

(2004) 02 AHC CK 0178
In the Allahabad High Court
Case No : C.M.W.P. No. 17909 of 1987

Hindustan Aeronautics Ltd.	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 24-02-2004

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 4K

Citation : (2004) 2 AWC 1441 : (2004) 101 FLR 823 : (2004) 2 UPLBEC 1261

Hon'ble Judges : D.P. Singh, J

Bench : Single Bench

Advocate : Bharati Sapru and Sudhir Chandra, for the Appellant; J.P. Pandey, Arun Kumar, V.S. Singh and V.S. Saxena and S.C., for the Respondent

Final Decision : Dismissed

Judgement

D.P. Singh, J.—Heard learned counsel for the parties at length.

2. This petition is directed against an order of the Industrial Tribunal dated 27.2.1998 by which it has recorded a finding that a settlement dated 5.4.1975 was reached outside conciliation proceedings.

3. Brief facts for decision of this petition are that in 1969, 110 workers were promoted as fitters grade "A". Subsequently another batch of 218 fitters were also promoted as fitters grade "A". It appears that pay revision became effective from 1.10.1973 and thus the second batch of fitters approached the management for determination of their promotion in order to get the benefit of their pay revision in the original cadre of fitters grade "B". This demand was accepted by the management on the basis of a settlement dated 5.4.1975 whereby the date of promotion of these 218 workmen was deferred to 1.10.1973 conferring the benefits of wage revision. The result was that even though the first batch of 110 workers who were though promoted in 1969 were put to a disadvantage in that they began drawing lesser wages than the latter batch of fitters. The Union took up this matter since no amicable settlement could be

reached, upon a failure report the matter was referred u/s 4K of the U. P. Industrial Disputes Act which was registered as adjudication case No. 260 of 1982 where the following reference was made :

"Kya sewayojakon dwara parishist men ullakhit 110 karmchari jo fitter grade "A" ke pad par karyarat hain unka vetan unse junior grade "A" ke karmchari ke saman na kiya jana uchit tatha vaidhanik hai. Yadi nahtn to sambandhit sharamik vikas labh/anutosh (Relief) pane ke adhikari hain. Evam kis anya vivran sahit?"

4. After exchange of pleadings an award was rendered on 9.6.1987 holding that the first batch of 110 workmen who were promoted in 1969 were entitled to the same and equal pay as that which was being given to the 218 worker. This award was subjected to a challenge in the present petition which was allowed vide order and judgment dated 23.10.1989 holding that in view of the settlement dated 5.4.1975, which was entered between the management and the Union and which was never challenged by the first batch of workmen, no reference u/s 4K could have been made. The workmen preferred a SLP before the Apex Court which after hearing the parties vide its order dated 18.10.1995 was of the opinion that if the settlement was reached outside conciliation, it would not bind them and the reference, therefore, would be valid. As, from the record, it was not clear as to whether the settlement was reached during conciliation it remitted this issue to the Tribunal to be decided after giving both the parties opportunity to adduce their evidence on the said issue. The Tribunal vide its order dated 27.2.1998 came to the conclusion that the said settlement was outside conciliation proceedings and remitted the findings to the Apex Court. The Apex Court vide its order dated 15.5.1998 set aside the judgment of this Court dated 23.10.1989 and remanded the matter to this Court to decide this writ petition afresh, in the light of the order of the Tribunal.

5. This is how the writ petition has to be decided yet again.

6. At the very threshold the counsel for the workmen has contended that a joint reading of the two orders of the Apex Court dated 18.10.1995 and 15.5.1998 would show that there was no scope of any interference in this petition as the only consequence of the two order was that the settlement would not bind the workmen, and as such this petition should be rejected. However, the learned counsel for the petitioner has urged that at no point of time she was given any opportunity by the Apex Court to challenge the validity of the findings of the Tribunal dated 27.2.1998 and as such this is the first opportunity where she can challenge it.

7. The Apex Court, though in its order dated 18.10.1995 had opined that if the agreement was in the course of conciliation, it could be binding on the parties and in which case the award had to be quashed, as it was done by this Court by its earlier judgment dated 23.10.1989. The order of the Tribunal dated 27.2.1998 was placed before the Apex Court but the Apex Court instead of allowing the appeal, remanded the matter to this Court to be decided in the light of the

findings of the Tribunal. If the Apex Court had been satisfied that the validity or if the petitioner had failed to satisfy the Apex Court in regard to the validity of the findings of the Tribunal, there was no occasion for the Apex Court to have remitted the matter to this Court because there could have been no difficulty in passing the order itself. To me, it appears that the only reason why this matter has been remitted to this Court in spite of the findings of the Tribunal is that the validity of the findings of the Tribunal should be tested. Thus, in my opinion, the counsel for the petitioner is right in her contention that this Court should permit her to adduce arguments to challenge the correctness of the finding of the Tribunal. She had earlier filed an amendment application to the aforesaid effect which has been allowed by me today. Counter and rejoinder-affidavits to the amendment have already been exchanged between the parties, and I have heard them at length in relation to the correctness of the order of the Tribunal dated 27.2.1998.

8. The learned counsel for the petitioner has firstly urged that the Apex Court had allowed the parties to adduce evidence before it and in pursuance thereof an application dated 14.8.1997 was moved by the petitioners before the Tribunal for placing on record certain documents in order to prove their case, but the Tribunal has committed an error of law which is apparent on the face of record by rejecting the said application by a cryptic order dated 26.8.1997.

9. Before proceeding to examine this argument of the learned counsel for the petitioner, it would be useful to note the procedure which is followed by the Conciliation Officer under the Act and Rules.

10. The procedure for remitting the dispute for conciliation is provided under the Rules, Once a dispute arises between a substantial number of workers and the management and they do not come to terms, any of the party can refer it to the concerned Conciliation Officer. The crux of the said dispute is then entered in the records of the Conciliation Officer and his office accords a unique number to the dispute for its identification. Thereafter, the Conciliation Officer issues notices to the parties fixing a date to elicit their reaction to the dispute. The parties on notice, may appear before the Conciliation Officer or he may refer it to a Conciliation Board, where they file their replies and the minutes of the proceedings are recorded. The Officer or the Board, as the case may be makes efforts to settle the dispute and if the parties come to terms in this process, the settlement is duly recorded and registered. It is not necessary that even in such a case the settlement reached between the parties has to be accepted by the Conciliation Officer because the Conciliation Officer or the Board has to keep in mind that the settlement should be just and fair to all workmen. If no settlement is reached, the Officer or the Board has to submit a failure report to the Government for exercise of its power u/s 4K of the Act.

11. On the filing of the application dated 14.8.1997 by the petitioner, the Tribunal invited objection from the workmen and after hearing the parties vide order dated 26.8.1997 had rejected the prayer "at this stage" and directed the parties

to adduce evidence on the issue. There is nothing on record to show that at any stage the petitioner disclosed the relevancy of the document sought to be produced as the workers had objected that the documents were only being filed to delay the matter. The Tribunal has given some reasons for the rejection. On the insistence of the learned counsel for the petitioner, this Court granted her opportunity to demonstrate the relevance of the documents for the decision of the issue. Learned counsel for the petitioner has referred to the documents which have been placed on the record. The document dated 4.4.1975 is a letter of the management to the union submitting a draft memorandum of settlement and requesting it to supply the names of the representative who would sign the agreement. The document dated 15.4.1975 is a letter of the Union seeking clarification with regard to the interpretation of para 7 of the settlement. Document dated 29th April, 1975 is the reply of the aforesaid letter by the management regarding the anomaly in pay and seniority between the workmen. Document dated 5.5.1975 also speaks about the anomaly and the clarification of the settlement. From the documents which have been placed it appears that a doubt had arisen even before the execution of the settlement, but none of these documents prove that the settlement was being entered in the course of conciliation proceedings before the concerned authority. In my opinion, these documents lend credence to the case of the workmen that the settlement was entered wholly outside conciliation as in none of the documents there is any reference to the Conciliation proceedings. In my view, the documents which have been placed before me had no relevance in supporting the case of the petitioner, to the contrary they, to an extent, prove the stand of the workmen that the settlement was reached without any reference to the Conciliation Officer. Therefore, the Tribunal was not in error in rejecting the application of the petitioner.

12. In view of the discussions hereinabove, the first argument of the learned counsel for the petitioner lacks merit and deserves to be rejected.

13. The second submission of the learned counsel for the petitioner is that there was an interpolation of a word, "nahin" in the statement of the workers" witness Sri C. H. Katoch. It is submitted by this interpolation, the alleged admission of the workers" witness has been changed to that of denial. This submission can be examined after reading the statement of the witness in its entirety. If the entire deposition of the witness is read as a whole, it would be evident that he has denied that the settlement was ever reached during Conciliation proceedings. Without severing the sentence from the entire deposition, it is apparent that there was some mistake while recording the evidence. It is settled law that a statement has to be read as a whole without tearing out one sentence from the context. In my opinion, even if there was some addition of the words, it cannot be said that there was some interpolation, especially so when the entire statement is read as a whole. Therefore, in my opinion, this submission of the learned counsel for the petitioner also does not have any force.

14. The counsel for the petitioner has further urged that the settlement had been registered u/s 4F read with Rule 15 and as such it should be presumed that settlement was in the course of Conciliation proceedings. Under law, all settlements between the workers and the management are required to be registered for it to be enforced, but there is no such provision of law that once a settlement is registered, it would necessarily lead to the assumption that it was reached during the course of conciliation. Thus, this argument also is bound to be rejected.

15. In the end, a feeble attempt was made to urge that the findings by the Tribunal are perverse. I have been taken through the order of the Tribunal but the learned counsel for the petitioner has failed to point out any perversity. The order deals with all the relevant aspect of the cause and it has considered all the evidence and argument raised by the parties and the order is a reasoned one which is based on findings of fact. The findings do not appear to be perverse or which no reasonable person could have been arrived at one the facts placed before it. Thus, this argument of the learned counsel for the petitioner also fails.

16. There is another aspect to the dispute between the parties. Equity is heavily against the petitioner. The first set of workmen were promoted as fitter grade "A" in 1969 and by the settlement dated 5.4.1975 the second set of workmen who were promoted in August and September, 1973 have stolen a march over their seniors and are receiving higher wages though they were atleast four years junior to them. There is nothing on record to show that the interest of the first batch of 110 workers was ever taken into account before reaching the settlement. For these reasons also, the present case is not a fit case for exercise of discretion under Article 226 of the Constitution of India.

17. No other argument has been raised by either of the parties.

18. In view of the discussions hereinabove, this petition fails and is dismissed but without any costs. The interim orders discharged.