
(1971) 02 PAT CK 0013
In the Patna High Court

Jamuna Prasad Singh and Others

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 26-02-1971

Acts Referred:

Constitution of India, 1950 — Article 136, 227

Industrial Disputes Act, 1947 — Section 10, 17, 17A, 18, 19

Citation : (1971) 4 PLJR 326

Hon'ble Judges : S. Sarwar Ali, J;N.L. Untwalia, J

Bench : Division Bench

Judgement

N.L. Untwalia, J.—An industrial dispute between the management of the Bihar Cotton Mills Ltd., Phulwarisharif, Patna, and their workmen presented by the Phulwarisharif Suti Mill Mazdoor Union was referred by notification dated the 31st of October, 1963 under Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), hereinafter called the Act, to the Industrial Tribunal, Bihar. There were two points of dispute referred. The second one related to the payment of bonus, the claim in regard to which was not accepted by the Presiding Officer of the Industrial Tribunal in his award dated 25-11-64, a copy of which is Annexure 2 to the writ application. We are not concerned with that point in this case. The first point of reference was in the following terms:--

Whether as per recommendations of the Central Wage Board for textile industry, there should be linking of dearness allowance with the cost of living index number as well as merger of a part of the dearness allowance with basic wages ?

2. In the award which was made by the Tribunal and published by the Government u/s 17 of the Act, it was decided that out of the sum of Rs. 22.62 which was being paid as dearness allowance Rs. 16.65 representing three-fourth of it should be merged in the basic wages of the workers and the remaining Rs. 5.97 would be fluctuating dearness allowance which will vary according to rise and fall in the cost of living index, as indicated in the award, taking the price index number 480 being the price index of 1st January, 1960 as the base and

neutralisation would be at the rate of 18 paise per point per mensem of any rise above it and if there would be any fall, there was to be corresponding decrease in the dearness allowance at the same rate. It was further decided that the rise and fall were to be reviewed every six months after obtaining figures from the Statistical Department of the Bihar Government. As regards the arrears of dearness allowance for 1960, 1961 and 1962, the claim on behalf of the workmen pressed by their union was that they were to be allowed on the annual average of the Patna centre. This seems to have been accepted by the Tribunal.

3. The management went up to the Supreme Court for grant of special leave under Article 136 of the Constitution in Appeal No. 408 of 1965. But, as would appear from Annexure 6 a copy of the letter of the Assistant Registrar of the Supreme Court, special leave was not granted.

4. For enforcing the benefits of the award a claim was lodged before the Government in accordance with Section 33C of the Act. Upon this, on the 22nd of March, 1965 a reference was made which was numbered as Reference 3 of 1965; this was by Notification No. IC-40106/65-L & E-2008 of the date, and it reads as follows:

Whereas the workmen named in Annexure "A" are entitled to receive from their employer, namely the Bihar Cotton Mills, allowance, in terms of the award of 25th November, 1964 of the Industrial Tribunal, Bihar, in Reference No. 31 of 1963;

And, whereas it is necessary to determine the amount at which such benefits should be computed and recovered from the said employer;

Now, therefore, in exercise of the power conferred by Sub-section (2) of Section 33C of the Industrial Disputes Act, 1947 (XIV of 1947), the Governor of Bihar is pleased to specify the Labour Court at Patna constituted by the State Government u/s 7 of the said Act as the Labour Court for determining the amount in money value to which the workmen are entitled to.

5. While this reference was pending, on 25th of July, 1965 a settlement was arrived at between the management of the mill and their workmen represented by the Phulwarisharif Suti Mill Mazdoor Union, the same union which had represented them in the reference u/s 10(1) of the Act. A copy of this settlement is Annexure C to the counter-affidavit filed on behalf of the management which is respondent 2 to this writ application. I shall have occasion to refer to some portion of it later. On the basis of this settlement, on being asked by the management and the union another notification was issued being Notification No. IC-40106/65-L & E-3609 dated the 7th April, 1966 wherein it was stated:--

Whereas in exercise of the powers conferred by Sub-section (2) of Section 33C of the Industrial Disputes Act, 1947 (XIV of 1947), the Governor of Bihar was pleased to specify, by the Government of Bihar, Labour and Employment Department Notification No. IC-40106/65-L & E-2008 dated the 22nd March,

1965, the Labour Court at Patna for determining the amount in money value which the workmen mentioned in Annexure "A" of the aforesaid notification were entitled to receive from their employer, namely the Bihar Cotton Mills Ltd., Phulwarisharif (Patna) as the payment of arrear dearness allowance in terms of the award dated the 25th November, 1964 of the Industrial Tribunal, Bihar, Patna, in Reference No. 31 of 1963; And whereas the management of the Bihar Cotton Mills Limited, Phulwarisharif, Patna and the Phulwarisharif Suti Mill Mazdoor Union, Phulwarisharif, Patna have arrived at a settlement on the 25th July, 1965 by which the award of the Industrial Tribunal, Bihar dated the 25th November, 1964 in Reference No. 31 of 1963 shall be deemed to have been fully implemented;

Now, therefore, the Governor of Bihar is pleased to cancel the aforesaid Government of Bihar, Labour & Employment Notification No. IC-40106/65-L & E-2008 dated the 22nd March, 1955.

6. But before Reference 3 of 1965 was withdrawn and cancelled, two petitions were filed before the Patna Labour Court--one on behalf of 116 workmen and the other on behalf of 49 workmen. A copy of one of the petitions is Annexure 1 to the writ application. In this petition it was stated that the petitioners were entitled to benefit u/s 33C of the Act under the award dated 25-11-64. They further stated that they did not accept the compromise alleged to have been arrived at out of Court between the management and the workmen through the Secretary, Phulwarisharif Suti Mill Mazdoor Union, a copy of which was filed before the Labour Court on 28-8-65. They asserted that none of the petitioners had received any claim money due from the Bihar Cotton Mills Ltd., although claim forms u/s 33C of the Act were submitted through the Secretary of Phulwarisharif Mill Mazdoor Union. The allegation in the petition further was that the petitioners learnt that the Secretary, Phulwarisharif Suti Mills Mazdoor Union, did not send the claim forms of all the workmen entitled to receive benefit under award and hence the duplicate forms of those workmen whose claim forms were not forwarded were filed with the said petition as Annexures C and C/1. The management filed two rejoinders--one on 19-1-67 (Annexure 3) and the other on 13-3-67 (Annexure 4). They took certain preliminary objections to the maintainability of the petitions filed by the batch of petitioners--116 and 49. Out of the preliminary objections taken in the main, two objections have succeeded, and the Labour Court, respondent No. 1, by its order dated 18-3-68 (Annexure 6) has held that the objections are not maintainable on two grounds, (i) that the award in respect of the arrear which was the basis of the claim in the petition was beyond the scope of the reference and hence a nullity and (ii) that the award had been fully implemented, claims had been fully satisfied as per the settlement arrived at between the management and the union and nothing was left to be executed. Forty workmen presumably out of those who had filed the two petitions in the Court below, have obtained a rule from this Court against the respondents to show cause why the said order of the Labour Court be not quashed by grant of an appropriate writ and why they should not be directed to

proceed in the matter further in accordance with law.

7. Cause has been shown on behalf of respondent No. 2, the management, by filing a counter-affidavit as also at the time of hearing.

8. In my opinion, the view of the Labour Court contained in Annexure 5 that the award dealing with the claims of arrears was a nullity is wrong in law. The reference was, undoubtedly, in general terms and did not specifically ask the Tribunal to determine the date from which there should be linking of dearness allowance with the cost of living index number as also the merger of a part of it with the basic wages. None the less, in my opinion, determination of a date from which the award in that regard, if in favour of the workmen, was to be effective was necessarily involved in the determination of the question; undoubtedly it was incidental to the main question. The Tribunal, therefore, had the power to determine the date on the facts and in the circumstances of a particular case retrospectively from the date of the dispute, as seems to have been done in this case, or from the date of the reference or prospectively from the date of the award. When the three words "from what date" would have been mentioned in question No. 1, there are a series of decisions of the Supreme Court to support the view, the date could be determined with a retrospective effect. I would only refer to the decisions of that Court in *Hydro (Engineers) Pvt. Ltd. Vs. The Workmen*, where some such cases have been noticed. One of the cases noticed there is *The Hindustan Times Ltd., New Delhi Vs. Their Workmen*, K.C. Das Gupta, J. delivering judgment on behalf of the Court, observed at page 119 (column 2):

There remains for consideration the question of retrospective operation of the award. u/s 17A of the Industrial Disputes Act, 1947, an award shall come into operation with effect from such date as may be specified therein but where no date is so specified, it shall come into operation on the date when the award becomes enforceable. Even without a specific reference being made on this question, it is open to an Industrial Tribunal to fix in its discretion a date from which it shall come into operation.

9. Of course, in that case the question had expressly included the matter of retrospectively. None the less, the observation of the Supreme Court was that even without a specific reference being made on this question, it is open to an Industrial Tribunal to fix in its discretion a date from which its award shall come into operation. In *Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others*, it has been pointed out at page 475(para. 18) that the Tribunal must look to the pleadings of the parties to find out the exact nature of dispute because in most cases the order of reference is so cryptic "that it is impossible to cull out there from the various points about which the parties were at variance leading to the trouble."

10. In the background of the above principle, it would be relevant to point out the dispute which arose leading to Reference No. 31 of 1963 u/s 10(1) of the

Act. It appears that before 31st of August, 1960 a demand had been made for the linking of the dearness allowance with the cost of living index number as also for the merger of a part of it with the basic wages. Parties had entered into an agreement on the 31st of August, 1960 on some points to arrive at a final conclusion in regard to the satisfaction of that demand. Due to one reason or the other the final conclusion could not be arrived at. Ultimately, in regard to that very dispute the Government intervened and made reference u/s 10(1) of the Act. If in this background the award of the Tribunal (Annexure 2) is appreciated, it would be clear that it was required not only to adjudicate as to whether as per recommendations of the Central Wage Board for textile industry there should be linking and merger but necessarily it was required to decide as to from which date it should be. In my opinion, the scope in the argument advanced before the Labour Court was there, because instead of clearly saying as to from which date the award will be effective, the Presiding Officer of the Industrial Tribunal bifurcated it in two parts, for the slight distinction that in one case the rise and fall were to be reviewed every six months and in the other case, as regards the arrears of dearness allowance for 1960, 1961 and 1962, it was to be allowed at the annual average of the Patna centre. I am definitely of the view that the decision in regard to the arrears of dearness allowance for those years meant in substance and in effect that the decision was to be effective from the date of the dispute which, undoubtedly, was raised in the year 1960, and must have been before August, 1960. That being so, the Labour Court was not correct in its view that the award of the Industrial Tribunal (Annexure 2) in respect of the arrears for the years 1960, 1961 and 1962 is without jurisdiction and a nullity. I may in passing mention here that on the principles of law enumerated on the basis of several authorities in the case of Chief Mining Engineer East India Coal Co. Ltd. Vs. Rameswar and Others, , it was rightly not disputed by Mr. Ranen Roy, learned advocate for the petitioners, that if the award were a nullity, the Court, u/s 33C(2) of the Act, had jurisdiction to refuse to make any computation in regard to the claim on the principle that an executing Court is not bound to execute a decree which is a nullity. Learned Counsel, however, submitted that in this particular case it was not open to the Labour Court to do so because the management had gone to the Supreme Court for special leave and special leave was not granted. I need not detain myself on this point any longer because I have decided on merits in favour of the petitioners that a part of the award which is in question is not a nullity. I would, however, observe that had it been a nullity, mere refusal by the Supreme Court to grant special leave could not have operated as a bar on the principle of constructive res judicata in adjudication of this point by the Labour Court.

11. The second ground which has been accepted by the Labour Court for refusing any relief to the petitioners is not free from difficulty and is a bit complicated and complex one. In it are involved certain subsidiary points, although each one of them is important in itself, the determination of which is necessary for determination of the broad point.

12. I shall now read some sub-sections of Section 33C of the Act--

(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter VA, the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

* * * (2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or/as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government.

* * * *

(5) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, then, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made on behalf of or in respect of any number of such workmen.

13. Section 33C provides mode of recovery of money due from an employer under a settlement or an award under the provisions of Chapter VA. Under Sub-section (1) the workman himself or any other person authorised by him in writing in this behalf or in the case of the death of a workman, his assignee or heirs, may, without prejudice to any other mode of recovery, make an application to the appropriate Government; the appropriate Government may realise the money through certificate proceeding. But if a question of computation of the money due arises then the Labour Court specified for the purpose under Sub-section (2) has got to determine it. The Government may make a reference for its determination or the workman concerned may approach the Labour Court for its determination. After determining it under Sub-section (4), the Labour Court shall forward its decision to the appropriate Government and any amount found due by it may be recovered in the manner provided for in Sub-section (1). The argument on behalf of the petitioners was that the union could not represent all the workmen before the Government on the basis of which Reference No. 3 of 1965 was made. The union could represent the workmen before the Industrial Tribunal in the matter of adjudication of industrial dispute. Counsel submitted that their authority ceased and they were no longer entitled to represent the workmen for enforcement of the individual benefit awarded to each workman by the Tribunal. On a strict interpretation of Sub-section (1), it would appear that

the workman himself or any other person authorised by him in writing in this behalf can apply; so also the heirs. But unless there is an authorisation in writing in this behalf, none else can represent the individual workman or workmen. In Sub-section (2) it is not specified as to how and by whom an application under that provision can be made. But reading that sub-section in the context of Sub-section (1), I think it is legitimate to hold that the same method has got to be applied. It is not known in this case as to how the union had made an application before the Government u/s 33C(1). What is, however, clear from Annexure 1 is that many workmen had sent their claim forms to the union and they have been forwarded by them to the Government. During the pendency of Reference No. 3 of 1965, the settlement (Ext. C) was arrived at on 25-7-65. The relevant terms of the settlement are:

(1) The management shall pay a consolidated sum of Rs. 1,00,000-00 (Rupees one lakh) as arrear dearness allowance to the workmen for the period, from the date, the award came into effect up to 30th June, 1965.

* * *

(3) From the 1st July, 1965 the management shall pay to the workmen at the rate of 14 (fourteen) paise per point per month.

* * * * (7) Other points in the award in reference No. 31 of 1963 not covered by this settlement shall remain unaltered.

(8) The award of the Industrial Tribunal, Bihar dated the 25th November, 1964 under reference No. 31 of 1963 shall be deemed to have been fully implemented by this settlement.

14. This was signed by a director of the company on behalf of the management and by two vice-Presidents and the General Secretary on behalf of the union. The question is, what kind of settlement was this and in what manner is it binding on the management and the workmen? By and large, the terms of the settlement were to modify the award dated 25-11-64 for the reason mentioned in the preamble of the settlement. For the arrears the figure arrived at in the settlement was Rs. 1,00,000, and for future the neutralisation figure was reduced to 14 from 18. But I am afraid such a settlement for modification of the award cannot be held to be valid, as argued on behalf of the petitioners. In Section 19 of the Act period of operation of an award is provided. In this case under Sub-section (3) the award was to remain in operation for one year. Even on the expiry of that period, it could not automatically terminate unless recourse was taken to the giving of 2 months' notice as provided for in Sub-section (6). The settlement dated 25-7-65 between the management and the union was entered into even before the expiry of period of one year. u/s 18(1) of the Act, a "settlement arrived at by agreement between the employer and workmen otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement". Even assuming that the Phulwarisharif Suti Mill Mazdoor Union had represented all the workmen of the mill it is clear that such a

binding nature under Sub-section (1) of Section 18 of the Act in regard to such a settlement will come in direct conflict with Sub-section (3) wherein an award is binding on all parties to the industrial dispute. The question would be, which is to prevail ? After due consideration of the matter, I have come to the conclusion that so long as the award of the Industrial Tribunal does not terminate or is not terminated in accordance with Section 19 of the Act, there cannot be a settlement between the employer and the employees in regard to matters covered by the award. The remedy of the management was to approach the Government u/s 19(4) of the Act for getting rid of the award first and then to arrive at a settlement. It seems, under some wrong advice, but bona fide, the management entered into an agreement with the union representing the workmen and in pursuance of this agreement parted with a sum of Rs. 1,00,000 also, as we were informed at the Bar. But we have to take a legal view of the matter, and I think public policy and industrial truce demand that so long as the award of a competent authority remains in operation, parties by their mutual agreement should not be permitted to change the award.

15. Question, however, is whether any portion of the settlement can be said to be binding on any party as an incident of satisfaction in its execution case. In that regard I am inclined to think that it is binding on all workmen who were mentioned in Annexure A appended to the notification dated the 22nd March, 1965. As many as 512 workmen were mentioned in Annexure A. Government must have given their names in Annexure A on being satisfied that a claim on their behalf has been laid before them in accordance with Sub-section (1) of Section 33C of the Act. They referred the matter for computation under Sub-section (2) specifying the Patna Labour Court to be the Court for the purpose although, I shall show hereinafter, specifying the Labour Court was not necessary as already there was a general specification in the year 1958. But the point to be emphasised is that the State Government for the benefit of the workmen mentioned in Annexure A asked the Labour Court to compute in terms of money the benefit to which they were entitled. During the pendency of this reference, the settlement was arrived at, one of the terms being term No. 8 to the effect that the award of the Industrial Tribunal, Bihar, dated 25-11-64 in reference No. 31 of 1963 shall be deemed to have been fully implemented by this settlement. In my opinion, in so far as the workmen mentioned in Annexure A are concerned, term No. 8 had the effect of accepting sums of money in full satisfaction of their claim. That being so, the settlement to this extent and to this extent only must be held to be binding on those workmen. On the footing of the settlement reference No. 3 of 1965 was withdrawn. The terms of the notification dated 7-4-66 have already been quoted. In that view of the matter, I am of the opinion that after having arrived at the settlement of full satisfaction in lieu of their claim it was not open to them to approach the Labour Court again u/s 33C(2) of the Act. If I were to hold that the settlement arrived at on the 25th July, 1965 is not binding in any regard, I think it will be a travesty of justice to do so. I have said above, it is not a settlement binding on the parties u/s 18(1) of the Act, and if it

is held to be no settlement in any sense (sic) any part of it will not be binding on any workman mentioned in Annexure A u/s 33C(2) of the Act. The result will be that the sum of rupees one lack paid by the management will vanish in air, and all the workmen will be free to lodge their claim again u/s 33C of the Act. I cannot persuade myself to agree to such a proposition in law as urged on behalf of the petitioners.

16. Although it was agreed at the Bar that undoubtedly the names of some of the 40 petitioners in this case find mention in Annexure A to the notification dated 22nd March, 1965, on the materials before us we could not be sure nor could it be shown with certainty as to whether names of all of them are mentioned in Annexure A or of some of them only occur there ; if so, whose. That being so, the case has to go back to the Labour Court on remand to decide in accordance with law in the light of the observation made and to be made only in respect of the workman, or workmen, if any, out of the forty petitioners before us whose name or names does not or do not find place in Annexure A.

17. One of the points pressed before us by Mr. Krishna Prakash Sinha, learned Counsel for the management, was that these forty petitioners, according to the counter-affidavit which does not seem to have been explicitly denied in the affidavit filed on behalf of the petitioners, were not in the employment of the mill at the time reference No. 31 of 1963 was made. Counsel, therefore, submitted that in any view of the matter the dismissal of their application should be maintained on this ground also. I am unable to accept this contention as sound. On referring to Clause (d) of Sub-section (3) of Section 18, it would be noticed that the award is binding on "all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part." The award being binding on the workmen who were there at the date of the dispute as also on the workmen who subsequently joined the establishment, it is plain that if any obligation of the award can be cast on them, equally they must be held to be entitled to the benefit under the award. The crucial date for determination of the industrial dispute in any case would be the date of the demand lodged with the management, which would be the date of the dispute. While adjudicating it may be open to the Tribunal not to make it retrospective from that date. If the award is prospective, only then a question may arise whether the workmen who were in the employment on the date of the dispute but were not so on the date of the award are entitled to any benefit. But, in my opinion, if the award is made retrospective from the date of the dispute as seems to have been done in this case, all workmen who were there in employment at that time must be held to be entitled to any benefit awarded to the workmen.

18. Mr. Krishna Prakash Sinha endeavoured to press two more objections to the maintainability of the petitions in the Court below, which objections seem to have been taken in their show cause petitions but do not find mention in the impugned

order (Annexure 5). I may briefly deal with them. The first objection raised in this Court is that the petitions filed by the workmen on 20-9-65 were not signed by all but were signed by only one workman. In reply Mr. Ranen Roy pointed out that along with the signed petition of workmen all the signed claims of the workmen had been attached. That being so, I do not attach any importance to the alleged defect or irregularity in the petitions. Even if there is any, the petitions can be got signed by all the workmen at any time.

19. The second objection was that the workmen could not file their application directly to the Labour Court and specially to the Patna Labour Court, as it was not a specified Court under Sub-section (2) of Section 33C of the Act. In my opinion, the workmen had a right to go to the Labour Court direct, *Treogi Nath Vs. The Indian Iron and Steel Co. Ltd., and Fertiliser Corporation of India Ltd. v. Presiding Officer, Labour Court, Ranchi*. The specification of the 1968 Lab. IC 335 Labour Court for the purpose of Section 33C(2) of the Act made by the notification dated 22-3-65, no doubt, was withdrawn by the notification dated 7-4-66. But we have been given a copy of the Notification No. III/D1-12032/58L-9803 dated 7-6-58 in which the Governor of Bihar was pleased to specify within their jurisdiction the Labour Courts constituted by Notification No. III/D1-12047/57L-13149 dated 26-7-57 as Labour Courts for determining the amount at which any workman is entitled to receive from the employer any benefit which is capable of being computed in terms of money for being recovered as provided for in Section 33C(1) of the Act. It may be stated here that no rules framed by the Bihar Government u/s 38 of the Act provide any rule envisaged in Sub-section (2) of Section 33C of the Act. That being so, both the objections raised in this Court by learned Counsel for the management must be overruled.

20. For the reasons stated above, in exercise of the power of this Court under Article 227 of the Constitution of India, I set aside the order dated 18-3-68 (Annexure 5) of the Labour Court, Patna, remit the case back to it and direct it to proceed with the case of such workmen, if any, as is fit to be proceeded with in the light of this judgment in accordance with law. In the circumstances of the case, I shall make no order as to cost.

S. Sarwar Ali, J.

21. I agree.