

(2011) 08 MAD CK 0452

In the Madras High Court

Case No : Writ Petition (MD) No. 11631 of 2005 and W.P. (MP) (MD) No. 12377 of 2005

M. Renganathan, M. Urkalan and M. Samuthiravel

APPELLANT

Vs

The General Manager, Personal Administration Department,
Indian Overseas Bank and All India Overseas Bank
Employees' Union

RESPONDENT

Date of Decision : 05-08-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 12(3), 18, 18(1), 18(3)

Citation : (2011) 08 MAD CK 0452

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : V.R. Venkatesan, for the Appellant; N.G.R. Prasad for Respondent-1 and M/s. M.V. Venkateshan for Respondent-2, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice Vinod K. Sharma

1. The Petitioners in this Writ Petition have challenged the settlement arrived at between the majority union and the management u/s 12(3) of the Industrial Disputes Act, dated 18.05.2001.

2. In view of the judgement of the Honourable Supreme Court in the case of National Engineering Industries Ltd. Vs. State of Rajasthan and Others, , wherein the Honourable Supreme Court has been pleased to lay down as under:

"24. It will be thus seen that the High Court has jurisdiction to entertain a writ petition when there is an allegation that there is no industrial dispute and none apprehended which could be the subject-matter of reference for adjudication to the Industrial Tribunal u/s 10 of the Act. Here it is a question of jurisdiction of the Industrial Tribunal, which could be examined by the High Court in its jurisdiction. It is the existence of the Industrial Tribunal (sic dispute) which would

clothe the appropriate Government with power to make the reference and the Industrial Tribunal to adjudicate it. If there is no industrial dispute in existence or apprehended the appropriate Government lacks power to make any reference. A settlement of dispute between the parties themselves is to be preferred, where it could be arrived at, to industrial adjudication, as the settlement is likely to lead to more lasting peace than an award. Settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bonafide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducement it could be the subject-matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the Conciliation Officer must be fair and reasonable. A settlement which is sought to be impugned has to be scanned and scrutinized. Sub-sections (1) and (3) of Section 18 divide settlements into two categories, namely (1) those arrived at outside the conciliation proceedings and (2) those arrived at in the course of conciliation proceedings. A settlement which belongs to the first category has a limited application in that it merely binds the parties to the agreement but the settlement belonging to the second category has an extended application in that it is binding on all the parties to the industrial disputes, to all others who were summoned to appear in the conciliation proceedings and to all persons employed in the establishment or part of the establishment, as the case may be, to which the dispute related on the date of the dispute and to all others who joined the establishment thereafter. A settlement arrived at in the course of conciliation proceedings with a recognized majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. The recognized union having the majority members is expected to protect the legitimate interest of the labour and enter into a settlement in the best interest of the labour. This is with the object to uphold the sanctity of settlement reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union for scuttling the settlement. When a settlement is arrived at during the conciliation proceedings, it is binding on the members of the Workers' Union as laid down by Section 18(3)(d) of the Act. It would ipso facto bind all the existing workmen who are all parties to the industrial dispute and who may not be members of the unions that are signatories to such settlement u/s 12(3) of the Act. The Act is based on the principle of collective bargaining for resolving industrial disputes and for maintaining industrial peace. "This principle of industrial democracy is the bedrock of the Act," as pointed out in the case of *P. Virudhachalam. v. Lotus Mills*. In all these negotiations based on collective bargaining the individual workman necessarily recedes to the background. Settlements will encompass all the disputes existing at the time of the settlement except those specifically left out.

3. In view of the law laid down in the above decision of the Honourable Supreme Court, this Writ Petition is not competent in this Court
4. Consequently, the Writ Petition is dismissed as not competent.
5. The connected Miscellaneous Petition is closed.
6. No costs.