

(1995) 04 BOM CK 0032
In the Bombay High Court
Case No : Writ Petition No. 903 of 1989

Gopinath Govind Panchal

APPELLANT

Vs

Hes Ltd. and Others

RESPONDENT

Date of Decision : 24-04-1995

Acts Referred:

Industrial Disputes Act, 1947 — Section 18(1), 2(p), 33C(2)

Citation : (1996) 3 LLJ 682

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

Bench : Single Bench

Judgement

1. This Writ Petition under Article 227 of the Constitution of India impugns an order of the 9th Labour Court, Bombay, dated October 29, 1987 made in Application (IDA) No. 1127 of 1984 under the provisions of Section 33C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act").

2. The petitioner was working for about 25 years as a Dye Maker in Highly Skilled Category in the service of the First Respondent which manufactures watches, alarm clocks and other horological equipments. The workmen of the First Respondent establishment were formerly represented by a trade union known as "Mumbai Mazdoor Sabha." In the year 1979, however, another Trade Union, "Association of Engineering Workers", came on the scene and a settlement u/s 18(1) read with Section 2(p) of the Act came to be signed between the First Respondent and the Association of Engineering Workers on September 29, 1979. This settlement was made effective from July 1, 1979. Under this settlement the conditions of service of the workmen regarding Dearness Allowance, House Rent Allowance, Education Allowance, Leave Travel Allowance, Medical Reimbursement, Lunch Allowance etc. were substantially revised. There was provision made in the settlement for permanency of workmen and payment of bonus. Clause (II) of settlement lays down detailed provision as to production norms in different Departments. By clause (12) it was agreed that the rise given in wages and other allowances was subject to the condition that the workmen

and the Union agreed to maintain the production norms as specified in the Annexure "A" to "F" to the settlement. Sub-clause (3) of clause (12) provides :

"That this settlement will be binding on those workmen who unconditionally agreed and abide, by the terms and conditions of this settlement after signing individual undertakings. The benefits would be given to such workmen only. No acceptance of this settlement under protest will be allowed under any circumstances."

The settlement contained an Annexure of the Pro-Forma Undertaking to be given by the workmen. In the year 1981, the Association of Engineering Workers became the recognised Trade Union of the employees in the First Respondent establishment by an order dated March 2, 1981 made by the Industrial Court, Bombay.

3. On August 20, 1983, the Association of Engineering Workers, as recognised union, signed a fresh settlement with the First Respondent in which there was, further revision of the various conditions of service, monetary as well as non-monetary. This settlement was made operative for a period of three years from January 1, 1983 to December 31, 1985. Even this settlement contained a clause that the benefits with effect from January 1, 1983 due to revision of wage rise, Dearness Allowance, House Rent Allowance, Leave Travel Allowance, Education Allowance, Milk Allowance, Local Conveyance Allowance were linked to and production would be available only "to those workmen who agree to abide by the terms and conditions of this settlement and execute an individual undertaking as per Annexure "H" to this settlement." The rest of the benefits were to be available to all workmen. A further clause in the settlement provided :

"It is hereby expressly agreed between the parties that those workmen who did not execute the undertaking as per settlement dated September 22, 1979 and who now wish to avail of the benefits of this settlement by executing the undertaking under this settlement will not be entitled to claim any benefits of the settlement dated September 22, 1979 as they have not given the production as per the norms stipulated in the settlement dated September 22, 1979 and upon executing the undertaking under this settlement, they will be entitled to get the benefits of this settlement with effect from January 1, 1983 only."

4. The petitioner had not given any written undertaking as required under the 1979 settlement or the 1983 settlement. He was not given the monetary benefits flowing from both settlements. The petitioner applied to the Labour Court, Bombay, by his Application (IDA) No. 1127 of 1984 claiming different amounts totalling to Rs. 31,760/- (Rupees Thirty One Thousand Seven Hundred Sixty only) allegedly payable to him under both settlements as difference payable to him by the First Respondent. The application of the petitioner was dismissed by the impugned order in which the Labour Court has taken the view that the petitioner was not a party to the settlement of 1983, because the settlement had not been signed in conciliation proceeding and, therefore, not binding on all the

workmen. It has further taken a view that, in any event, the petitioner having not given the written undertaking, either under 1979 settlement or 1983 settlement, he was not entitled to any benefits thereunder. Being aggrieved, the petitioner is before this Court by the present Writ Petition.

5. Apart from 1979 and 1983 settlements in which the general conditions of service were revised, there was another settlement dated January 12, 1982 in which the bonus claim for the year 1980 was settled as 8.33 per cent and the workmen were granted additional amount of Rs. 400/- as ex-gratia payment. This settlement also contained a clause that the ex-gratia amount of Rs. 400/- would be given only to such workmen who had given production according to the norms as prescribed under the settlement of 1979. Another settlement which needs to be noticed is the settlement dated August 20, 1983, in which the bonus demand for the accounting year 1981 was settled. This settlement also contained an identically worded restrictive condition. A section of workmen having not given the written undertakings, 68 workmen were not given the bonus payable under the settlement dated October 30, 1982. The workmen filed Complaint (ULP) No. 68 of 1983 before the Industrial Court, Bombay alleging unfair Labour Practice under Items 2, 3 and 4 of Schedule II and items 5 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. After a lengthy trial and an elaborate judgment, the Industrial Court, by order dated November 23, 1987, held that the complainant-workmen had actually given production according to norms prescribed in the settlement dated September 22, 1979, and further, that a large number of workmen who were still in service had given written undertakings before the Court on April 23, 1984. In view of the said fact, the Industrial Court held that all the complainants before it had fulfilled requirement of the settlement dated October 30, 1982 and consequently entitled to bonus. It directed that they were entitled to bonus. It directed that they were entitled to bonus for the year 1981 payable under the settlement of October 30, 1982. Though the petitioner was also a complainant before the Industrial Court in Complaint (ULP) No. 68 of 1983, he had retired during the pendency of the complaint some time in May, 1985. As a matter of fact, the written undertakings of all the complainants were filed before the Industrial Court some time in April, 1987, by which time the petitioner was retired. Hence, no undertaking of the petitioner was given or placed before the Industrial Court in Complaint (ULP) No. 68 of 1983. The other finding made by the Industrial Court in its order dated November 23, 1987 regarding the concerned workmen having given production according to norms, was equally applicable to the case of the petitioner.

6. In these circumstances, the question for consideration is whether the Labour Court was justified in rejecting the claim of the petitioner only on the ground that he had failed to give a written undertaking. In my view, that would amount to emphasising the form, to detriment of the Spirit of the settlement dated September 22, 1979. The spirit of the settlement was that, as higher production was prescribed, the monetary benefits under the settlement would be made

available only to such workmen who contributed to the prosperity of the company by increasing the production and bringing it upto the norms stipulated in the September 22, 1979 settlement. The same spirit governs the bonus settlements of January 12, 1982 and October 30, 1982, as well as the settlement of August 22, 1983.

7. It is true that in all the concerned settlements there was emphasis on the workmen giving production in accordance with norms as well as on execution of a written undertaking. The fact that the petitioner and other workmen did give production, not only in accordance with the norms stipulated under the 1979 settlement, but even higher, is now beyond the pale of controversy, in view of the order of the Industrial Court dated November 23, 1987 rendered in Complaint (ULP) No. 68 of 1983, to which the petitioner and the First Respondent were parties. The first finding recorded by the Industrial Court is equally binding on the First Respondent. The only question which requires consideration is, whether, in the absence of the written undertaking, it can be held that the petitioner had failed to fulfill the condition precedent in the concerned settlements. In my view, insisting upon an undertaking in writing by the workman and depriving him of the benefit of the settlements for mere failure to give written undertaking though he had given production according to norms, would be harsh and unjust. It is a fortuitous circumstance that he was not in service in April, 1987, when all other complainants in Complaint (ULP) No. 68 of 1983 gave the undertakings before the Industrial Court and thus complied with the letter of the law. In my judgment, it would not be fair and just to deprive the petitioner workman of the benefits, merely because of the technicality that he had failed to give the undertaking in writing, since he had substantially complied with the requirements of giving higher production.

8. There is no dispute with regard to the amount claimed by the petitioner as the impugned order does not show that any such dispute was raised, the dispute being confined, to petitioner's entitlement to the claim.

9. In the result, the writ petition is allowed. The impugned order of the Labour Court dated October 29, 1987 made in Application (IDA) No. 1127 of 1984 is quashed and set aside. It is held that the petitioner is entitled to a sum of Rs. 31,760/- (Rupees Thirty One Thousand Seven Hundred Sixty only) from the First Respondent, as claimed in the Application. The First Respondent is directed to pay the aforesaid sum of Rs. 31,760/- (Rupees Thirty One Thousand Seven Hundred Sixty only) to the petitioner within ten weeks from today, failing which the amount payable shall carry simple interest at the rate of 12 per cent per annum from the expiry of ten weeks from today, apart from other legal consequences.

10. Rule accordingly made absolute with no order as to costs.

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