

(2010) 07 MAD CK 0020

In the Madras High Court

Case No : Writ Petition No's. 8360 and 23899 of 2001

Coimbatore District Mill Labour Union and Others	APPELLANT
Vs	
National Textile Corporation (T.N. and P.) Ltd. and Others	RESPONDENT

Date of Decision : 08-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 18(1), 9A

Citation : (2011) 1 LLJ 577

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : R. Rengaramanujam, for the Appellant; V. Govardhanan, for Row and Reddy, T.S. Gopalan and Co. and S. Sivashanmugam, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S. Nagamuthu, J.—Since common issues are involved, both the writ petitions were heard together and they are disposed of by means of this

common order.

2. The Petitioner in W.P. No. 8360/2000 is a Trade Union known as Coimbatore District Mill Labour Union. Its members are the workers in the

National Textile Corporation Limited (NTC) which is a Central Government Undertaking. The Petitioners in W.P. No. 23899/2001 are also

similar Trade Unions whose members are also workers in NTC Limited. In both the writ petitions, they are aggrieved by the action of the NTC

Limited in resorting to recover the amount paid as advance on the annual earnings of the employees between ` 30,000/- and ` 42,000/- under the

Bonus Settlements dated October 23, 1997 and October 15, 1998 Though the wordings of the prayer in W.P. No. 8360/2001 are slightly

different, in effect, the prayer made in the said writ petition is also the same prayer as it has been made in W.P. No. 23899/2001.

3. On October 23, 1997, a settlement u/s 18(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") was reached between

the workmen and the management of the mills belonging to NTC Limited, Coimbatore in respect of the demand made by the unions for bonus at

the minimum of 20% and maximum of 40% without any wage / salary ceiling for bonus calculation as well as for the bonus eligibility for the

accounting year 1996-97. According to the terms of settlement, it was agreed upon between the parties that the workmen will be eligible for bonus

as per the Payment of Bonus Act and the same will be paid as ex gratia for the year 1996-97 in terms of Region-cum-Industrial Settlement being

followed by the member mills as per the details given in the settlement itself. As per one of the terms and conditions of the settlement, the advance

payable in terms of the modification in Clause 3 of the settlement will be subject to amendment in the payment of Bonus Act. In the event of no

such amendment forthcoming on or before March 31, 1998, the mode of adjustment of the advance will be further discussed with the unions and

decided.

4. It was on these terms the unions called off the strike call. Subsequently, another memorandum of settlement u/s 18(1) of the Act was reached

between the workmen and the management on October 15, 1998. As per the said terms of the settlement, it was agreed upon to continue to pay

such advance for the year 1997-98 also. After this, there has been no other fresh settlement reached for the subsequent years. Thus, the advance

paid as ex gratia as an interim arrangement as per the settlement reached u/s 18(1) of the Act could not be adjusted by the management as there

was no further discussion on the matter and no further settlement was arrived at.

5. In those circumstances, the member mills started deducting the said amount paid as advance from out of the retirement benefits of the workmen

who got retired. In respect of the workmen, who are still in service, adjustment has not been so far effected. The Unions got agitated over the

same. It appears that this dispute has been going on for several years, but no efforts have been taken by the management as well as the trade

unions to arrive at a fresh settlement in respect of the adjustment of the

advance paid to the workmen. It is also admitted that no amendment to the Payment of Bonus Act was brought in. In the above stated circumstances, the trade unions have come forward with these writ petitions seeking a mandamus forbearing the Respondents from deducting any amount from the benefits of the retired employees as well as the existing employees in order to adjust the advance amount paid as per the above settlements.

6. In the counter affidavits filed by the Respondents, the maintainability of the writ petitions is questioned. According to the Respondent, the Petitioners are trying to enforce the terms and conditions of the Settlement reached u/s 18(1) of the Act by way of writ petition which, according to the Respondent, is not possible.

7. The learned Counsel appearing for the Respondent would submit that in respect of interpretation of terms and conditions of the above two settlements, there is some dispute which would only give rise to an Industrial Dispute which needs to be resolved as per the provisions of the Industrial Disputes Act, 1947. He would further submit that the writ jurisdiction of this Court, under Article 226 of the Constitution of India, cannot be extended to enforce the terms and conditions of the settlements reached as per the provisions of the Industrial Disputes Act. When there is such an alternative remedy, the learned Counsel for the Respondent contended that the writ petitions are not maintainable and, therefore, the writ petitions may be dismissed of course, with a liberty to the Petitioners to workout their remedies as per the provisions under the Industrial Law. For this proposition, the learned Counsel appearing for the Respondent has relied on few judgments of the Hon''ble Supreme Court about which I would make reference at appropriate places of this judgment.

8. But, the learned Counsel appearing for the Petitioner would submit that actually there is no dispute in respect of the terms and conditions of the settlements and there is no need to interpret the terms and conditions of the settlements as they are unambiguous requiring no interpretation at all. He would further submit that since the NTC Limited is a Government Undertaking, writ petitions are maintainable and, therefore, though there is a alternative remedy available for the Petitioners under the Industrial Law, that cannot be a ground to deny the relief to the Petitioners in these writ petitions.

9. I have considered the rival submissions and also perused the records carefully.

10. Indisputably, in these cases, the Petitioners are trying to enforce the terms and conditions of the settlements arrived at u/s 18(1) of the Act.

There is no controversy regarding the legal position between the learned Counsel appearing on either side that there is an alternative remedy

available under Industrial Law to work out the relief sought for in these writ petitions. But, what all that the learned Counsel for the Petitioner

would submit is that the availability of such alternative remedy is not a bar to entertain these writ petitions.

11. In this regard, I may state that the power of this Court under Article 226 of the Constitution of India is so wide and the same is not limited by

any of the provisions of the Constitution. But, at the same time, in course of time, while exercising such power under Article 226 of the Constitution

of India, the Courts have evolved certain self-imposed restrictions. One such self-imposed restriction is to decline to entertain a writ petition when

the party to the case has got an alternative remedy which is efficacious. But, it does not mean that invariably in all the cases that simply because

there is an alternative remedy this Court should decline to entertain the writ petition. It is also settled law that in appropriate cases, even though

there is alternative remedy available to a party, this Court does entertain a writ petition, where the situations are extraordinary warranting such

exercise of the power of this Court. Here, in the instant cases, it is not at all the case of the Petitioners that the remedy under the Industrial Law to

the Petitioners cannot be secured without any loss of time. It cannot also be stated that such remedy available under the Industrial Disputes Act is

not efficacious. When such efficacious remedy is readily available for the Petitioners to workout under the Industrial Law, it is not explained to this

Court as to why the Petitioners have rushed to this Court invoking the jurisdiction u/s 226 of the Constitution of India. No extraordinary situation

has been brought to the notice of this Court warranting to remove the self-imposed restriction as stated above and to exercise its jurisdiction under

Article 226 of the Constitution of India. Therefore, I am of the view that these writ petitions cannot be entertained by this Court and it is for the

Petitioners to workout their remedy under the Industrial Law.

12. In this regard, I may usefully refer to the judgment of the Hon''ble Supreme

Court in Binny Ltd. and Another Vs. V. Sadasivan and Others, . In

para 11 of the said judgment, after having analysed various judgments of the Hon''ble Supreme Court as well as English cases, the Hon''ble

Supreme Court has held as follows:

11. Judicial review is designed to prevent the cases of abuse of power and neglect of duty by public authorities. However, under our Constitution,

Article 226 is couched in such a way that writ mandamus could be issued even against a private authority.

However, such private authority must be discharging a public function and that the decision sought to be corrected or enforced must be in

discharge of a public function.

13. Then, what is public function was also considered by the Hon''ble Supreme Court. Ultimately, the Hon''ble Supreme Court has held that if

only, there is public law element involved then, the Court can exercise its power u/s 226 of the Constitution to issue a mandamus even against a

private party.

14. In VST Industries Limited v. VST Industries Workers'' Union and Anr. (2001) 1 SCC 298: 2001 I LLJ 470 the Hon''ble Supreme Court has

held as follows:

In other words, it is only a labour welfare device for the benefit of its workforce unlike a provision where the Pollution Control Act makes it

obligatory even on a private company not to discharge certain effluents. In such cases public duty is owed to the public in general and not

specifically to any person or group or persons. Further the damage that would be caused in not observing them is immense. If merely, what can be

considered a part of the conditions of service of a workman is violated then we do not think there is any justification to hold that such activity will

amount to public duty. Thus, we are of the view that the High Court fell into error that the Appellant is amenable to writ jurisdiction.

15. A close reading of the above observations of the Hon''ble Supreme Court would make one to understand without any doubt that mere

violation of a part of the service conditions of the workmen would not amount to public duty so as to invoke the jurisdiction of the writ Court. In

the instant cases, there is an alleged violation of terms and conditions of settlements reached u/s 18(1) of the Act which is a violation of service

conditions of the workmen and it raises only an industrial dispute. In my considered opinion, applying the above stated legal principle, this Court cannot entertain these writ petitions.

16. The learned Counsel appearing for the Respondent has relied on yet another judgment of the Hon"ble Supreme Court in *Indian Additives*

Limited, Chennai v. Indian Additives Employees" Union and Anr. 2005 I LJ 900 (Mad). That was a case where a writ petition was filed alleging

violation of the provisions of Section 9-A of the Industrial Disputes Act. The Division Bench after referring to *Rajasthan State Road Transport*

Corporation and Another Vs. Krishna Kant and Others, , *U.P. State Bridge Corporation Ltd. and Others Vs. U.P. Rajya Setu Nigam S.*

Karamchari Sangh, and The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, and other judgments, ultimately

dismissed the writ petition holding that the dispute could be resolved by the remedy available under the Industrial Disputes Act. In para 7 of the

judgment, the Division Bench has held as follows:

7. In the present case, when the first Respondent Union complains that the Appellant had breached the provisions of Section 9-A of the I.D. Act,

the only remedy available to it is to raise an "Industrial Dispute" and seek adjudication of the same before the appropriate forum created under the

I.D. Act rather than approaching this Court under Article 226 of the Constitution by passing the alternative remedy available under the Act.

17. In the case on hand what is now alleged by the Petitioners is that there is violation of terms and conditions of the settlement which gives rise to

an "Industrial Dispute" which could be resolved before the forum constituted under the Industrial Law. Applying the principles stated in the above

cases, I am of the view that these writ petitions are not maintainable and the remedy for the Petitioners is to workout under the appropriate

Industrial Law.

18. In view of the above, the writ petitions fail and they are accordingly dismissed. However, liberty is given to the Petitioners to workout their

remedy under Industrial Disputes Act, 1947 or any other Industrial Laws. No cost.