(2015) 01 KL CK 0099

In the High Court Of Kerala

Case No : Writ Petition(C). No. 19630 of 2009 (W)

Malabar Cements Limited — APPELLANT

Vs

The General Secretary, MCL Employees Union and Others — RESPONDENT

Date of Decision : 16-01-2015

Acts Referred:
Industrial Disputes Act, 1947 — Section 10, 2(p)

Citation : (2015) 01 KL CK 0099

Hon'ble Judges : K. Vinod Chandran, J.

Bench : Single Bench

Advocate : K. Anand, Senior Advocate and Latha Krishnan, for the Appellant

Final Decision : Disposed off

Judgement

K. Vinod Chandran, J.—The petitioner, an industrial establishment, carrying on cement manufacturing, is aggrieved with Exhibit P4 award passed by the Industrial Tribunal, Palakkad [for brevity "the Tribunal"]. The Tribunal, by Exhibit P4 award, while adjudicating a dispute raised with respect to certain anomalies in the pay structure, by reason of a settlement entered into between the management and the employees, found that the management is bound to implement its proposal placed before the Conciliation Officer and directed the proposal to be implemented from 01.04.1996, the date of agreement; but, however, restricting the monetary benefits from 01.04.2000.

2. The learned Senior Counsel appearing for the petitioner would submit that the dispute itself was raised on the basis of a settlement arrived at between the Cement Manufacturers Association and the employees of the cement factories in the country, represented by their representative Unions, by way of a settlement entered into on 12.07.1996. The settlement between the Association and the Unions governed the entire cement industry and the petitioner also had implemented the same within its establishment. Stray incidents with respect to anomaly in pay was pointed out, which, however, was not effectively adjudicated by the representative-Unions or the workmen who raised such dispute.

3. In the year 2001, certain anomalies were admitted by the management and it was agreed to rectify the same from 01.04.2000, by provision of a Special Personal Pay, so as to ameliorate any inconsistency with the pay structure causing short-fall in existing pay of the employees, if any found. There was no settlement as such arrived at on the above proposal and the Union dragged its feet, insofar as a conciliation was initiated only in the year 2004, specifically on 30.12.2004. Since no settlement was arrived at before the Additional Labour Commissioner, the matter was referred for adjudication, in which Exhibit P4 award was passed accepting a proposal placed before the Conciliation Officer, which was produced before the Tribunal as Exhibit W2.

4. The preliminary objection raised with respect to the jurisdiction, is on account of the fact that the agreement itself is one entered into between the Cement Manufacturers Association with the representative Unions at the National level and, hence, a reference would have been competent only by the Central Government and not by the State Government and that too, to a Court constituted under sub-section (1A) of Section 10 of the Industrial Disputes Act, 1947 [for brevity "ID Act"]. The Tribunal, however, rejected the said contention, which, in the opinion of this Court, is perfectly in order.

5. Though the settlement was entered into between the Cement Manufacturers Association and the representative Unions of employees engaged in the cement industry, at the National level, the petitioner-establishment by way of compulsion only on account of its membership under the Cement Manufacturers Association, adopted the same to its establishment with the consent of its employees. Hence, definitely that would be "settlement" as defined under Section 2(p) of the ID Act applicable to the establishment, the disputes of which could be referred only by the State Government, which is the appropriate Government.

6. The Tribunal also held that the admitted anomalies in the settlement entered into at the National level was rightly referred to the Conciliation Officer, which conciliation having failed, the reference had been made to the Tribunal. There would be no difficulty in accepting such proposition and any settlement arrived at the National level adopted in the management-establishment would be subject to any modifications made on agreement between the management and the representative Unions.

7. The anomalies again relate only to pay structure of the employees and the seniors being conferred with a lesser scale than that of the juniors, which could be alleviated without much difficulty. A settlement on that aspect if arrived at, on conciliation, definitely such altered terms entered into, would be applicable to the petitioner''s establishment alone. The settlement entered into at the National level would stand modified to that extent, with respect to the petitioner''s establishment. The findings on the preliminary objection rejecting the same are found to be, hence, in order. The Tribunal having noticed that there were two other settlements arrived at on 16.08.2000 and 26.04.2005, respectively produced as Exhibits M2 and M3, found that the factum of said settlements

having been arrived at subsequently, would not efface the anomaly in the earlier settlement.

8. In the present case, the conciliation had failed and a reference was made. The Tribunal was obliged to adjudicate on the anomalies. However, in the present case what the Tribunal has done is to hold the management down to the proposal made to the Conciliation Officer. The Tribunal ought to have noticed that the proposal made by the management was specifically prospective from the year 2004, on which date the conciliation was initiated. The management also could not be held down to such proposal, since definitely a settlement in conciliation was not arrived at.

9. On a reading of Exhibit P4 award, it is seen that the Tribunal has not at all looked into what exactly the anomaly was. The Union and the Tribunal proceeded merely on the premise that an anomaly was admitted. It was not even evident as to who were the workmen who were affected by the aforesaid anomalies. The Tribunal in fact notices that the charter of demand dated 29.10.2004 which led to the reference of the dispute was with respect to 15 workmen and it was not clear as to whether they were persons included in the 27 referred to in Exhibit W1 letter, as having filed representations for rectification of anomalies. No evidence seems to have been adduced with respect to the specific anomaly alleged by the Union on which the reference was made. In such circumstance, there was no warrant for the Tribunal to adopt the proposal of the management filed before the Conciliation Officer with retrospective monetary benefits from 01.04.2000.

10. It is to be noticed that considerable time has elapsed from the time in which the anomaly in pay fixation had arisen. Admittedly the anomalies occurred in 1996 and there was a proposal by the management agreeing to rectify the same from 01.04.2000. The Union neither accepted the same; nor raised an industrial dispute. Only in the year 2004 such an attempt was made. Though there is no question of any limitation for a reference under the ID Act, the Hon''ble Supreme Court has said that relief can be moulded if the delay stands proved, in Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another, . Though the Tribunal has accepted the offer of the management placed before the District Labour Officer, the Tribunal has given it with retrospective effect. The proposal of the management, which was extracted in Exhibit P4 at para 9, would indicate that the management had merely agreed to grant monetary benefits with prospective effect. In such circumstance, the grant of monetary benefits with retrospective effect as per Exhibit P4 would stand set aside.

With the aforesaid modification in Exhibit P4, the writ petition would stand disposed of. Parties are left to suffer their costs.