
(1989) 10 AHC CK 0051

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 17909 of 1987

Hindustan Aeronautics Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-10-1989

Acts Referred:

Industrial Disputes (Central) Rules, 1957 — Rule 5(1)
Uttar Pradesh Industrial Disputes Act, 1947 — Section 4F, 4K
Industrial Disputes (Central) Rules, 1957 — Rule 5(1)
Uttar Pradesh Industrial Disputes Act, 1947 — Section 4F, 4K
Industrial Disputes (Central) Rules, 1957 — Rule 5(1)
Uttar Pradesh Industrial Disputes Act, 1947 — Section 4F, 4K

Citation : (1990) 60 FLR 134 : (1992) 1 LLJ 172 : (1990) 1 UPLBEC 13

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

Bench : Single Bench

Advocate : Bharati Sapru and Sudhir Chandra, for the Appellant; S.N. Misra, for the Respondent

Final Decision : Allowed

Judgement

M.P. Singh, J.—This writ petition is directed against an award of the Industrial Tribunal III, Kanpur dated April 24, 1987, published on June 9, 1987.

2. The petitioner is a company incorporated under the Indian Companies Act, 1956 having its registered office at Bangalore. The petitioner has seven units in the country. The dispute relates to the Kanpur unit in which there are about 3,500 workmen.

3. The respondent No. 3 is a registered Union espousing the cause of the workmen and looking after their welfare.

4. The entire controversy hinges on the interpretation of the settlement which was entered into between the respondent No.3 and the petitioner on April 5, 1975. The question further is whether the present proceeding u/s 4-K of the U.P. Industrial Disputes Act, 1947 (hereinafter referred to as the Act) is valid or is

barred on account of that settlement.

5. Now let us examine the settlement of 1975 and its effect.

6. In the year 1969, 110 workmen were promoted as Fitter, Grade "A". Subsequently in August/September, 1973, 218 other workmen of the company were similarly promoted as Fitter, Grade A. These subsequently promoted 218 Fitter Grade A got their dates of promotion shifted to October 1, 1973 under the said settlement dated April 5, 1975.

7. The relevant paragraphs of the said settlement dated April 5, 1975 are being quoted below:-

"1. The effective dates of promotion of employees in Group "D" and below promoted during August and September 1973 to their next higher grades will stand amended from their original dates to October 1, 1973 in respect of these employees who so desire.

2. This amendment in the promotion dates of these employees is being considered in the wake of wage revision made in 1973 and there is no question to amend the promotion dates of any other employee other than those promoted during August and September 1973.

3. to 6.....

7. No anomalies in pay or seniority arising out of such changes will be entertained and no relief on this account will be admissible.

8. This settlement is confined to the case of promotions mentioned in the recital and will not be treated as a precedent for any other promotion made before or after the settlement."

8. The effect of this settlement has been that first day of October of every year happened to be the date of their annual increment. The shifting of the date of their promotion benefitted the said 218 Fitters by enabling them to get advantage of the new scale of pay after promotion after getting one increment in their pre-promotion scale on the due date i.e. on October 1, 1973. In this manner their pay became higher to 110 workmen promoted in the year 1969.

9. While entering into this settlement, the respondent No.3 knew it well that this settlement was going to affect the said 110 workmen. Keeping this in view the respondent No. 3 agreed in Paragraph 7 of the settlement that no anomalies in pay or seniority arising out of such changes will be entertained and no relief on this count will be admissible. Now the question is that so long this registered settlement stands, is it open to the respondent No.3 to raise an industrial dispute to the effect that the pay of 110 workmen may be brought at par with those 218 workmen subsequently promoted Fitters with effect from October 1,1973.

10. The said settlement was entered into between the parties u/s 4-F of the Act and Rule 5(1) of the Rules framed thereunder.

11. On account of the present dispute a reference was made u/s 4-K of the Act. The exact order of reference is as under:

^^D;k lsok;kstdks }kjk ifjf"k"V esa mfYyf[kr 110 deZpkjh tks fQVj xzsM ^^,** ds in ij dk;Zjr gS dk osru muls twfu;j fQVj xzsM ^^,** ds deZpkfj;ksa ds leku u fd;k tkuk mfpr rFkk@vFkok oS/kkfud gS \\ ;fn ugh] rks lEcU/kr Jfed fdl ykHk@vuqrks"k ?fjyhQ? ikus ds vf/kdkjh gSa] ,oa fdl vU; fooj.k lfgr **

12. The petitioner company challenged the claim on the ground that whatsoever disparity between the pay of the aforesaid two categories of Fitters Grade "D" i.e. the Fitters promoted on October 1, 1973 and those prompted prior to that date cannot now be reopened inasmuch as the matter stands settled between the parties in terms of the settlement dated April 5, 1975. After the said settlement no industrial dispute exists and the subsequent reference u/s 4-K also becomes bad. The Industrial Tribunal has no jurisdiction to adjudicate upon the reference.

13. After the settlement the respondent No. 3 1 is bound by the terms and conditions. It cannot be permitted to raise this dispute on behalf of the present workmen concerned.

14. The issue framed by the Industrial Tribunal was:-

"Thus the matter in dispute stands settled by an agreement dated April 5, 1975 and no industrial dispute exists now."

15. The Tribunal while deciding this issue held that the present dispute cannot be held to 2 be settled by the agreement dated April 5, 1975. In fact the agreement does not bear the dispute to be raised either by the workmen concerned or by their Union. The dispute was consequently an industrial dispute. The reference order was, therefore, not bad. It further directed the petitioner to give 110 workmen concerned pay equal to the pay of their 218 juniors with effect from October 1, 1973 within one month from the date of publication of the award. This order is the subject of challenge in the present writ petition.

16. Heard Sri. Sudhir Chandra, learned counsel for the petitioner and Sri. S.N. Misra, learned counsel for the respondent No.3. ;

17. After hearing learned counsel for the parties I am satisfied that the reference is bad in view of Paragraph 7 of the settlement dated April 5, 1975 which was entered into between the petitioner and the respondent No.3 for the following reason.

18. Firstly, the said settlement took place between the petitioner and the respondent No. 3 knowing it fully well that on account of that settlement, in future there may arise some anomaly with regard to other workmen. It cannot be said that this question was not in the mind of the parties entering into such an agreement. With this view in end it was clearly agreed in Paragraph 7 that no anomaly in pay or seniority arising out of such changes will be entertained and

no relief on this count will be admissible. If a literal interpretation is given to this paragraph, it bars the present reference u/s 4-K of the Act. In case if the present reference is allowed to proceed that leads to deletion of this Paragraph 7 from the said settlement which cannot be done. It is also admitted that this settlement was not challenged at any point of time after 1975. The settlement was entered into by this very respondent No. 3 which is spousing the cause of 110 workmen.

19. Secondly, the Union while entering into the said settlement was fully conscious of the fact that it was representing the interest of the entire body of workers, including the present 110 workmen. It may be true that exact dispute of these 110 workmen were not directly considered but impliedly it was agreed that no workmen will ever raise any dispute about the anomalies in the pay or seniority arising out of such a settlement and no relief on this count will be admissible. The workmen are bound by the agreement entered into between the petitioner and the respondent No.3.

20. In the case of *Herbertsons Ltd. v. Workmen of Herbertsons Ltd.*, reported in AIR 1977 SC. 322 the Supreme Court while considering the question of settlement between the employer and the Union, held (Paras 18 & 27):

"When a recognised Union negotiates with an employer, the workers as individuals do not come into picture. It is not necessary that each individual worker should know the implication of the settlement since a recognised union which is expected to protect the legitimate interest of labour, enters into a settlement in the best interests of labour. This would be a normal rule. There may be exceptional cases where there may be allegation of mala fides, fraud or even corruption or other inducement but in the absence of such an allegation a settlement in the course of collective bargaining is entitled to due weight and consideration."

"It is not possible to scan the settlement in bits and pieces and hold some part good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantage gained, the Court will be slow to hold a settlement as unfair and unjust. The settlement has to be accepted or rejected as a whole."

21. Relying upon this decision of the Supreme Court the correctness of the award can be tested. There is no dispute that respondent No.3 is a registered union which had been protecting the legitimate interest of the workmen. It has a right to enter into any agreement. In the instant case there is no averment by these 110 workmen that the said settlement was entered into by the Union on account of some fraud, corruption or some other inducement from the employer. Impliedly it has been admitted by them that the Union had entered into that settlement in the best interest of the labour.

22. Thirdly, I have looked into the statement of Sri. C.P. Shukla (E.W. 1). Even if it is admitted that he made statement that the service rules of the company do not provide for deferment of promotion for more than a month, it does not take

away the legal effect of clause 7 of that settlement entered into between the parties.

23. Fourthly, nothing has been shown to me that there was any legal bar for entering into the said agreement in respect of deferment of promotion to 218 Fitters promoted in August/September, 1973 to the detriment or prejudice of any other employee of the company. These workmen are supposed to have known about the existence of that settlement. If they were aggrieved, they could have challenged the same in a regular proceeding. The respondent No.3 even if wanted, it could not take any steps contrary to that settlement.

24. Fifthly, the respondent No.3 is estopped now from spousing the cause of those 110 workmen so long the settlement dated April 5, 1975 is not set aside.

25. In the case reported in Tata Engineering and Locomotive Company Limited Vs. Their Workmen, , it has been observed (p. 431):

"If the settlement had been arrived at by a vast majority of the concerned workers with their eyes open and was also accepted by them in its totality, it must be presumed to be just and fair and not liable to be ignored while deciding the reference, merely because a small number of workers were not parties to it or refuse to accept it or because the Tribunal was of the opinion that the workers deserve marginal higher emoluments than they themselves thought they did. A settlement cannot be weighed in any golden scale and the question whether it is just and fair has to be answered on the basis of principles different from those which come into play when an industrial dispute is under adjudication."

26. This decision of the Supreme Court is based on its earlier decision in the case of Herbertsons Ltd, (supra).

27. In another case reported in this Court while considering the effect of a settlement u/s 4 for the U.P. Industrial Disputes Act held:-

"When parties do arrive at a settlement the law gives to it a greater sanctity than it gives to an award and therefore industrial law does not contemplate any interference with the finality of the settlement and it compels the settlement to run on for the period mentioned in the settlement itself and neither party is permitted to challenge the settlement during this duration."

28. In that case also there was subsisting settlement between the employer and the workmen and during subsistence of that a reference was made u/s 4K of the Act by the State Government for adjudicating upon a dispute. The Court took a view that no such dispute could in the eyes of law arise during the continuance of valid settlement.

29. Sri. S.N. Misra, learned counsel for the respondent, relying upon Section 18 of the Central Industrial Disputes Act, has submitted that a settlement arrived at by agreement between the employer and the workmen otherwise than in the course of conciliation proceedings shall be binding on the parties to the

agreement. His contention was that since 110 workmen were not parties to the said settlement, it will not be binding on them. The contention is not acceptable. Firstly, there is no parallel provision in the U.P. Industrial Disputes Act and secondly these 110 workmen have never challenged the validity of the said settlement at any point of time. The respondent No.3 has a right to enter into such an agreement with the employer. In the absence of any allegation of corruption or inducement the present workers are debarred from raising this question.

30. For the reasons given above I am of the view that the reference made u/s 4K of the Act was not maintainable and the dispute stands settled by the agreement dated April 5, 1975. No industrial dispute exists now.

31. Accordingly the writ petition is allowed. The order of the Industrial Tribunal dated April 24, 1986, as published on June 9, 1987, is set aside and the dispute stands settled by the agreement dated April 5, 1975.

32. In the circumstances of the present case I make no order as to costs.