
(2013) 04 MAD CK 0051
In the Madras High Court
Case No : Writ Petition No. 8185 of 2005

K. Mallikesan

APPELLANT

Vs

The General Manager (works)

RESPONDENT

Date of Decision : 05-04-2013

Acts Referred:

Industrial Disputes Act, 1947 — Section 18(1)

Citation : (2013) 3 LLJ 211

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : R. Rajaram, for the Appellant; M.A. Abdulwahab, for the Respondent

Final Decision : Dismissed

Judgement

T. Raja, J.—This writ petition was filed by K. Mallikesan, Convener of Tamil Nadu Industrial Explosive Ltd., Employees Progressive Union

(affiliated to LPF), Vellore challenging the correctness of the impugned order passed by the respondent-General Manager (works), Tamil Nadu

Industrial Explosive Ltd., Tel Post, Vellore-632 059 in vz; gJ/16/04/2005 dated 16.02.2005 by which the respondent sought to recover the

advance amount of Rs. 11,000/- paid at the rate of Rs. 5,500/- during the periods 2001-2002 and 2002-2003 to those persons who were not

eligible to get the bonus. When they have been paid Rs. 5,500/-per head as advance, for the periods 2001-2002 and 2002-2003 by reaching a

settlement u/s 18(1) of the Industrial Disputes Act 1947 (hereinafter referred to as "the Act"), the respondent passed the impugned order, to

recover the advance paid already. Challenging the correctness of the impugned order the present Writ Petition has been filed.

(i) Mr. R. Rajaram, learned counsel appearing for the petitioner submitted that

the impugned order seeking to recover the above said amount from the employees of the petitioner union in 10 instalments is arbitrary and illegal for the reason when the respondent by entering into a settlement u/s 18(1) with the petitioner union to pay this advance amount in lieu of bonus to all the members of the petitioner union, for the above said periods at the rate of Rs. 5,500/-, they are bound by the settlement and therefore, the management/respondent is not entitled to recover the said amount.

(ii) The learned counsel further contended that when the respondent management has come forward to take care of the plight of all the members of the petitioner union, while paying bonus to other eligible permanent employees, it is not possible legally to recover the same only from the members of the petitioner union. In this case since the bonus was paid u/s 18(1) settlement to the employees irrespective of their salary they are entitled to get the bonus as per section 18(1) settlement. While so, the respondent after a period of two years, suddenly cannot say that the payment of bonus advance made on 2.11.2002 and 22.10.2003 to be recovered from the salary of the concerned employees by way of 10 instalments. When it goes against the legitimate expectation of the employees, the impugned order to recover what was paid to the members of the petitioner union should be held as illegal.

(iii) The learned counsel also brought to the notice of this Court an order passed in W.P. No. 40089/2002 dated 11.9.2012 to say that this Court has also held in similar circumstances that when the members of the petitioner union and the respondent management had already reached a settlement u/s 18(1) of the Act and agreed that all the employees would get a minimum bonus and also ex-gratia amount, subsequently it is not open to the management to go back from the settlement reached u/s 18(1) of the Act and recover the same amount paid under the settlement.

2. But, in the present case, this Court is not able to agree with this arguments and also the reliance made by the learned counsel for the petitioner in the above said order. The reason is, the impugned order is very clear and unambiguous in saying that the respondent management while giving bonus to all the permanent employees, out of compassion to improve the efficiency of the other employees who were not eligible to get bonus, came forward to give advance to other employees by reaching a settlement

dated 2.11.2002 and 22.10.2003 u/s 18(1) of the Act. In the settlement reached u/s 18(1) of the Act it is specifically mentioned a sum of Rs. 5,500/- per year was paid for two years, namely, 2001-2002 and 2002-2003 only by way of advance, that too, for the employees who were not eligible to get bonus. Therefore, as the learned counsel rightly argued before this Court, the parties are bound by the settlement. In case the settlement reached u/s 18(1) mentions that the amounts were paid by way of bonus to the members of the petitioner union, as he rightly argued, the members of the petitioner union are entitled to challenge the recovery order. But, the case of the petitioner is something different for the reason that the wording mentioned in the settlement shows that the amount of Rs. 5,500/- per year paid for 2001-2002 and 2002-2003 for two years was made by way of advance to the employees of the petitioner union who are not eligible to get bonus, therefore, the amount paid by way of advance can always be recovered, hence the impugned order passed to get back the amount in 10 instalments at the rate of Rs. 1,100/- per instalment from March 2005 is in order. The order passed in W.P. No. 40089/2002 dated 11.9.2012 relied on by the petitioner in support of his submission cannot be applied to the present case. The reason being that the facts in the above said order is totally different from the one covered in the present writ petition. In the above case, when the members of the petitioner union therein and the respondent management have reached a settlement on 30.10.2001 u/s 18(1) of the Act agreeing that all the employees would get a minimum bonus of Rs. 2,500/- and also ex-gratia amount of Rs. 3,000/-, this Court held that the minimum bonus and the ex-gratia amount paid by way of settlement reached u/s 18(1) of the Act cannot be recovered. But, in the present case, as highlighted above, the amount of Rs. 5,500/- paid per year, for two years, namely, 2001-2002 and 2002-2003 by way of advance to ineligible employees to get bonus has been sought to be recovered. Therefore, the order in W.P. No. 40089/2002 dated 11.9.2012 cannot be cited before this Court. Accordingly, finding no merits in the Writ Petition, W.P. No. 8185/2005 is dismissed. No costs.