

(2004) 02 JH CK 0045

In the Jharkhand High Court

Case No : CWJC No's. 2314 of 1994 (R) and 3399 of 1996 (R)

Heavy Engineering Corporation Limited

APPELLANT

Vs

Industrial Tribunal and Others

RESPONDENT

Date of Decision : 09-02-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 2 LLJ 1031 : (2004) 2 JCR 551

Hon'ble Judges : P.K. Balasubramanyan, C.J.; Amareshwar Sahay, J

Bench : Division Bench

Advocate : Deepak Kumar Bharati and S.K. Sinha, for the Appellant; S.N. Das and S.N. Sharma and Rita Kumari, JC to GP-II, for the Respondent

Final Decision : Allowed

Judgement

1. Both these writ petitions are by the Heavy Engineering Corporation Limited, the employer. The Employer feels aggrieved by the awards marked Annexure-1 in the two writ petitions. The two awards relate to some workmen similarly situated. The workmen were drillers. In the first case, the question that was referred to the Tribunal was whether the drillers named therein were entitled to promotion and if so, since which date and in what scale of pay. In the second case, the question referred was whether the drillers referred to therein have been superseded in promotion and if so what relief they were entitled to and since when. The Industrial Tribunal passed separate awards in the two cases. In the first case, on going through the award, prima facie, it is seen that the relevant legal aspects that were placed for consideration were ignored and have not even been considered by the Tribunal and in the second award no precise relief has been granted even though an award has been passed upholding the claim of the workmen.

2. During the pendency of the references, a settlement was arrived at by the management with Hatia Project Workers Union, a recognised union in the industry. There is no dispute that the said settlement was communicated to the

Labour Commissioner as contemplated and that it was implemented by the employer. The disputes were raised on behalf of the workmen concerned, essentially on the basis that they were not members of the Hatia Project Workers' Union and they were not bound by the settlement even though it was conceded that they had taken the benefits of that settlement. It was the case of the workmen that they can raise the dispute and pursue their claim notwithstanding the settlement. In the first case, the Tribunal merely stated the workmen had a case that they were not members of the concerned union and were not parties to the settlement and in view of that, the reference had to be answered independent of that settlement even though it was recognised that they had received that benefit of the settlement and a direction was issued that the benefits received should be taken note of while granting them benefits of the award. In the second of the cases, the case of the workmen that they had consented to the said settlement and that there was no quarrel with that settlement, though was noticed, its legal effect was lost sight of. We shall deal with these aspects at a subsequent stage.

3. Meanwhile, there was a proceeding initiated u/s 15(2) of the Payment of Wages Act at the instance of the drillers in the industry. The claim of the workmen was upheld rejecting the contentions of the management. Miscellaneous Appeals 28 to 31 of 1972 were filed before the Judicial Commissioner, Ranchi. While those appeals were pending the disputes were settled and an order based on a compromise was passed. The agreed scale and arrears were paid on the basis of that compromise. As per that compromise, the drillers were placed in the wasting cadre. The drillers again approached the authority under the Payment of Wages Act u/s 15(2) thereof. Their claim as allowed overruling the objections of the management. An appeal filed by the management was also dismissed. The management challenged the decision in CWJC Nos. 770 to 775 of 1980 before the Patna High Court. The Patna High Court noticed that the authorities had ignored the position that the drillers concerned were not promoted to the scale of Rs. 279-550/-. That was their claim and since they were not so promoted the order passed by the authority u/s 15 of the Act was illegal and without jurisdiction and it was liable to be quashed. Thus, an order passed u/s 15 of the Act was quashed. Though these judgments of the Patna High Court were challenged before the Supreme Court in petitions for Special Leave to appeal, we are now informed by counsel for the management that the said petitions for Special Leave have been dismissed.

4. In the first of these awards, the Tribunal took note of the decision of the Patna High Court. It simply brushed it side saying that some of the workmen before it were not parties to that writ. It did not consider the effect of the findings of the Patna High Court, while had general application that the drillers were not promoted to the scale of 259-519, the basis of the claim of the drillers including the workman involved in this industrial dispute. In the second case also the Tribunal proceeded on the basis that the workmen were not eonominees parties to the judgment of the Patna High Court and hence effect of the same could be

ignored by the Tribunal.

5. On going through the awards passed, what we find is that the Tribunal has not properly considered the effect of the earlier adjudication by the Patna High Court and also the effect of the settlement arrived at on 27.07.1990, though not during a conciliation proceeding, but which had been accepted by the drillers in general who had derived benefits thereunder. In the second of the cases, the Tribunal does not understand the effect of the clear admission that the settlement was arrived at with the consent of the concerned workmen and its own finding that the settlement was with consent. When a settlement is accepted and the benefits thereunder received, the question always would be whether the party can resile from that settlement even though it was not arrived during the course of a conciliation, but it was arrived at with the consent of the concerned workmen. In our view, the Tribunal was clearly in error in ignoring the settlement with the workmen. In the second of these cases, WW 1 has very clearly stated in paragraph 14 of his deposition that he had produced the settlement before the Industrial Tribunal, that it was between the management and the Hatia Project Workers' Union and that the settlement was arrived at with their consent also and that of WW 2 in paragraph 10 to the effect that he had no objection, to the terms of that settlement. Thus, in the second of the cases where the evidence clearly disclosed that the compromise was entered into with the consent of the workmen who claim to be members of a smaller unrecognised union and they were seeking to get out of the settlement arrived at the instance of recognised union regarding drillers employed in the industry. The Tribunal itself had noticed in paragraph 29 of its award that the settlement was arrived at with the consent of the concerned workmen. In the light of that finding and in the light of evidence indicated by us above, it was clearly a case where the Tribunal ought to have held that the workmen were bound by the settlement and were entitled to the reliefs only on the basis of that settlement.

6. As far as the first award is concerned, it is also seen that the workmen involved therein had challenged decision of the Patna High Court rendered in CWJC Nos. 770 to 775 of 1980 in the Supreme Court and were thus clearly bound by that decision. Even apart from that, the fact that the settlement was arrived at with the consent of the drillers in general, stands established by the other evidence available in the case. In this situation we think that the Tribunal should have held in the first reference that the workmen involved were not entitled to relief. This is in addition to the fact that settlement dated 27.02.1990 was binding on them since they had accepted that settlement and had derived benefits thereunder as has been noticed by the Tribunal itself.

7. It is argued on behalf of the workmen by their learned counsel that the jurisdiction of this Court under Article 226 of the Constitution of India is limited and this Court is not supposed to sit in appeal over the decision of the Industrial Tribunal. But, when an Industrial Tribunal ignores the legal effect of a prior adjudication and a settlement arrived and in spite of rendering of findings in that

behalf, ignores the effect of that finding and proceeds to pass an award, it has necessarily to be held that the Tribunal has committed an error apparent on the face of the record justifying interference by this Court. Moreover, when the Tribunal proceeds to pass an award ignoring its own findings or the legal effect of a prior adjudication of the High Court, it must also be held that the Tribunal has acted outside its jurisdiction in proceeding to pass an award. Similarly, the failure to understand the legal effect of a settlement arrived also vitiates the award of the Tribunal justifying interference by this Court under Article 226 of the Constitution of India. Thus, on the facts of these cases we have no difficulty in overruling the contention of the learned counsel for the respondents that no ground for interference under Article 226 of the Constitution of India has been made out.

8. What is seen is that there was a claim by drillers for promotion and for fitting them in a particular scale of pay. There was even an agitation launched including a fast unto death undertaken by some workmen. This led to the matter being taken up by the recognised union with the management. On the evidence, it is clear that with the consent of all the drillers including those who were not members of the recognised union, a settlement was arrived at between the management and the union and the same was communicated to the Labour Commissioner, promptly, as contemplated by the Industrial Disputes Act. The management acted on the basis of that settlement and made available the benefits thereunder to the drillers in general irrespective of whether he was a member of the particular recognised union or not. The workmen as a whole accepted these benefits. In our view though the said settlement is not one which was arrived at during the course of a conciliation, it was certainly a settlement that was arrived at to put an end to the claims in that behalf raised by the drillers and bonafide and to bring industrial peace. It was also implemented. Such a settlement would be binding on all the drillers employed in the industry. This aspect has been completely lost sight of by the Industrial Tribunal.

9. Since we have found that the settlement is binding on all the drillers including the workmen involved in this reference, we find that it is unnecessary to send back this proceeding to the Tribunal for a fresh decision. We, therefore, allow these writ petitions and quash the awards passed by the Industrial Tribunal. We hold that the workmen involved are not entitled to any reliefs as claimed by them. We make no order as to costs.