
(1992) 07 BOM CK 0059
In the Bombay High Court
Case No : Writ Petition No. 373 of 1986

Chandrabhushan Prasad Purushottam Prasad Mishra	APPELLANT
Vs	
Hercules Hoists Ltd. and Another	RESPONDENT

Date of Decision : 10-07-1992

Acts Referred:

Constitution of India, 1950 — Article 133, 134A, 226, 227
Industrial Disputes Act, 1947 — Section 18, 2

Citation : (1992) 94 BOMLR 309

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.N. Srikrishna, J.—This writ petition, under Articles 226 and 227 of the Constitution of India, impugns an Award, dated 29th August, 1985, made by the 4th Labour Court, Bombay, in Reference (IDA) No. 437 of 1983, under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act").

2. The first Respondent is a Company engaged in the manufacture and sale of Travelling Trolleys, Electric Hoists, Cranes and other allied equipments. The first Respondent has a factory at Mulund, Bombay, where it employs about 250 employees. The Petitioner was in the employment of the first Respondent as an Engineer from 27th January, 1978, till he was dismissed from service with effect from 16th March, 1982, and his last drawn wages were Rs. 1,200 per month.

3. The Petitioner was served with a Charge-sheet-cum-suspension order, dated 19th October, 1981, in which it was alleged against him that around 7th October, 1981, it had been noticed that the Petitioner had started playing Table Tennis, during lunch hours, contrary to the Rule and practice. It had also been noticed that the Petitioner has changed his small table and taken possession of the big table kept at the place of Ex-Secretary Shri Badetia. It was alleged that, despite orally being advised against it by the Commercial Executive, Shri M.C. Bhuta, on

two or three occasions between 7th and 10th October, 1981, the Petitioner continued in possession of the big table and continued to play table tennis. It was further alleged that despite specific advice to the contrary, on 10th October, 1981, he did not cease the practice of playing table tennis during lunch hours, nor did he give up the table occupied by him, and thus the Petitioner continued to disobey the order of the Superior and even refused to acknowledge the memo served on him. The aforesaid conduct of the Petitioner was alleged to constitute (1) misconduct of wilful insubordination or disobedience, whether or not in combination with another, of any lawful and reasonable order of a superior, and (2) Commission of any act subversive of discipline or good behaviour on the premises of the establishment.

4. The Petitioner, by his explanation, dated 23rd October, 1981, denied all the charges against him as being baseless, mala fide and irrational. He contended that the action was being taken against him in a spirit of revenge and to harass him. He also contended that the suspension order served on him was illegal and contrary to law. He contended that he had not committed any misconduct and demanded that all proceedings against him be withdrawn.

5. An enquiry was held into the charges alleged against the Petitioner as a result of which he was found guilty of the misconducts alleged against him and dismissed from service by an order of dismissal, dated 16th March, 1982. The dismissal order, in terms, states that, though there was nothing adverse found in the past record of the Petitioner, the misconducts proved against him were of very grave nature warranting dismissal. The "Management Note", dated March 16, 1982 (annexed at Exh. "D" to the petition), brings out the reason why the misconducts of the Petitioner, which, might otherwise have been considered petty, were viewed with seriousness by the Management. The first Respondent appears to have taken a serious view of the matter since it considered that the Petitioner's behaviour and conduct did not remain at the innocent level of casual disobedience but had entered the dreaded area of insubordination and defiance.

6. The Petitioner demanded reinstatement in service with full back wages and continuity. Having been unsuccessful in getting satisfaction, he raised an industrial dispute for the said demands which came to be ultimately referred to the Labour Court at Bombay vide Reference (IDA) No. 437 of 1983.

7. Before the Labour Court, the first Respondent appeared and contested the reference. It denied the allegations with regard to the conduct of the enquiry held against the Petitioner. It also contended that the Petitioner was not a "workman" within the meaning of Section 2(s) of the Act. One of the principal contentions of the Respondent-Company, inter alia, canvassed before the Labour Court, and seriously reiterated here, was that the dispute had been settled by a settlement, dated 22nd August, 1982, entered into between the workmen represented by a registered Trade Union known as Association of Engineering Workmen and the first Respondent.

8. The Labour Court tried the reference and recorded elaborate evidence. By its impugned Award, dated 29th February, 1985, the Labour Court rejected the contention that the enquiry was improperly conducted. It held that the reference was not maintainable as the dispute involved in the reference had been settled by the settlement, dated 22nd August, 1982, between the parties. It further recorded a finding that if the reference was maintainable, then the enquiry held against the Petitioner was fair and proper. In view of its finding that the reference was not maintainable, the Labour Court declined to go into the contentions as to perversity of finding and discrimination and harshness of the punishment. It is this Award which has been impugned in the present petition.

9. Since the reference failed on the issue of maintainability, Mr. Kochar, learned Advocate appearing for the Petitioner, understandably, went hammer and tongs at the finding on this issue recorded by the Labour Court. In his submission, the settlement, dated 22nd August, 1982, relied upon by the Respondent-Company before the Labour Court, was not a settlement with a recognised Union under Chapter III of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act and hence, it was a only "settlement" within the meaning of Section 2(p) read with Section 18(1) of the Industrial Disputes Act. The settlement would, therefore, bind only the members of the Trade Union (Association of Engineering Workers) which has signed such settlement. According to the Petitioner, he was not a member of the Association of the Engineering Workers on the date of the settlement. Therefore, the settlement with regard to the issue of his dismissal was not binding on him. Alternatively, it was argued that the settlement was the culmination of a Charter of Demands put forth by the General Body of Workmen through the Association of Engineering Workers, with regard to demands for revision of wage scales, dearness allowance and other general conditions of service, which contained no demand regarding withdrawal of dismissal order issued to any workman. Hence, also, it is contended that the settlement was invalid as it had travelled beyond the terms of the demands contained in the Charter of Demands.

10. Mr. Kochar strenuously urged that the Petitioner had ceased to be a member of the Association of Engineering Workers on 22nd August, 1982, and, therefore the settlement was not binding on him. The Labour Court, after analysing the evidence on record, came to the conclusion that the Petitioner had been a member of the Association of Engineering Workers and further that the said Union was authorised to enter into the settlement on the issue of the dismissal of the Petitioner from service. Mr. Kochar urged that these findings were perverse and took me through the evidence on record in order to sustain his contention. The exercise has not persuaded me that the contention is justified.

11. In his affidavit, dated 5th February, 1985, which was accepted in lieu of examination-in-chief, the Petitioner stated that he had joined the Association of Engineering Workers and that he was an "active workman of that union". He maintained in his affidavit that he had not authorised the Association of

Engineering Workers to settle his dispute and that he had never been consulted before the settlement had been arrived at between the Respondent-Company and the said Union. He admitted in his cross-examination:

Till October, 1981 I was active member of the union, I did not resign from the membership of Association of Engineering Workers till the time of my dismissal of the service, and even till today.

When it was put to him that there was a settlement between the Respondent-Company and the Association of Engineering Workers on 22nd August, 1982, regarding the general demands and disciplinary action taken against himself and three other workmen, Kadam, Shedge and Patil, the Petitioner feigned ignorance despite his claim of being an active worker of the Union and denied the suggestion. On his own admission, the Petitioner was an active member of" the Association of Engineering Workers till October, 1981 and did not resign from the membership of the said Union till the date of his dismissal from service and even till the date on which the evidence was recorded (in the year 1985). If this be so, the burden lay on him to disclose as to how and in what manner his membership of the Association of Engineering Workers had ceased on or prior to the date of settlement, dated 22nd August, 1982. On this issue, there was no evidence whatsoever. In these circumstances, if after considering the totality of the evidence on record, the Labour Court has recorded a finding that the Petitioner continued to be a member of the Association of Engineering Workers, on the date of the settlement i.e. 22nd August, 1982, it is difficult to characterise the said finding as perverse by applying any known test of perversity.

12. The next contention of the Petitioner is that even if the Petitioner had continued to be a member of the Association of Engineering Workers on the date of the settlement, the settlement was invalid in law, since the Petitioner had not specifically authorised the said Union to enter into a settlement with his employer with regard to the issue of his dismissal. Here again the Labour Court, upon correct assessment of the evidence, rejected this contention. The Labour Court has pointed out that the settlement, dated 22nd August, 1982, itself recited that the settlement had been entered into by the President of the Association of Engineering Workers and the Employer of the Respondent-Company with regard to the Charter of Demands of the workmen. Further, the Labour Court has found that by the letter, dated 2nd October, 1981, the President of Association of Engineering Workers had raised the dispute regarding the dismissal of the Petitioner stating specifically therein that the Petitioner had informed the Union to raise the dispute. The Labour Court also placed reliance on several letters written by the President of Association of Engineering Workers to the Respondent-Company in which the said Union, at each stage, had purported to and acted on behalf of the Petitioner. The evidence on record shows that the Vice-President of the said Union had been authorised by the Petitioner to represent him during the course of the enquiry and that he did actually defend him during the enquiry. Taking these facts together with the fact that there was nothing to show that the

Petitioner had resigned from the membership of the Union, the Labour Court came to the conclusion that the said Union had been authorised to raise the dispute on behalf of the Petitioner. I find no perversity in the finding recorded by the Labour Court that the Association of Engineering Workers had been authorised to settle the dispute of the Petitioner with regard to his dismissal.

13. It cannot be gain-said that in the process of collective bargaining there is always some give and some take. At the material time, just prior to the agreement, dated 22nd August, 1982, there were several disputes pending between the Respondent-Company and its workmen represented by the Association of Engineering Workers. Some disputes were of a general nature while others were touching individual workman i.e. Kadam, Shedge, Patil and the Petitioner. As a result of collective bargaining, the settlement, dated 22nd August, 1982, was arrived at. This settlement settles disputes with regard to classification, grades and adjustment, increments, dearness allowance, leave, privilege leave, casual leave, sick leave, paid holidays, accident leave, maternity leave, transport allowance, attendance bonus, shifting allowance, heavy duty allowance, house rent allowance, leave travel allowance, outdoor allowance, outstation allowance, weekly off allowance, medical benefit to non-ESI workmen, education allowance, shoes and uniform, Janata Insurance, sick-on-work assistance, permanent, free tea, recruitment policy, etc. Clauses 25.00 and 25.01 of the settlement read as under:

Disciplinary Actions

It is agreed between the parties that the punishment of dismissal imposed on Shri Kadam and Shri Shedge shall be reduced to 4 days suspension each on the days to be specified after the reopening of the Company. However, dismissal of Shri C.P. Mishra and Shri D.S. Patil shall stand.

Further, Clauses 23.00 and 23.01 provide as under:

No Demands

In consideration of this settlement, the Union and the workmen agree that they would not press for the rest of the demands contained in their charter of demands referred to in the opening para of this settlement and would not raise any further demands involving any financial burden during the currency of this settlement or raise any other industrial dispute in future for any period upto the date of signing the settlement. However, all the existing facilities to the workmen not specifically covered or altered by this settlement, shall be continued.

14. Thus it would appear that there was an over all settlement, as package deal, between the Association of Engineering Workers and the first Respondent. This package deal settlement settles all outstanding disputes including the disputes with regard to the dismissal of the four workmen Kadam, Shedge, Patil and the Petitioner. With regard to Kadam and Shedge, it was agreed that the dismissal orders would be substituted by orders of suspension for four days each. With

regard to the Petitioner and Patil, the Union unmistakably agreed that the dismissal orders "shall stand."

15. Mr. Kochar then contended that even if the settlement is held binding upon the Petitioner, Clause 25.00, per se, did not settle the outstanding dispute but merely reiterated the status quo, which left the aggrieved workman free to agitate his individual dispute. It is difficult to accept this contention which runs counter to all accepted notions of collective bargaining in industrial relations. Acceptance of such argument would sound the death-knell of collective bargaining as it would leave the workman free to pick and choose from the terms of the collective settlement, accepting what they like and rejecting those that they do not approve of. It must be remembered that the legislative policy underlying the industrial disputes and other Labour Statutes, is to encourage collective bargaining, so that the workmen can settle their disputes across the table without being driven to Courts of law. The contention runs foul of this Legislative policy and must be rejected.

16. Mr. Kochar relied upon the judgment of the Supreme Court in *The Bata Shoe Co. (P) Ltd. Vs. D.N. Ganguly and Others*, to press his point. In this case, there was a prolonged strike in the Establishment. The Employer took a view that the strike was an illegal strike as it had taken place during the currency of a settlement arrived at and signed during the course of conciliation proceedings before the Conciliation Officer. Chargesheets were served upon the workmen who had joined the illegal strike which resulted in dismissal of 60 workmen. The resulting industrial dispute was referred for adjudication. The Tribunal took the view that the settlement which had taken place on February 15, 1954, was a bona fide settlement and, therefore, it was binding upon the workers and consequently the strike which began on 23rd February, 1954, was illegal. The Tribunal also held that the strike was unjustified. The Tribunal ordered reinstatement of 60 workmen on various grounds. Before the Supreme Court, the Appellant-Employer challenged the award on three grounds:

(i) As a settlement had been arrived at during the course of conciliation proceedings on September 2, 1954, which specifically dealt with the case of these sixty workmen, the references were incompetent;

(ii) the references were incompetent because what was referred was not an industrial dispute but a dispute between the employer and its individual workmen; and

(iii) the tribunal's order of reinstatement was in any case unjustified.

We are only concerned with the first issue which is relevant to the present discussion. On this issue the Supreme Court held that since the Labour Commissioner had not taken part actively in the matter of negotiations between the parties, the settlement could not be said to be a settlement within the meaning of Section 18 and, therefore, the settlement would not be binding upon the workmen. The ratio of this judgment hardly helps the Petitioner's case. It is

not contended by the first Respondent that the settlement, dated 22nd August, 1982, was a settlement in conciliation. On the other hand, it is contended that the settlement was a settlement de hors conciliation proceedings and, therefore, binding only upon the members of the Union signing the settlement. The authority has no application to the facts before me.

17. Mr. Kochar then relied on another judgment of the Supreme Court in *C. Mackertich Vs. Steuart and Co., Ltd.*. In this case the Union had espoused the cause of one workman, who had been made to retire by the employer allegedly before the due date of retirement. There were conciliation proceedings pending on this subject and, during the said proceedings, the Union entered into the settlement with the Management directly and agreed, inter alia, therein not to prosecute the case of one Shibban Lal. A copy of the said settlement was thereafter sent to the Conciliation officer after he had sent a failure report. When the dispute was referred for adjudication the Employer raised a contention that Shibban Lal's case having been barred by the settlement between the Union and the Employer, the reference was incompetent. The Supreme Court, after examining the contentions in the light of the facts, found that the settlement was not a "settlement" within the meaning of Section 2(p) read with Section 18(1) since it had not complied with the applicable Rule 54 of the Industrial Disputes (Central) Rules inasmuch as the Management and the Union had not jointly forwarded a copy of the settlement in question to the Central Government, as required under the Rule. In view of these lacunae, the Supreme Court was of the view that the agreement did not amount to a "settlement" as contemplated by Section 2(p) so as to be binding upon the workmen u/s 18(1) of the Industrial Disputes Act and, therefore, overruled the contention of the employer that the reference was incompetent. In my view, this judgment is of no help to the Petitioner.

18. The next authority relied upon by the learned Advocate for the petitioner is the judgment of the Supreme Court in *Technological Institute of Textiles v. Its workmen and Ors.* 1965 (II) L.L.J. 149. This again is an authority on the proposition that an agreement does not become settlement within the meaning of Section 2(p) unless it complies with the procedure prescribed under the applicable Rules. This judgment has also no application to the facts before me as the Labour Court has rightly held on facts that the settlement, dated 22nd August, 1982, complied with the provisions of law and that the settlement was one within the meaning of Section 2(p), binding upon the workmen u/s 18(1).

19. Finally, Mr. Kochar relied upon on a judgment of the Supreme Court in *Ameteep Machine Tools Vs. Labour Court, Haryana and Another.* This was a case where the Employer had dismissed some of the workmen. A settlement came to be signed with individual workmen directly, under which it was agreed that one of the dismissed workmen would not be taken back. The Supreme Court upheld the finding of the Labour Court that the settlement could not, in law, be understood as covering the affected person and that it was open to him to

pursue his demand for adjudication. In my view, this judgment also does not help the Petitioner in advancing his case.

20. Mr. Bhatkal, learned Advocate for the first Respondent, strongly relied on the settlement, dated 22nd August, 1982, and contended that on settled principles of collective bargaining, the terms of the said settlement must be upheld and it must be held that the dispute with regard to the dismissal of the four workmen including the Petitioner, stood finally settled and concluded. Mr. Bhatkal contends that, for ought we know, the Employer might not have conceded what he has, on several items, if there had not been an overall settlement on all outstanding issues. He further contends that the Court ought not to apply the principles of adjudication in testing the reasonableness of a settlement. He contends that the fact that even if some terms of the settlement might appear prejudicial to the interest of a few workmen, that, per se, cannot be conclusive in determining its overall validity or reasonableness which are to be judged by its overall impact on industrial relations in the establishment. In my judgment, the contention is well founded and supported by the observations of the Supreme Court in *Harbertsons Ltd. v. The Workmen of Harbertsons Ltd.* AIR 1977 SC 322. The Supreme Court pointed out in its judgment:

There may be several factors that may influence parties to come to a settlement as a phased endeavour in the course of collective bargaining. Once cordiality is established between the employer and labour in arriving at a settlement which operates well for the period that it is in force, there is always a likelihood of further advances in the shape of improved emoluments by voluntary settlement avoiding friction and unhealthy litigation. This is the quintessence of settlement which courts and tribunals should endeavour to encourage. It is in that spirit the settlement has to be judged and not by the yardstick adopted in scrutinising an award in adjudication. The Tribunal fell into an error in invoking the principles that should govern in adjudicating a dispute regarding dearness allowance in judging whether the settlement was just and fair.

The Supreme Court further pointed out:

It is not possible, to soon the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be slow to hold a settlement as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or unjust.

To the same effect are views expressed in the judgment of the Supreme Court in *New Standard Engineering Company Ltd. Vs. N.L. Abhyankar and Others*, .

21. Though the above considerations by themselves would have been sufficient to reject the case of the Petitioner, there is an additional factor, which, perhaps, clinches the case.

22. The settlement, dated 22nd August, 1982, expressly provided that there would be no change made in the dismissal order issued to two workmen, Patil and the Petitioner. The said settlement had not been terminated as on 28th July, 1983, which was the date of reference and, therefore, the provisions of the said settlement including Clause 23 were binding upon all workers including the said Patil and the Petitioner. Both Patil and the Petitioner raised industrial dispute. Patil's industrial dispute was marked as Reference (IT) No. 366 of 1982. The Tribunal which adjudicated the said issue, by a detailed Award, rejected the demand by holding that there was no industrial dispute in existence as on the date of reference inasmuch as the dispute stood settled by the settlement, dated 22nd August, 1982. The said Award, in Reference (IT) No. 366 of 1982, was challenged by Patil by his Writ Petition No. 378 of 1985. The writ petition was summarily rejected by a learned Single Judge on 5.3.1985. An appeal carried there against was also summarily dismissed on 10.12.1985 by the Division Bench (Lentin and R.R. Jahagirdar, JJ.). The situation in the Petitioner's case being identical, I cannot conceive of there being a different result in the Petitioner's case. The petition must, therefore, fail for this reason also.

23. In the premises, the petition has no substance and it deserves to be dismissed.

24. Accordingly, the petition is hereby dismissed. Rule is discharged.

25. However, in the circumstances, there shall be no order as to costs.

26. This judgment was pronounced and the writ petition was dismissed just now.

27. Mr. Bapat, learned Advocate for the Petitioner, applies for leave to appeal to the Supreme Court under Article 134-A read with Article 133 of the Constitution of India. In my view, there is no case whatsoever made out for leave under the said Articles of the Constitution.

28. Application for leave rejected.

29. Certified copy expedited.