1.1998, Annexure-14 to the writ petition, the respondent No. 1 has found that each one of the workmen was entitled to the wages for gazetted and weekly holidays at par with the regular employees in terms of the settlement dated 6.6.1985 and that the contrary view taken by the petitioner-institute or its controlling body-ICAR is clearly destructive of the settlement. It is this finding which has been challenged in this writ petition with all vehemence. Sri Rakesh Tewari learned counsel for the petitioner pointed out that the respondent No. 1 has taken a view which is contrary to the provisions made in the scheme. This submission has been repelled by Sri Siddhartha, learned counsel for the workmen.

12. The scheme was formulated with a view to implement clause (2) of the settlement dated 6.6.1985 which contemplated that the workmen shall be deemed to have been regularised after the expiry of six months from the date of signing of the settlement. This clause is unambiguous and admits of no doubt. The workmen who were party to the settlement shall be deemed to have been regularised for all intent and purposes and the necessary concomitant of the said clause is that the workmen who stood regularised were to get wages and all other benefits and privileges which were available to their regular counterparts, without any discrimination, difference or distinction. The scheme prepared and enforced with effect from 6.12.1985 is not in conformity and consonance with the stipulation of clause (2) of the settlement as only a temporary status has been granted on the casual workers. The implications of temporary status are contained in clause (6) of the Scheme. The temporary status entitles the casual

workers to the following benefits.

(i) Wages at daily rates with reference to the minimum of the pay scale for a regular Group "D" official of the council including D.A. The HRA and CCA will also be payable as per normal rules governing such allowances and made applicable to the employees of the council.

(ii) Benefits in respect of increments in pay scale will be admissible for every one year of service subject to performance of duty for at least 240 days in the year.

(iii) Leave entitlement will be on a pro-rata basis, one day for every 10 days or work. Casual leave or any other kind of leave will not be admissible. They will also be allowed to carry forward the leave at their credit on their regularisation subject to a maximum of 240 days. They will not be entitled to the benefit of encashment of leave on termination of services for any reason or their quitting service.

(iv)

(v)

(vi)

In clause 7 of the scheme, it is provided that no benefit other than those specified in clause 6 will be admissible to casual workers with temporary status. It is, perhaps, on the basis of clause 6 of the Scheme that the workmen have been denied the benefit of the wages for weekly and gazetted holidays. It is not disputed that the regular workmen are being paid the wages for the weekly and gazetted holidays. In terms of the settlement dated 6.6.1985, the workmen who were party to the settlement could not be denied the benefit of the wages of weekly and gazetted holidays as this benefit is being extended to their regular counterparts.

13. Sri Rakesh Tewari, learned counsel for the petitioner-institute urged that the applicability of the doctrine of "equal pay for equal work" is dependent on a number of imponderables and casual worker who has been conferred temporary status under the scheme formulated to regularise his services, is not entitled to the same pay scale and other benefits as are admissible to a regular workman. In support of his contention, reliance was placed on the decision of the Apex Court in *State of Haryana v. Surinder Kaur and others*, 1997 Lab IC 2096 and *State of U. P. and others v. Ministerial Karmachari Sangh*, 1998 Lab IC 407, as well as the decision of this Court in *Chaturth Shreni Karmachari Sangh Sinchai Vibhag a. State of U. P.* 1998 (80) FLR 802. I have thoroughly studied the aforesaid decisions and find that they are not applicable to the facts of the present case. Whenever there is a dispute between an employer and an employee, an attempt is made with a view to maintain cordial relations, to effect conciliation and sometimes during the course of conciliation proceedings, a settlement is arrived at. The concept of collective bargaining has been well recognised in the Labour jurisprudence for establishing and maintaining peace

and harmony. The settlement as a result of such collective bargaining process cannot be upset either by individual challenges of the workmen or by the employer as such challenges are against the principle of justice and equity. The sanctity of settlement which has been accepted by a vast majority of workmen as well as the employer with their eyes wide open has always been upheld by the various legal enunciations. In the instant case, as said above, the petitioner-Institute did challenge the validity of the settlement, but failed. The settlement clearly implies that after the expiry of the period of six months from the date of the settlement, the workmen shall be deemed to have been conferred the status of the regular employees. This position, of late, was accepted by the petitioner institute and it was for this reason that the wages, which were admissible to the workers were paid to the casual workers, who were party to the settlement and some of whom are respondent Nos. 2 to 94 to this writ petition. On attaining the status of regular employee, the workmen were not only entitled to the wages equal to the wages of their counterparts but were further entitled to the benefits of the subsequent increase in the wages, dearness allowance, which would encompass the gazetted and weekly holidays also. As regards the weekly holiday of Sunday, it may be mentioned that it is not a holiday as such in the sense that it is declared as a national or festival holiday. It is a day of rest. That means, an employee who has worked for 6 days in a week is deemed to have worked the whole week round just as he has worked the whole day round if he has worked eight hours during the 24 hours of the day, subject, of course, to statute or special terms of contract. It is on this analogy that all the regular employees are given wages for the weekly holidays or say rest day. It would sound ridiculous if the employees on whom a temporary status has been conferred are allowed to work on all the seven days of the week without rest to the serious detriment of their health and well being. The regular employees as well as temporary employees are entitled to the wages of weekly and gazetted holidays. The respondent No. 1, therefore, has taken a very rational, reasonable and equitable view of the matter in allowing the wages for the holidays to the workmen. The settlement dated 6.6.1985 is sacrosanct between the parties who have signed it and if it has any sanctity in that event, not only the wages for the actual working days, but the wages for the weekly and gazetted holidays as are admissible to the regular labourers, have to be allowed to the workmen who have been conferred the status of temporary employees, in pursuance of the scheme formulated for the purpose. The petitioner-institute cannot be allowed to stick to the stand that it has complied with the settlement by making payment of the wages equivalent to those of the regular labourers but has only withheld certain fringe benefits on account of national status conferred on the workmen who were to stand regularised in terms of the settlement.

14. On behalf of the petitioners, a controversy was raised about the maintainability of the applications of the workmen u/s 33C(2) of the Act with particular reference to the scope of the said provision. The controversy, as a matter of fact, merits rejection outright. The object and scope of the provision of

Section 33C(2) of the Act have been elaborated in the decision of the Division Bench of Rajasthan High Court in Jaipur Development Authority, Jaipur v. Labour Court and others, 1990 (60) FLR 81 (Raj HC --Jaipur Bench), as well as earlier decision of Delhi High Court in Delhi Transport Corporation Indraprastha Estate New Delhi v. D. D. Gupta. Presiding Officer Labour Court and another, 1978 (36) FLR 138. The well established position which has emerged, may be summarised as follows :

(i) If the claim of a workman involves an adjudication of dispute which falls within the definition of industrial dispute as given in the Act, then that dispute cannot be resolved u/s 33C(2) of the Act.

(ii) If a claim, in the nature of an execution application relating to an industrial award or settlement, is made, then Section 33C(2) is available.

(iii) Even other claims of workmen not arising out of awards or settlements can be made the subject-matter of claim u/s 33C.

In the instant case, the applications were moved u/s 33C(2) with a view to get the settlement dated 6.6.1985 implemented. The impugned order dated 28.1.1998, Annexure-14 to the writ petition, could, therefore, be passed on applications filed u/s 33C(2) and the said order, therefore, cannot be faulted on any ground whatsoever.

15. Sri Rakesh Tewari was very much critical of the manner in which respondent No. 1 has passed the impugned order. It was pointed out that the impugned order has been passed for a mere asking and that no evidence was required to be led by the applicant workmen. It was pointed out that initially, burden to prove the claim lay heavily on each one of the workmen and since they did not lead any evidence in support of their claim, the applications should have been rejected outright by the respondent No. 1. In substance, the plea taken by the petitioner-institute is that it was imperative upon the workmen to lead evidence in support of their claim. Sri Rakesh Tewari placed reliance on the decisions of this Court in Meritec India Ltd. v. State of U. P. and others 1996 (74) FLR 2204 and M/s. Delta Engineering Company Pvt. Ltd., Meerut Ltd., Meerut v. Presiding Officer. Industrial Tribunal Meerut and others. 1997 (77) FLR 520. There can be no quarrel about the proposition of law laid down in the aforesaid two decisions. In the instant case, as a matter of fact, there was nothing which was required to be proved by the workmen in proceedings u/s 33C(2) of the Act. They had pleaded in unequivocal terms that the institute has failed to honour the settlement dated 6.6.1985 in spite of the fact that it has received a judicial stamp of validity and that the petitioner institute be directed to give benefit of the wages etc., in terms of the settlement as a regular workmen. All the facts were undisputed and it was only a case of mathematical calculation. Even during the course of the pendency of the applications u/s 33C(2) of the Act, the petitioner-institute did make the payment of the wages for the period claimed by each one of the workmen except that the wages for weekly and gazetted

holidays were withheld. The respondent No. 1 was required to determine whether the workmen were entitled to the wages for the aforesaid holidays or not. This determination was not dependent on any evidence, which was required to be led by the workmen. The workmen were to swim or sink on the legal interpretation of the settlement arrived at between the parties. The Apex Court has held in *Chief Mining Engineer v. Rameshwar and others* AIR 1968 SC 213, that the Labour Court has jurisdiction to interpret an award or settlement on which the workmen's right rests. In view of the facts of the case, it was not required of the workmen to lead any evidence to support their claim. The impugned order does not suffer from an illegality or irregularity calling for interference by invoking extraordinary jurisdiction under Article 226 of the Constitution of India.

16. For the first time, a plea was taken in this petition, though not specifically but orally, that the petitioner-institute does not fall within the ambit of the expression "industry" and consequently, the labour laws were not applicable and, therefore, it was an exercise in futility to invoke the provisions of the Act. To fortify the submission a reference was made to the decision of K.G. Sharma, (supra) on the basis of which the interim order was passed by this Court on 19.5.1998. In my view, the new plea which has been taken by the petitioner-institute at this stage should not have been allowed. The petitioner never disputed the jurisdiction of the Labour Court either during the conciliation proceeding or in the earlier writ petition which came to be decided by the Central Administrative Tribunal. Nevertheless, I proceed to examine the question also. The ratio of K. C. Sharma's case, (supra) is confined to the Physical Research Laboratory which was purely an institution carrying on the activities of research not for benefit or use of others. In para 12 of the decision, the Apex Court found that PRL (Physical Research Laboratory) is an institution under the Government of India. Department of Space. It is engaged in pure research in space science. The purpose of the research is to acquire knowledge about the formation and evolution of the Universe but the knowledge thus acquired is not intended for sale. The material on record of that case further disclosed that the PRL is conducting research not for benefit or use of others. Though results of the research work done by it are occasionally published, but they have never been sold. There was no material to show that the knowledge so acquired by the PRL is marketable or has any commercial value. In the background of the above facts, it was held by the Apex Court that:

".....It is more an institution discharging Governmental functions and a domestic enterprise than a commercial enterprise. We are, therefore, of the opinion that PRL is not an industry even though it is carrying on the activity of research in a systematic manner with the help of its employees as it lacks that element which would make it an organisation carrying on an activity which can be said to be analogous to the carrying on of a trade or business because it is not producing and distributing services which are intended or meant for satisfying human wants and needs, as ordinarily understood."

17. The law laid down in K.G. Sharma's case, (supra) is not attracted to the case of the present petitioner-institute which is not purely a research institute. In the counter-affidavit, it has been clearly mentioned that the petitioner-institute carries on economic activities involving huge profits from sale and auction of horticultural produces like Mango, Guava, Banana, Grapes, Amla, Karaunda, Licchi, etc., of different species. The research which is done in the petitioner institute is with a view to produce better quality of fruits, vegetables, flowers and food grains, which are produced and sold in the form of seeds and fruits both to the farmers and other growers. A number of receipts of sale have been filed with the Supplementary Affidavit, which have been compendiously marked as Annexure-1. Annexure-2 is the auction notice issued by the petitioner institute. These documents clearly support the stand taken by the workmen that the petitioner institute is engaged in commercial activity. The petitioner-institute does not fall within the exception laid down by the Apex Court in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, . The petitioner-institute is an industry within the meaning of Section 2(j) of the Act, and, therefore, the proceedings, which were taken under the Act to enforce the settlement dated 6.6.1985 were well within the frame work of law.

18. In the result, for the reasons stated above, the writ petition fails. It lacks substance and merit and has to be dismissed. The writ petition is accordingly dismissed. Interim order dated 19.5.1998 shall stand discharged. Parties shall bear their own costs.