**(2015) 12 BOM CK 0077**

**In the Bombay High Court**

**Case No :** Writ Petition Nos. 738 and 739 of 2015

Chowgule Industries Pvt. Ltd. APPELLANT

Vs

Sakharam Gad and Others RESPONDENT

**Date of Decision :** 18-12-2015

**Acts Referred:**

Constitution of India, 1950 — Article 227

Industrial Disputes Act, 1947 — Section 10A, 12(3), 18, 18(3)

**Citation :** (2015) 12 BOM CK 0077

**Hon'ble Judges :** K.L. Wadane, J.

**Bench :** Single Bench

**Advocate :** Atul Damle, Senior Advocate, Rajesh Kinnerkar and Pretam Talaulikar, Advocates, for the Appellant; Bennet D''CostaAdvocateAdvocate and Ryan Menezes, Advocate, for the Respondent

**Final Decision :** Disposed Off

## Judgement

K.L. Wadane, J.

1. Heard Mr. Atul Damle, learned Senior Counsel appearing for the petitioner and Mr. Bennet D''Costa, learned Senior Counsel appearing for the respondent nos. 1 to 14 in Writ Petition No. 738/2015 and for respondent no. 1 in Writ Petition No. 739/2015.

2. Rule made returnable forthwith.

3. Heard by consent of the learned counsel appearing for the respective parties. Mr. R. Menezes, learned Counsel waives notice on behalf of the respondent nos 1 to 14 in Writ Petition No. 738/2015 and for the respondent no. 1 in Writ Petition no. 739/2015.

FACTS IN WRIT PETITION NO. 738 OF 2015

4. The present petition is filed by the petitioner/ Employer under Article 227 of the Constitution of India and seeks to challenge the award dated 8.7.2015

passed by the Industrial Tribunal and Labour Court in Reference No. IT/10/2011 wherein benefits of settlement was directed to be made applicable to the workers.

5. Parties are referred to as per their original status. The brief facts may be stated as follows:-

In the claim settlement it is in short, the case of Party I/ workmen that the employer and the committee of Chowgule Industries Ltd. (Automobile Division) Workers Unity entered into a settlement dated 22.3.2005 which was signed under Section 12(3) read with Section 18(3) of the Industrial Disputes Act, 1947 ("the Act" for short). It is stated that as per this settlement, it was agreed that all the workmen will be paid variable Dearness Allowances ("VDA" for short) on the basis of the All India Consumer Price Index (Base 1960=100). The parties had also agreed for neutralization rate of Rs. 1.85 per point rise/fall from 870 to 1000 points and Rs. 1.95 per point rise/fall from 1001 and above. It is stated that this settlement covered all the workmen at that time and was operative from 1.7.2004 to 30.06.2008. It is stated that in May 2008, almost all permanent workmen employed at Sales and Services Centers of Party II joined Gomantak Mazdoor Sangh("GMS" for short) and this fact was communicated to Party II by GMS by letter dated 14.5.2008. It is stated that existing settlement was to expire on 30.6.2008 and the workmen submitted their Charter of Demand ("COD" for short) vide letter dated 10.6.2008. It is stated that matter of COD is pending before this Tribunal under Ref. No. IT/29/2009. It is stated that GMS then realized that the workers whose services has been confirmed subsequent to the settlement dated 22.3.2005 were not paid any VDA and therefore, GMS on behalf of these 14 workmen wrote a letter dated 6.7.2009 to Party II explaining the position and demanding that their VDA be paid. Correspondence was then exchanged between the parties and Dy. Labour Commissioner Panaji, however, finally the matter ended in failure. It is stated that the benefits of a settlement continue to flow even after its expiry and by virtue of Section 18 of the Act the benefits of a settlement are extended to all the workmen who have been confirmed in service subsequent to the settlement. It is therefore prayed to hold that the action of Party II in not paying VDA as per the settlement dated 22.3.2005 to the 14 workmen is illegal and unjustified and to order Party II to pay VDA as per this settlement from the respective date of joining of the 14 workmen mentioned in the order of reference.

6. In defence, Party II has denied the case set up by Party I in the claim statement and has stated that Party I union has no locus standi to espouse the present demand and that the said demand cannot and do not constitute an Industrial Dispute. It is stated that the said demand is subject matter in Ref. IT/29/2009 and therefore, it is barred by res-judicata or principles analogous to res-judicata. It is stated that terms of reference are defective as it presupposes payment of VDA to certain class of employees who were not even parties to the said settlement. It is stated that Party II has complied with all its rights and obligations as per the said settlement dated 22.3.2005 and that they are aware

 

that the benefits of the said settlement dated 22.3.2005 and that they are aware that the benefits of the said settlement continue even after termination or till replaced by a new settlement, Award or agreement. It is stated that the concerned 14 employees were not parties to the said settlement and also never extended any benefits of the said settlement. It is stated that the concerned persons cannot make a grievance of not being paid VDA, whether by settlement or otherwise when the service conditions agreed by them with the management did not comprise of the component of VDA. It is stated that instead of VDA the concerned employees are receiving incentives of monthly average amounting to Rs. 4000/- to 6500/- and from the day the concerned employees were engaged, the VDA was not a part and parcel of their remuneration and neither they were party or beneficiary to the settlement dated 22.3.2005. It is stated that the concerned employees were given benefits of mutually agreed terms and conditions and therefore they did not make any grievance regarding the same. It is stated that any additional burden if imposed on the company would have grave consequences for the industry in general and also a crippling effect on its financial capacity there by jeopardizing the very survival of the company in the highly competitive market. It is stated that the service conditions, mutually agreed with the concerned employees did not include payment of VDA. Thus, amongst the above and other objections, Party II has prayed to reject the reference under consideration.

7. In the rejoinder Party I has denied the defence set up by Party II and has stated that the demand for VDA has been made by the Union on behalf of the concerned workmen on the basis of settlement dated 22.3.2005 which was signed under the Act. It is also stated that GMS is a registered Trade Union under the Trade Unions Act, 1926 and therefore is entitled to raise disputes on behalf of its members. It is stated that the Industrial law allows any registered Trade Union to raise an Industrial Disputes under the Act.

8. On the basis of the averments of the respective parties issues dated 15.3.2012 at Exh. 10 were framed.

9. During the evidence Party I examined Shri Kiran Gadekar as witness No. 1 and Shri P. Gaonkar as witness no. 2. On the other hand Party II examined Shri Sujay Rao, Senior Manager(HR) and closed its case.

10. After considering the evidence on record, the learned Industrial Tribunal has held that the action of the employer in not paying VDA as per existing settlement dated 22.3.2005 to the 14 workmen is illegal and unjustified. Further it is held by the learned Industrial Tribunal that the 5 workmen who are still in service shall be paid VDA from the date they have been confirmed in the services and the remaining workmen shall be paid VDA from the date they have been confirmed in the services till the date of their resignations. Hence, the Party II/ employer filed present Writ Petition.

FACTS IN WRIT PETITION NO. 739 OF 2015

11. Petitioner has filed this Petition under Article 227 of Constitution of India seeking to challenge the award dated 13.7.2015 passed by the Industrial Tribunal in reference no. IT 29/2009.

12. Parties are referred as per their original status.

The brief facts of the case is as follows:-

It is in short the case of Party I that it is representing the workmen employed by Party II who is an industrial establishment having sale and services centers in Goa and it is engaged in sales and services of the vehicles manufactured by M/s. Maruti Udyog Ltd. and Swaraj Mazda. It is stated that Party II started sales and services activities in the State of Goa in the year 1995. It is stated that the settlement dated 22.3.2005 between the parties expired on 30.6.2008 and as such Party I submitted a fresh Charter of Demands (COD) vide letter dated 10.6.2008. It is stated that the matter was taken in conciliation but the parties could not arrive at a settlement and the conciliation officer submitted the failure report to the Government. Pursuant to failure report the Government by order dated 4.9.2009 referred the dispute to the Tribunal for adjudication.

13. It is further the case of Party I that from July 2004 to August, 2009, the consumer price index has increased from 2549 to 3698 and therefore there is tremendous increase in the inflation and the wages paid to the workmen are insufficient to meet their day-to-day needs. It is stated that Party II is making huge profits and is in a sound financial position to meet the demands of the workmen. It is stated that there is huge disparity between the salary paid to the officer and the wages paid to the workmen. It is stated that the workers who were confirmed during the period of settlement were not given VDA as per the terms of the settlement. It is stated that due to more then 80% increase in the All India Consumer points and increase in the inflation, the purchasing power of the Rupee is decreased tremendously.

14. In defence, it is the case of Party II that Party I Union has no locus standi to espouse the present demands of the workmen belonging to Auto dealership and marketing activities. It is stated that party I union has not filed any documents to show that it is duly Registered under Trade Union Act. It is stated that the additional financial burden if put on Party II will have crippling effect on this financial capacity thereby jeopardizing the very survival of the company in a highly competitive market. It is stated that in the last settlement, the average rise in the salary wages Rs. 1088/- approximately. It is stated that the financial position of Party II is not sound and that there is no tremendous increase in inflation. It is stated that the various clauses of the settlement which was in force from 1/7/2004 to 30/6/2008 take care of the increase in the cost of living. Party II has denied that there is disparity in the wage structure of the officer vis-a-vis the workmen as these are two different categories and are not comparable. It is stated that the comparable concerns pay less wages to their workmen as compared to the wages paid by Party II. It is stated that Party I has failed to

 

justify as to why and how the basic wages could be even considered or increase so disproportionately as is sought to be done in the present COD as compared to the last mutually agreed settlement. Party II has therefore amongst above and other grounds stated that Party I is not entitled to any relief in this reference.

15. In the rejoinder, Party I has denied the defence raised by Party II in the written statement.

16. It may be mentioned that Party I had filed an application for interim relief (Exh.8) claiming an amount of Rs. 2,500/- per month. By order dated 5.4.2011, this Court disposed the said application granting it partly thereby directing Party II to pay to Party I workmen an amount of Rs. 750/- per month from the date of application till the final award. The amount paid as above was ordered to be at the time of passing of the final Award.

17. In view of the pleadings in the claim statement and the written statement the issues dated 17.8.2011 at Exh. 24 were framed.

18. After considering the evidence on record and after hearing both sides, the learned Tribunal has considered revision in the pay scale. Workmen have submitted 10 COD out of which the learned Tribunal has refused COD Nos. 3,8,9,11,12,13,14, 16,17 and has allowed COD Nos. 1, 2, 4 to 7, 10 and 15. Hence, employer has presented present Writ Petition.

19. I have heard arguments of Mr. Atul Damle, learned Senior Counsel appearing for the petitioner and Mr. Bennet D''Costa, learned Senior Counsel appearing for the respondents. I have gone through the pleadings of the parties, evidence on record and the reasons/findings given by the learned Tribunal in both the matters.

20. During the course of the arguments, Mr. Damle, learned Senior Counsel appearing for the petitioner/employer has argued that the complaint demanding VDA is made by only 5 workmen but they are not entitled for the same simply because there is no contract between the parties in reference to the demand of VDA. Therefore, in the absence of specific contract to that effect, the workmen are not entitled to get VDA. According to Mr. Damle, learned Senior Counsel, minimum wages includes all the components i.e DA, therefore, the workers are not entitled for any relief. As against this, Mr. D''Costa, learned Senior Counsel appearing for the respondents/workmen has argued that VDA has to be given irrespective of the cadre of the majdoor. According to Mr. D''costa, as per the settlement of 2005, the workmen/ respondents are entitled to VDA in the absence of any expressed settlement between the petitioner and the respondents. They are entitled as per settlement of 2005, irrespective of the fact that they are parties to the settlement or not, even after lapse of settlement of 2005. The respondents are to be given VDA until new settlement takes place. It is material to note that in the claim settlement workmen/Party I and the committee of Chowgule Industries Ltd. entered into settlement dated 22.3.2005 which was signed under Section 12(3) read with Section 18(3) of the Act and as per the above settlement it was agreed that all the workmen will be paid VDA on

 

the basis of All India Consumer Price Index (Base 1960=100) and was operative from 1.7.2004 to 30.6.2008, and, as such, were entitled to VDA. It is further revealed that in the month of May, 2008 almost all permanent workmen employed at the sales and services centres of the Employer joined the Gomantak Mazdoor Sangh, ("GMS" for short) and this fact was communicated to party no. 2 by GMS by letter dated 14.5.2008.

21. Mr. Damle, learned Senior Counsel appearing for the petitioner/employer has stated that instead of VDA workmen are getting intensive ranging from Rs. 4500/- -Rs. 6000/-. Therefore, it is not necessary to give benefit to VDA. He further argued that COD is almost pending before the same Tribunal in reference No. IT/29/2009 and therefore, the present demand of VDA is unjustified.

22. As against this Mr. D''Costa, learned Senior Advocate appearing for the respondents has rightly submitted that benefit of the settlement continues to flow even after its expiry and by virtue of Section 18 of the Act.

23. The benefit of the settlement are extended to all the workmen who has been confirmed in service pursuant to the subsequent settlement.

24. Having gone through the entire records relating to the correspondence between the parties and fact admitted in the Written Statement by the Party II benefit of settlement continues even after termination or till it is replaced by new settlement/award/agreement and admittedly benefit of settlement dated 22.3.2005 is not replaced by the new settlement till the date of the award of the learned Tribunal. To clarify this position, it is necessary to quote provisions of Section 18(3) of the Act which reads thus:-

18. Persons on whom settlements and awards are binding.-

(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

(2) Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]

(3) A settlement arrived at in the course of conciliation proceedings under this Act 5 or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or an award of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on--

(a) all parties to the industrial dispute;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, arbitrator,] Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;

 

(c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.

25. Looking to the above provisions clearly speaks about the person or class of a persons and their entitlement and it is not necessary for the workmen to show that the particular workmen is belonging to the union which was party to the dispute before the Conciliator. The whole policy of the Section 18 appears to give an extended operation to an award and settlement arrived at in the course of conciliation proceedings or adjudication proceedings and that is the object with which the four categories of persons bound by such award and settlement are specified. The witness of the petitioner namely Sujay Rao admitted that the settlement is applicable only to the permanent workers and he further admitted that 14 workmen to the reference have been issued a confirmation letter and therefore, it is apparent that these 14 workmen are entitled to claim VDA s per the terms of settlement dated 22.3.2005.

26. To consider the case of the workmen who became permanent but subsequently resigned from services, obviously they are entitled to get VDA from the date of confirmation of service till the date of their respective resignations. Mr. Damle, learned Senior Counsel appearing for the petitioner tried to canvas that the Union/Party I has not locus standi to espouse the present demand and he further argued that Union is functioning in two states, therefore State Government is not appropriate Government. In such cases Central Government is appropriate Government. It is material to note that after scrutiny of the documents which is collectively marked Exh. 32. the Party I Union was registered under the Trade Union Act, 1926 and the object of GMS is to organize and unite persons employed in different industries in Union Territory of Goa, Daman and Diu and to regulate their relations with the employees. Schedule A annexed to this document indicates that GMS was authorised to represent the workers employed in several industries listed therein. The activities of the employer Party II includes sales and services of vehicles and these activities are squarely covered under clause 19 and 21 of Schedule A of the Constitution. The consequence thereof is that Party I Union has locus standi to espouse the dispute on behalf of the workmen of party II company. The next contention of Mr. Damle, learned Senior Counsel was about the demands already under consideration in reference No. IT29/2009. Witness Sujay Rao of Party II has admitted in his cross examination that COD in reference no. IT/29/2009 there is claim for revision of VDA. This being the situation, the contention of Party II that the demand of VDA in reference was already a subject matter in Reference No. IT29/2009 and therefore is barred by res-judicata or principle of analogous to it, does not stand.

 

27. While dealing with the question about revision of wages/scales it is necessary to remember that the technical considerations of res-judicata should not be allowed to hamper the discretion of industrial adjudication. It is undoubtedly true that wage scales are devised and wage structures constructed as the matters of long-term policy, and so, industrial adjudication would naturally be reluctant to interfere with the wage structures without justification or in a lighthearted manner.

28. For the reasons stated above, it is crystal clear that workmen/respondent are entitled to VDA when they became permanent employees of the petitioner.

29. In reference to Writ Petition No. 739/2015, Mr. Damle, learned Senior Counsel has argued that while considering COD, learned Tribunal has not taken into consideration industry cum region and financial capacity of industry Therefore, award of the learned Tribunal is bad in the eyes of law.

30. As against this Mr. D''Costa, learned Senior Counsel appearing for the respondents has argued that if a small industry is not situated within the vicinity or region then the learned Tribunal can independently assess the COD and has powers to grant it reasonably. Mr. D''Costa, learned Senior Counsel appearing for the respondent no. 1 workmen has poised a question that in the absence of a chart of wages of the workmen from the similar Industry in the region where the wages structures can never be revised? And he submitted that even in the absence of availability of chart of wages of the work in the similar industry pay scale can be revised on the basis of the evidence given by the witness of the employer industry.

31. I have gone through the various demands submitted by the Workers out of which most of the demands are refused by the learned Tribunal.

32. First demand of the workers of the pay scale has been considered by the Tribunal and has granted as per chart shown.

33. Workmen demand no. 2 is flat rise of Rs. 1000/- in their salary, however Tribunal has granted Rs. 300/-.

34. Demand no. 4 of VDA is considered by the learned Tribunal and the learned Tribunal has granted VDA at the revised rate of Rs. 2/- per point rise. Child Education allowance was demanded at the rate of Rs. 500/- but however, the learned Tribunal has granted at the rate of Rs. 200/- per month. Conveyance Allowance was claimed at the rate of Rs. 70/- per day but, however, it is granted at the rate of Rs. 77/- per day which learned Counsel appearing for the respondents has fairly conceded that conveyance allowances granted by the learned Tribunal is an excess then the demand. Therefore, he submitted that conveyance allowance to the extent of Rs. 7/- be reduced and award be modified accordingly. Workmen have claimed Leave travel Allowance at the rate of Rs. 3500/- per year. Learned Tribunal has granted Rs. 2400/- per year. Washing allowance was claimed at Rs. 350 and the learned Tribunal has granted Rs. 300/-.

 

35. I have carefully gone through the reasons recorded by the learned Tribunal while accepting the demands of the workmen and most of the demands of the workmen are refused. In such circumstances it is to be seen whether COD are granted reasonably or not considering the final capacity of the industry/employer.

36. To consider the financial position of the Industry and whether it can bare additional burden of wage structures, it is material to note that witness of the employer Mr. Sujay Rao has stated that financial position of the company is not sound and is bleak and in the year 2006 loss amounting to Rs. 117.66 lacks was incurred by the company. It was tried to suggest that employer is unable to bear the additional wage structures if the pay structure is revised and enhanced however in the cross examination Mr. Rao has admitted that balance sheet of Party II company for the year 2009-10, 2010-11 and 2011-12 indicates that company is in profit. This means that financial position of the Party II is sound enough to bear the additional burden and it is in the light of settled principle that the admission is the best piece of evidence. Coming to the next point about reasonable revised structure. It is material to note that it is an admitted fact that in the last settlement Exh. 38, the average rise given per workmen per month was Rs. 1088/- and it is say of party no. 2 that the above increase was given due to inflation. Though according to the Party I above increase was given pursuant to the agreement between the management and the workers but the witness Mr. Gaonkar has made it clear that generally one of the reason for giving wage rise is inflation and witness Sujay Rao in his affidavit of the oral evidence has admitted that the percentage increase in CPI for the period 2006 to 20013 was 235.59%. This means that inflation raised considerably. Witness Sujay Rao states in the cross examination that the salary of the workers except VDA and the amount of Rs. 750/- towards interim relief granted by this Court have not been increased since the year 2008. Keeping this in mind, the above fact increase in the CPI, justifies and up ward revision so higher wage can be granted if financial position of the company permits such burden.

37. I have gone through the reasons recorded by the learned Tribunal while considering the COD and it reveals that the learned Tribunal has considered the demand in reference to financial capacity of the employer.

38. While exercising jurisdiction of this Court under Article 227 of the Constitution of India. It is to be seen whether there was gross violation of principle of natural justice. I do not think that there was gross violation of Principe of natural justice therefore, both the Writ Petitions are liable to be dismissed with slight modification of conveyance allowance.

39. As per demand no. 7 workers have demanded Rs. 70/- per day as conveyance allowance in addition to the existing conveyance allowance of Rs. 32/-. The learned Tribunal has granted Rs. 45/- per day in addition to the existing conveyance allowance to meet day to need of the workers. Thus, existing CA and increased CA comes to Rs. 77/- per day which was not the demand of the workers. The demand of the workers is only Rs. 70/-. Hence,

 

amount of Rs. 7/- is liable to be reduced and ultimately workmen will get Rs. 70/- per day instead of Rs. 77/-. With this modification, Rule stands disposed of.

40. Petitions stand disposed of accordingly.

 