

(1992) 02 BOM CK 0041

In the Bombay High Court

Case No : Writ Petition No. 5249 of 1991

C.T.R. Trade Union and Others

APPELLANT

Vs

C.T.R. Manufacturing Industries Ltd. and Others

RESPONDENT

Date of Decision : 07-02-1992

Acts Referred:

Industrial Disputes Act, 1947 — Section 10C(2)

Citation : (1993) 3 LLJ 951

Hon'ble Judges : A.V. Savant, J

Bench : Single Bench

Advocate : H.L. Gokhale and J.M. D'Silva, for the Appellant; Meena H. Doshi and A.A. Sheode, for Respondent 2, for the Respondent

Final Decision : Allowed

Judgement

A.V. Savant, J.—Heard the Counsel.

2. This petition was admitted on the 22nd November, 1991 and interim relief in terms of prayer (b) of the Petition was granted. Prayer (b) of the petition reads as under: -

"(b) that pending the hearing and final disposal of the said Petition to grant interim relief to the members of the Petitioner No. 1 Union on par with the other workmen who have been paid increase in wage of Rs. 350/-from 1.4.90, Rs.375 / from 1.4.89 and Rs. 400/ from 1.4.91 and such other benefits received by the other co-workmen doing similar nature of work and including the arrears denied to them."

After this order was passed on the 22nd November,1991, the first Respondent employer filed Civil Application No. 6107 of 1991 for vacating the interim relief. Upon hearing the Counsel for the parties, this Court passed an order on the 6th December, 1991 modifying the earlier interim order and giving certain directions. The Petition was directed to be placed for hearing peremptorily and that is how the matter has been placed for hearing before me.

3. The petitioners seek to challenge the Order dated 16th October, 1991 passed by the Industrial Court, Pune, by which their application for interim relief has been dismissed inter alia on the ground that the application for interim relief was not maintainable in a reference under the provisions of the Industrial Disputes Act, 1947.

4. The facts that on the 17th November, 1989 a settlement was arrived at between Respondent No. 2 Union and Respondent No. 1 Employer providing inter alia for increased wages and other amenities. The said settlement did impose certain obligations on the workmen accepting the settlement. However, the petitioners claim to be the majority Union and, therefore, contend that all the employees of the first Respondent employer are entitled to be treated on par.

5. On the question of the power to grant interim relief, this Court held on 6th December 1991, relying upon the observations of the Supreme Court in the case of the The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers' Union, that the application for interim relief was maintainable and, therefore, the view taken by the Industrial Tribunal was prima facie erroneous. This Court, therefore, directed by its Order dated 6th December, 1991 in para 6(1) as under: -

"Without prejudice to legal rights and contents of the parties, the concerned workmen who are members of Petitioner No. 1 shall be at liberty to file declaration with Respondent No. 1 accepting all the obligations under the settlement dated 27.11.89. Thereupon the Respondent No. 1 do pay increased wages and award all other benefits to the concerned members of the petitioner on par with the workmen members of Respondent No. 2 prospectively from the date of declaration."

Unfortunately, however, the pleadings on record show that the above directions could not be worked out and both the sides have their respective version which is the reason why the direction contained in para 6(1) of Dhanuka J's order could not be worked out. However, it is not necessary for me to go into the details.

6. Shri Gokhale has invited my attention to the statements made by Shri Bhimrao Gulwale on behalf of the 2nd Petitioner in para 8 of his Rejoinder. The said statements are accepted.

7. In a similar situation Shrikrishana, J., in Writ Petition No. 3911 of 1991 passed an order directing the employer to give benefits of the settlement to the Petitioner Union without seeking a declaration or undertaking. The learned Judge had further directed that the question as to whether the member of the Petitioner Union should be subjected to the obligation arising under the settlement was to be expressly determined by the Industrial Court upon final hearing of the pending reference and depending upon its finding, the Industrial Court was to make appropriate orders in that behalf.

8. The said order passed by Shrikrishna, J., on 9th September 1991 in Writ

Petition No. 3911 of 1991 was challenged in Appeal to the Supreme Court in SLP (Civil) No. 15863 of 1991. The said Social Leave Petition was disposed of on 24th October 1991 in the following words:-

"The SLP is against an interlocutory order. The High Court has given sufficient direction to the Industrial Court to dispose of the dispute. We are of the view that justice to the matter can be appropriately done if there is a direction to the Industrial Court to dispose of the matter within four months from today. The SLP is dismissed.""

9. Mrs. Doshi for the petitioners, however, contends that the present settlement which was arrived at on the 17th November 1989 is valid only till 31st March 1992.

10. In view of the above, in my opinion, interests of justice would be met if in the present case, the following directions are given:-

(A) Respondent No. 1 Company shall extend the benefits under the settlement dated 17th November 1989 between itself and the Respondent No. 2 Union to the members of the Petitioner Union without seeking any declaration undertaking. The question as to whether the members of the Petitioner Union should be subjected to the obligation arising under the said settlement dated 17th November 1980 shall be expressly determined by the Industrial Court upon final hearing of the pending reference and depending upon its finding, the Industrial Court shall pass appropriate orders in this behalf.

(B) The petitioners claim payment of differential amount with retrospective effect and seek direction for payment of arrears so as to ensure equal treatment with the concerned employees who are members of the 2nd Respondent Union. This question has, however, to be kept open to be decided in the pending reference.

11. It is made clear that all the contentions of the parties are kept open. Having regard to the fact that the present settlement is to be effective till 31st March 1992, the Industrial Court is directed to dispose of the reference by 31st March 1992. Liberty to the parties to apply.

12. Accordingly, Rule is made absolute with no order as to costs.