

(1967) 04 KAR CK 0005

In the Karnataka High Court

Case No : Writ Petition No's. 378 and 456 of 1967

Krishnarajendra Mills Workers" Union

APPELLANT

Vs

Assistant Labour Commissioner and Conciliation Officer,
Mysore and Others

RESPONDENT

Date of Decision : 06-04-1967

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 12 (3), 18 (1), 19 (2)

Citation : (1968) 1 LLJ 504 : (1967) 2 MysLJ 174

Hon'ble Judges : T.K. Tukul, J;K. Bhimayya, J

Bench : Division Bench

Judgement

Tukul, J.—These two writ petitions have been filed under Art. 226 of the Constitution by two different sets of workmen, the first by persons who are the members of the Krishnarajendra Mills Workers" Union, and the second, by the workmen of Krishnarajendra Mills Karmika Sangha. The prayer made in both these writ petitions is for a writ of certiorari to quash the settlement arrived at between respondents 2 to 5 with the assistance of the conciliation officer who is respondent 1.

2. In Writ Petition No. 456 of 1967, there is a specific prayer for issuing a direction to respondent 2 to pay wages and dearness allowance to the workmen in accordance with the settlement dated 1 July, 1963 which, according to the petitioners, is still in force. There is also a prayer for a writ of mandamus restraining the conciliation officer from giving effect to the said settlement on the ground that the same was illegal and void.

3. The circumstances under which these two writ petitions have been filed are briefly as follows.

4. The Krishnarajendra Mills, Ltd., Mysore, is a textile mill working in Mysore. The two petitioners and respondents 3 to 5 in Writ Petition No. 456 of 1967 are the different unions of workmen. Of these five unions, the Krishnarajendra Mills

Labour Association (respondent 3) and Krishnarajendra Mills Staff Association (respondent 5) in Writ Petition No. 456 of 1967 are the recognized unions. There were a number of disputes between the workmen and the management of the mills as regards the implementation of the recommendations of the central wage board for the cotton textile industry. These disputes were referred to the industrial tribunal in Industrial Dispute No. 12 of 1961 and that tribunal passed an award. The labour as also the management were aggrieved by the award. The respondent-mill and respondent 3, labour association, filed Writ Petitions Nos. 90 and 212 of 1963 before this Court challenging the award on various points. During the pendency of these writ petitions, the parties came to a settlement and filed a memorandum of compromise before the Court and the Court quashed the award passed by the industrial tribunal and substituted the compromise in its place. This settlement was to be in force for a period of four years commencing from 1 July, 1963. On 20 September, 1966, respondent 2, the mills, addressed a letter to respondent 1, the conciliation officer, requesting him to initiate conciliation proceedings as regards the dearness allowance payable to the workers since the management felt that the linking of dearness allowance with the cost of living index had imposed an unbearable burden on them. The conciliation officer brought about a settlement under S. 12(3) of the Industrial Disputes Act on 30 September, 1966 as per Ex. B. According to the terms of this settlement, it was agreed that the dearness allowance payable to the staff members and to the workmen was to be paid at those rates for the months of September, October, November and December 1966. It was further stipulated that from January 1967 onwards, payment of dearness allowance was to be on the basis of the previous system envisaged in the agreement, dated 1 July, 1963. It is thereafter that the settlement impugned in these writ petitions came into existence on 16 January, 1967 through the good offices of respondent 1. The dearness allowance payable to the workers under this settlement is fixed at a flat rate of Rs. 90 per month for a period of two years from 1 January, 1967. There are other details which it is unnecessary to mention for the purpose of these writ petitions.

5. It is contended by the writ petitioners that this settlement of 16 January, 1967 was illegal and void, firstly, on the ground that no industrial dispute could have been raised during the period when the prior settlement was in operation and secondly, on the ground that no notice as required by S. 19(2) of the Industrial Disputes Act (hereinafter called the Act) had been given terminating the earlier settlement. Two other grounds which have been taken by the writ petitioner in Writ Petition No. 456 of 1967 may also be mentioned. The first is that the impugned settlement is contrary to S. 9A of the Act as no notice of the change in the rates of dearness allowance was given. The second is that the settlement arrived at between the parties with the good offices of the conciliation officer was not in law a settlement under S. 12(3) of the Act. It is also contended that the period stipulated in the agreement of 1 July, 1963 was binding between to that settlement could raise any industrial dispute during the pendency of its operation.

6. Sri Rangaswami Ayyangar, the learned counsel for respondent 2, has raised a preliminary objection. His submission is that the writ petitions for writs of certiorari and mandamus are not tenable, firstly, because the impugned settlement is an administrative act of the conciliation officer and secondly, because no writ of the kind prayed for can be issued against a mill or any of the labour unions which are parties to these writ petitions. In support of his contention, he has drawn our attention to three decisions, viz, Royal Calcutta Golf Club Mazdur Union Vs. State of West Bengal and Others, , The Employees in the Caltex (India), Ltd., Madras and Another Vs. The Commissioner of Labour and Conciliation Officer, Government of Madras and Another, and Workmen of Standard Furniture Company, Ltd. Vs. District Labour Officer and Conciliation Officer and Others, . What has been laid down in these decisions is that no writ of certiorari can be issued against a conciliation officer acting under S. 12 of the Act; his functions thereunder are neither judicial nor quasi-judicial in character and that the fact that such officer has signed the agreement does not make it an order or decision susceptible to correction by the High Court. Reference was also made to a decision of this Court in Suryanarayana (H.) Vs. Hindustan Machine Tools Ltd. (By Managing Director) and Another, This decision summarizes the legal position and we, therefore, reproduce the relevant headnote :

"A writ of certiorari can be issued to correct a judicial or quasi-judicial order ... It is now well-settled that before a writ of certiorari could be issued, the Court must be satisfied that the authority which has made the impugned order had a duty to act judicially in making the order."

7. These decisions support the preliminary objection raised by the learned advocate for respondent 2. Sri Subba Rao, however, contends that the impugned settlement which has been brought about through the conciliator is in the nature of a quasi-judicial act and it is, therefore, within the competence of this Court to strike down the settlement if the other requirements of law are not satisfied. In order to examine this contention, it is necessary to refer to the first three Sub-sections of S. 12 of the Act, which deal with the duties of conciliation officers. Those provisions read :

"12. (1) Where an industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice under S. 22 has been given, shall hold conciliation proceedings in the prescribed manner.

(2) The conciliation officer shall, for the purpose of bringing about a settlement of the dispute, without delay investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amiable settlement of the dispute.

(3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings, the conciliation officer shall send a

report thereof to the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute."

8. The entire argument of the learned advocate is based on what is contained in Sub-section (2) of this section. It is submitted that since it is the duty of the conciliation officer to consider whether the settlement arrived at is fair and amicable, his function would be quasi-judicial in nature and would not at all be administrative, as contended by the learned advocates for the respondents. Analysing Sub-section (2), we find that the first duty of the conciliation officer for the purpose of bringing about a settlement is to act expeditiously without loss of time. This indeed is not an act entirely within his discretion and is purely administrative in character. When he decides to act, he has to find out what the dispute between the parties is. This has to be done by ascertaining from the parties to the dispute what their contentions are. The next function that he has to discharge relates to the further ascertainment of the merits and the right settlement. The last important duty that he has to discharge is that of inducing the parties to come to a fair and amicable settlement of the dispute. It is well-established that an authority discharging the quasi-judicial function has, besides finding out what the subject-matter of the dispute is, to hear the parties, consider the evidence placed before him, arrive at a decision and record his reason in support of such decision. In the present case, there is no doubt that there is dispute between the two contending parties. The vital point for consideration is whether at all any legal obligation is cast on the conciliator to hear both the parties and record evidence in support of their mutual contentions. The hearing, if any, is for the purpose of ascertaining what are the points of dispute between the parties and for the purpose of knowing what are the matters which affect the rights and merits of the parties. On his own, there is no decision on the merits of the dispute which the conciliation officer is required to arrive at. Patently his task is one of discussion, of advice and of persuasion so that the matters in dispute are clarified to the parties themselves and by thrashing out the various points of dispute in their presence, they are enabled to come to a settlement which is fair and amicable. Sri Subba Rao's contention, however, is that the words "as he thinks fit" occurring in Sub-section (2) should go with the last portion of the expression "fair and amicable settlement of the dispute." We are unable to agree with such a construction. Obviously, the words "as he thinks fit" necessarily go with the previous clause "may do all such things." In other words, the words "as he thinks fit" which vest a discretion in him, regulate the manner in which he should conduct himself in bringing about a fair and amicable settlement between the parties. It was then urged that when the dearness allowance was Rs. 110 per month in the months of September to December 1966, a settlement reducing the same to Rs. 90 would neither be fair nor amicable. In considering what is fair and what is amicable, we have necessarily to take into account the various factors under which the disputes are raised and the circumstances under which the parties take the assistance of the conciliator in arriving at a settlement. Exhibit C which embodies the terms of the impugned

settlement refers to the previous history of disputes between the parties. It also refers to the fact that the mills had been losing heavily during the last few years and that the total loss from 1961-62 to 1965-66 was to the tune of Rs. 53,11,632. Mention is made of other textile mills in Bombay, Ahmedabad and Coimbatore having already been closed and of the apprehension of the closure of the other mills. It is stated that there was large accumulation of cloth stocks causing great financial strain on the company and there was vehement demand at the annual general meeting of the company held on 5 November, 1966 for Closing down the mills and taking steps for the liquidation of the company. If against this background the two parties agreed to a partial reduction of their dearness allowance, it cannot be said that it was a settlement which no reasonable person could have acceded to. If the Labour unions which are parties to the settlement consider after taking all factors into consideration that half a loaf is better than no loaf, it would be difficult for this Court particularly sitting on the writ side to say that the settlement was either unfair or not amicable.

9. This brings us to the important contention which both the petitioners have pressed upon our attention with sufficient vehemence. Their contention is that it is not open to the employer and the employees to enter into a settlement when a settlement or an award is in operation and when no notice as required under Sub-section (2) or Sub-section (6) of S. 19 has been issued. Since S. 19 itself makes a distinction between an award and a settlement, it is necessary for us before considering the provisions relied upon by both the parties to determine whether the settlement which is said to have been in operation, is in reality a settlement or an award. It is common ground that when disputes arose between the parties regarding the implementation of the recommendations of the central wage board for the cotton textile industry, the dispute was referred to the industrial tribunal by the State Government and the industrial tribunal passed an award in Industrial Dispute No. 12 of 1961. It is also common ground that both the parties were dissatisfied with the award and therefore approached this Court by filing two independent writ petitions. During the pendency of the writ petitions, the parties arrived at a settlement and filed the same with a memo, before the Court praying for a particular order in the disposal of the two writ petitions. Exhibit A is the certified copy of the order passed by this Court in the two writ petitions (Writ Petitions Nos. 90 and 212 of 1963) on 29 July, 1963. We reproduce the following portion of the order which has a bearing on the point requiring our decision :

"Memorandum of compromise entered into by both the parties and counsel wherein it is submitted

1. Writ Petition No. 90 of 1963 and Writ Petition No. 212 of 1963 arise out of the same award dated 15 December, 1962 passed by the industrial tribunal in Mysore, Bangalore in Industrial Dispute No. 12 of 1961. Writ Petition No. 90 of 1963 has been filed by the employers and Writ Petition No. 212 of 1963 has been filed by the workmen. A common order may, therefore, be passed covering both the writ petitions.

2. The parties to Industrial Dispute No. 12 of 1961 on the file of the industrial tribunal, Bangalore, have by negotiations settled the disputes and have signed a memorandum of settlement on 1 July, 1963, a true copy of which is annexure A to this memorandum.

3. The award, dated 15 December, 1962, passed by respondent 2 in Industrial Dispute No. 12 of 1961 may, therefore, be quashed and substituted by an award in terms of the memorandum of settlement (annexure A).

4. Parties will bear their own costs of the writ petitions."

10. These petitions along with the compromise petition coming on for hearing this day, Hombe Gowda, J., Made the following :

ORDER

"The award is quashed as desired by the parties. In its place the compromise arrived at between the parties and incorporated in the petition is substituted. An order in terms of the compromise petition is passed. Parties will bear their own costs."

11. Sri Krishnayya, the learned advocate for the petitioner (workers' union), contended that considering the definition of the word "award" in S. 2(b) of the Act, it would not be possible to bring the order passed in the writ petitions under the category of an award. It must be conceded that the term "award" as defined in this Act has a reference to the determination of an industrial dispute or of any question relating thereto by the tribunals contemplated by the Act, viz., labour court, industrial tribunal or national industrial tribunal. There is no reference to the High Court for the obvious reason that the High Court is not one of the tribunals constituted under the Act. It cannot be denied that the High Court has jurisdiction over all subordinate tribunals either in appeal if one is provided for by the statute or under the writ jurisdiction as provide by the Constitution in Arts. 226 and 227 of the Constitution. It is obvious from the proceedings in the writ petitions that the parties themselves prayed to the Court that the award dated 15 December, 1962 passed by the industrial tribunal should be quashed. There was a further prayer that the terms of the settlement as embodied in the memorandum of settlement filed before the Court, should be substituted in place of the award passed by the industrial tribunal. In law and in fact, the settlement arrived at by the parties was substituted by the order of this Court in place of the award and the only award which could result in an enforceable document is that embodied in the order of this Court. If the parties had arrived at a settlement as contemplated by S. 18(1) of the Act otherwise than in the course of a conciliation proceeding and it had no reference to a proceeding pending in Court, then there would have been some need to doubt the character of the settlement. In the present case, we have absolutely no doubt that the prayer made by the parties in the former writ petitions was granted by this Court and this Court expressly stated is the operative portion of the order that the award had been quashed and that the settlement embodied in the memorandum filed by the parties should

stand substituted in place of the award. We are, therefore, of the opinion that what emerged from the order passed in the writ petitions, has to be construed as an award and that such sub-sections of S. 19 as are applicable to an award have got to be considered in deciding the points raised by the parties.

12. The first ground of attack is that when the award was in operation, it was not open to the employer and to the labour unions to have entered into a settlement even through the conciliation. In support of this contention, reliance was placed on the decision of the Bombay High Court in *Poona Mazdoor Sabha Vs. Dhutia G.K. and Another (Esco Ltd.)*, in which it was laid down that conciliation proceedings cannot be initiated when there is a settlement in force. Now we have to see whether this award was in force when the impugned settlement was entered into between the parties. Section 19(3) of the Act reads as follows :

"* * * (3) An award shall, subject to the provisions of this section, remain in operation for a period of one year from the date on which the award becomes enforceable under S. 17A :

Provided that the appropriate Government may reduce the said period and fix such period as it thinks fit :

Provided further that the appropriate Government may, before the expiry of the said period, extend the period of operation by any period not exceeding one year at a time as it thinks fit so, however, that the total period of operation of any award does not exceed three years from the date on which it came into operation."

13. The award provides that it shall operate for a period of four years from 1 July, 1963. In view of what has been laid down in Sub-section (3) of S. 19, it is essential that the total period of an award should not exceed three years from the date on which it came into operation. In that view, the award ceased to be operative after 1 July, 1966.

14. It was further contended that the award continued to be binding between the parties in view of the reference made to the operative portion of it in the settlement that was entered into between all the parties concerned on 30 September, 1966. This document of settlement is marked as Ex. B in Writ Petition No. 378 of 1967. It expressly states that the rates of dearness allowance mentioned therein were to be operative for four months, viz., September, October, November and December 1966. It is mentioned in Clause (d) of the settlement that

"from January 1967 onwards, payment of dearness allowance will be restored to the previous system as per agreement dated 1 July, 1963."

15. On the basis of this recital, Sri Krishnayya, the learned advocate for one of the petitioners, contended that though the settlement of 30 September, 1966 ceased to be in operation by the end of December 1966 in so far as the rate of dearness allowance proposed therein were concerned, yet on account of the

recital in Clause (d) the terms of the prior award would continue to be in operation.

16. In considering the merits of this argument, we have to refer to Sub-section (6) of S. 19 which lays down :

"* * * (6) Notwithstanding the expiry of the period of operation under Sub-section (3), the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award."

17. In considering the intendment of Sub-section (3) and (6) of S. 19, the distinction between the expressions "in force" and "in operation" has to be borne in mind. While Sub-section (3) lays down that an award shall be in operation for the different periods mentioned in that sub section whenever action has been taken by the Government after the expiry of the period of operation, the award does not automatically cease, but it continues to be in force and binds the parties until it is terminate by a notice and such termination takes effect two months after the notice. The words "in operation" have reference to the period fixed by law or by the parties according to law while the words "in force" have reference to the period (subsequent to the period of operation) during which it will statutorily be binding on the parties to the award or settlement. Much of the significance of this argument disappears when we remember one significant feature of this case. The award ceased to be in operation by the end of June 1966. It is nobody's case that the settlement dated 30 September, 1966 is either invalid or suffers from any of the infirmities alleged against the settlement of January 1967. The only legal inference that can be drawn from these admitted circumstances is that the award ceased to be in force from 1 July, 1966, and that by common consent of all the parties a new settlement was arrived at and that settlement was to operate for four months expressly specified in the settlement.

18. Now we have to see whether Clause (d) of this settlement is either a new term of the settlement as is contended by the learned advocates for the petitioners or is merely an expression of consent to revive the old award that ceased to be in operation and which had lost all its binding character after the settlement of 30 September, 1966. In this connexion we may refer to certain averments in the writ petitions. It has been stated in Para. 13(1) of Writ petition No. 378 of 1967 thus :

"(1) As stated supra, on 30 September, 1966, there was a settlement (Ex. B) during the course of conciliation proceedings under S. 12(3) of the Act to the effect that from January 1967 onwards payment of dearness allowance will be restored to the previous system as per agreement dated 1 July, 1963, i.e, the dearness allowance was to be payable to the workmen on the basis of cost of living index. This settlement was to be binding on all the parties till 30 June, 1967."

19. The recitals in the other writ petition (Writ Petition No. 456 of 1967) at the end of Para. 3 merely points out that the petitioners' plea therein is that the settlement dated 1 July, 1963 continued to be in force till 1 July, 1967. Taking the pleadings of the parties as they stand, we are of the opinion that when once the binding character of the award got effaced by the mutual consent of the parties and a new settlement dated 30 September, 1966 came to be arrived at, it would not be open to them to say that the old award shall stand revived. There is nothing either in S. 19 or in any other provisions of the Act providing for revival of an award which has become extinguished or ceased to be in force by act of parties.

20. The second aspect of the contention is that without issuing a notice as contemplated by Sub-section (6) of S. 19, it would not be open to the parties to enter into a fresh agreement. It is common ground that no notice as stated in Sub-section (6) of S. 19 was issued by any of the parties. It appears from EX. 10 of the exhibits produced by respondent 2 with its counter that even before the expiry of the second settlement of 30 September, 1966 which as already stated expressly mentioned as being operative for a period of four months specified therein, the management seems to have started negotiations for continuance of revived rates of dearness allowance ignoring the linking of the rates with the living index. It appears from Ex. 9 that as early as on 30 November, 1966, the office-bearers of the five labour unions of the mills were invited for discussion by the managing director and the discussion seems to have been carried on till about 15 December, 1966 without producing any tangible results. It is only thereafter that the management wrote a letter dated 7 January, 1967 as mentioned in the preamble to the impugned settlement to the effect that as the four months stipulated in the settlement expired by the end of December 1966, the conciliation officer should take steps to arrive at a settlement regarding the quantum of dearness allowance payable from the month of January 1967. The contention of the petitioner is that such negotiations or the conciliation could not have been started without an express notice as required by Sub-section (6) of S. 19. We do not agree with this contention for the reasons to be stated presently.

21. The preamble to the settlement at Ex. C. 5 makes it clear that the conciliation officer held two meetings on 11 and 16 January, 1967 at which all the five labour unions were represented. They participated in the discussion also. The settlement (Ex. C) which is in the prescribed form narrates the circumstances to which a reference has already been made, besides stating why the necessity for reviving the rates of dearness allowance had arisen. It appears from the concluding paragraph of the preamble that the two petitioners did not agree to the proposal of reduction of dearness allowance and refused to sign the settlement. The remaining three associations and Labour unions as also the employer signed the settlement. It is also signed by the conciliation officer. It does not appear from Ex. C that the present petitioners took objection either about the notice under Sub-section (3) of S. 19 or of any award or settlement having been in force and of binding effect during the period for which

negotiations had been started. It is only on 23 January, 1967 as per Ex. 4, the Karmikara Sangha, the petitioner in Writ Petition No. 456 of 1967, took an objection as to the failure of issue of notice terminating the settlement of 1 July, 1963. The impugned settlement was arrived at on 16 January, 1967; while the notice to the conciliation officer was issued on 23 January, 1967. It has been laid down by the Supreme Court in *Workmen of Western India Match Company v. Western India Match company* 1962 I LlJ 661, that the absence of a formal notice under S. 19(2) of the Act terminating the settlement is immaterial in view of the subsequent representations made by the workmen and the action taken by the parties. It has been stated that no express notice is necessary and that if the conduct of the parties showed that they were definitely aware of the intention to terminate settlement or an award and thereafter participated in arriving at a settlement, then the absence of notice would not affect the validity of the settlement.

22. It is necessary to mention that from the records placed before us, the strength of the workmen in the mills is 3,012. Respondent 2, namely, the mills, has stated that the membership of the union of the petitioner in Writ Petition No. 378 of 1967 was 500; while that of the union in the other petition (Writ Petition No. 456 of 1967) was 75. Respondent 3 has stated in his affidavit that the membership of his union was 2,209. The petitioner in Writ Petition No. 378 of 1967 has stated that the membership of his union was about 1,000, while that of the other petitioner in Writ Petition No. 456 of 1967 was 200. The petitioner in Writ Petition No. 456 of 1967 has stated that his union has a membership of about 400, while that of the other petitioner was 600. Taking the precise statements made by respondents 2 and 3, we are inclined to hold that the two petitioners together have a membership of about 800 to 1,000, while the rest of the other workmen are members of the respondent-unions which have signed the settlement of 16 January, 1967 and have agreed to accept the revised terms of the dearness allowance. In other words, nearly two-thirds of the workmen, or slightly more, seem to have accepted the arrangement with the management in view of the facts that the management itself was in financial stringency, that the shareholders had been pressing for closure of the mills and that the total losses during the last five years exceeded even the share capital of the mills. In these circumstances, even if we had any reasons to agree with the petitioner, we would not have exercised our discretionary jurisdiction to quash the arrangement which has been arrived at by the majority of the workmen with the management both in the interest of the industry and in the interest of the labour itself.

23. Now remain two other contentions which have been urged by Sri Subba Rao. One of his contentions is that the impugned settlement is contrary to S. 9A of the Act and is therefore, illegal. section 9A lay down :

"9A. No employer, who proposes to effect any change in the conditions of service applicable to any workmen in respect of any matter specified in Sch. IV shall effect such change -

- (a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or
- (b) within twenty-one days of giving such notice ..."

24. In our opinion, the clear meaning of this section is that whenever an employer unilaterally proposes to effect any change in respect of any of the matters specified Sch. IV he ought to give notice as provided by this section. The provision safeguards the interests of the employees, in that it prohibits an employer from taking any action in the specified matters without notice. When a notice is given to the employees, they can take such steps as the law permits them to take, before the changes proposed by the employer are brought into effect by his unilateral action this section has no application to a settlement which is arrived at in the course of a conciliation proceeding.

25. The last contention is that the settlement at Ex. C is not a settlement as contemplated by S. 12(3) of the Act. We have already quoted Sub-section (3) of S. 12. All that that sub-section lays down is that when a settlement is arrived at in the course of the conciliation proceedings, it is obligatory on the conciliation officer to send a report thereof to the appropriate Government together with a memorandum of settlement signed by the parties to the dispute. It is nobody's case that there was any failure on the part of the conciliation officer to comply with this requirement of law. When confronted with this difficulty, Sri Subba Rao submitted that the settlement did not disclose what efforts the conciliation officer had made in order to make the settlement fair to the labourers. He further sought to rely upon some rules dealing with factual steps to be taken. We are not prepared to consider these objections, because when any section is impeached on the ground of failure to follow certain formalities, the objections pertaining to such breaches of formalities ought to be specifically taken so that the party affected by such objections has an opportunity of showing that there had been full or proper compliance with those formalities. The learned advocates for the petitioners drew our attention to ascertain observations made by the Supreme Court in *Hindustan Times, Ltd., New Delhi v. Their workmen* 1953 I Ilj 108 and *Crown Aluminium Works Vs. Their Workmen*, . These observations relate to the assessment of the evidence and of testing of the claims arrived at by the lower tribunals. It should be remembered that both these cases before their lordships were cases of appeal and not cases of writ petitions for writs of certiorari and of mandamus. It is an undisputed principle of law that a writ Court is not an appellate Court and cannot assume there role of an appellate Court to examine the facts of the case and the evidence before the tribunal in order to assess whether the conclusions arrived at are reasonable or satisfactory. The limits of the writ jurisdiction are well-known. So far as the petitioner in a writ for certiorari is concerned, it is necessary for him to show that there is an error of law apparent on the face of the record or that there is an illegality, or as laid down by the Supreme Court in *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, the administrative order complained of is

vitiated either on the ground of mala fides, dishonesty or corruption. We have no proof of any of these infirmities in this case. So far as the writ for mandamus is concerned, we have already pointed out that the settlement impugned is an act of the parties to the settlement and the conciliation officer has merely used his good offices to induce the parties to come to a fair and amicable settlement. The settlement is neither an order passed by him nor a decision recorded by him. So the question of issuing any writ of mandamus against a statutory authority does not arise.

26. For these reasons, we hold that both the writ petitions fail and they are dismissed. In the particular circumstances of the case, we direct the parties to bear their own costs.