

(2017) 07 AHC CK 0046
In the Allahabad High Court
Case No : 47957 of 2004

Panna Lal & Others

APPELLANT

Vs

Presiding Officer & Another

RESPONDENT

Date of Decision : 21-07-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs
Uttar Pradesh Industrial Disputes Act, 1947, Section 2(a), Section 6B, Section 2(t), Section 2(z) - Definitions -
Definitions - Definitions

Citation : (2017) 07 AHC CK 0046

Hon'ble Judges : Sangeeta Chandra

Bench : Single Bench

Advocate : G.C. Gehrana, Anoop Trivedi, Babita Upadhyay, Pankaj Srivastava, Pawan Bhardwaj, Pramod Bhardwaj, Sanjeev Kumar Gaur, Shyam Sundar, A.K. Mishra, Piyush Bhargava, U.K. Mishra

Final Decision : Dismissed

Judgement

1. This writ has been filed challenging the award dated 6.9.2003 passed by the Presiding Officer, Labour Court, U.P., Agra and also praying for writ in the nature of mandamus to the respondent No.2 M/s Heinz India Pvt. Ltd., Manzoor Garhi to allow the petitioners to resume duties and to treat them in service with effect from the date of their illegal termination and to give them all consequential benefits.

2. Heard Shri Chandrajeet Yadav, learned Advocate assisted by Shri Sanjeev Kumar Gaur, Miss. Babita Upadhyay for the petitioners and Shri Piyush Bhargava, learned counsel for the respondent No.2.

3. It is the case of the petitioners that they were working in the establishment of M/s Glaxo (India) Ltd., Manzoor Garhi, Aligarh, later on acquired by M/s Heinz India Pvt. Ltd. and all the assets and liabilities alongwith workmen were

transferred to the respondent No.2. Since, the workmen, who were engaged in the department of production and retail packing were vocal in raising various demands on behalf of other workers, the management hatched a conspiracy so that all the petitioners alongwith 33 other workmen, who were active in trade union activities, were illegally stopped from working w.e.f. 2.11.1997. No termination order or notice or information was given in writing before such termination. In the last week of November 1997, the petitioners were told that they will be given some additional amount as wages, which they may receive on 27 / 28th November, 1997.

4. It is alleged that the petitioners and other workmen were asked to sign a typed document in English and were told that the amount which is being given to them was additional wages as demanded by them. The workers signed the said documents without properly understanding its content. Later on, it was revealed to them that the employers had played a fraud upon them and had terminated their services alleging that their claims had been settled by giving monetary compensation. No retrenchment compensation as was due to them was given.

5. It has been argued by the learned counsel for the petitioners that after protests were held and applications were moved before the authorities concerned, the dispute was referred to the Labour Court for adjudication under Section-2(A) of the U.P. Industrial Dispute Act.

6. Similar claims were filed by 14 workmen and the disputes were registered as Adjudication Case Nos.319 to 332 of 2000. Written statements are filed containing similar pleadings in all such claims by the employers and replications were filed thereafter by the workmen. The workmen also filed an application for summoning certain documents but such application was arbitrarily rejected on 22.5.2003. It is the case of the petitioners that the following two issues were framed in all the adjudication cases namely:-

(i) whether the settlement between the parties is legally binding or not ? if not, its effect ?

(ii) whether the workmen were falling within the definition of workmen under Section-2(z) of the U.P. Industrial Dispute Act, 1947 ? If not, its effect ?

7. The Labour Court however did not look into the evidence produced by the workmen and failed to consider that the alleged settlement has not been done in accordance of the provisions of U.P. Industrial Dispute Act, but has been done under the guise of payment for their claims, which was due to them for past services rendered.

8. It is the case of the counsel for the petitioners that Labour Court failed to decide the crucial question with regard to "settlement" as set up by the employers. "Settlement" can be of two types, one settlement is arrived at in the course of conciliation proceedings and another is a written agreement, which is signed between the employer and workmen outside conciliation proceedings but

such written agreement must be signed by the parties in such manner as may be prescribed and a copy of the said agreement must be sent to the State Government and the Conciliation Officer. Under Section-6 B of the U.P. Industrial Dispute Act, it is provided that the "settlement" arrived at by an agreement between the employer and workmen outside conciliation proceedings is referred to the Conciliation Officer in the prescribed manner for registration and on receipt of application for registration, the Conciliation Officer either registers the settlement or refuses registration and in case of such refusal on grounds affecting social justice or coming to the conclusion that the agreement is a result of collusion, fraud and misrepresentation, such agreement shall not be binding upon the parties under the Act.

9. The counsel for the petitioners has alleged that since under Section-6-B, a "settlement" shall be binding if it is arrived at outside conciliation proceedings only if a copy of the same is sent to the Conciliation Officer to the State Government after it has been registered by him, the alleged agreement between the parties on which the employers relied upon for illegally terminating the services of the workmen cannot be said to be a settlement which comes within the definition of Section-2(t) of the U.P. Industrial Dispute Act. The alleged settlement being against the provisions of Sections-2(t) and 6-B of the U.P. Industrial Dispute Act, could not have been relied upon by the Labour Court to reject their claim against their employers.

10. On the other hand, learned counsel for respondent No.2 M/s Heinz India Pvt. Ltd. argued that an agreement was arrived at between 47 casual workmen and the management, with regard to the proposal to do away with their services. As it was admitted by the workmen that they had not worked for 240 days in the preceding 12 months and were not entitled to retrenchment compensation, such workmen had agreed that if the Company paid some lump-sum amount to them as compensation they would not raise any further claims against the Company. Accordingly, out of compassion alone and on humanitarian considerations, the Company agreed to give certain amounts to each of the workmen on the basis of number of days they had worked in the preceding year, with an understanding between the workmen and the Company that in case such compensation is received, the workmen shall not make any further claims against the Company. Cheques were given of different amounts to each of the workman in accordance with the number of days that each of them worked on the 27 / 28th November, 1997, and then their services were terminated. Out of 47 workmen, who received such benefits, 14 became greedy and turned dis-honest. They filed claim petitions, which were referred to the opposite party No.1 by the Government.

11. It is the case of the respondents that fourteen petitioners had originally filed the writ petition but seven have later on withdrawn by filing an application. This Court by order dated 28th February 2017 has dismissed the writ petition as withdrawn with regard to petitioner Nos.1, 2, 4, 6, 10, 13 and 14.

12. It has also been argued that the petitioners are not permanent or temporary workmen as defined in the Company's Certified Standing Orders, which provided the procedure for engagement of casual workers, and also for regular workmen. There are three types of workers in the factory; permanent, temporary and casual. The petitioners herein were casual workers and could not claim the status of workmen.

13. The counsel for the respondent No.2 has pointed out from the order impugned the fact that the Reference that was made by the Government to the respondent No.1 was only to the effect whether the concerned workmen could have been said to be validly dis-engaged in pursuance of the settlement dated 28.11.1997, and in case such dis-engagement was invalid, the reliefs to which the concerned workmen were entitled to. The counsel for the respondent has submitted that the validity of the settlement was not under challenge. It was only the disengagement of the workmen on the basis of such settlement dated 28.11.1997, which was questioned and a Reference was made by the Government to the Labour Court for its adjudication on alleged illegal termination.

14. After hearing the parties and perusing the order impugned in this writ petition, this Court finds that two issues have been raised by the learned counsel for the parties. Firstly, it is the petitioners case, the alleged settlement, which took place on 28.11.1997 was not indeed a "settlement" within the meaning of Section-2(t) and Section-6 B of the U.P. Industrial Dispute Act. Secondly, it is the case of the petitioners that there was definite evidence that soon after the alleged agreement there was picketing outside the factory gates by the petitioners to allow them to resume duties and also for cancellation of alleged settlement, if any. The respondent No.1 has not given any finding on this aspect.

15. The respondent No.1 has considered in detail issue No.(1) with regard to whether the alleged settlement would bind the parties to the said settlement or not and has considered the submissions made by the learned counsel for the workmen before it that the settlement was typed in English and they could neither read it nor understand it. On the representations made by their employers that this was a receipt, which would be treated as evidence that they had received arrears of their increased wages, they had signed the said document. Some of the workmen, had also said before the Labour Court that they were asked to sign blank papers, which they signed.

16. The Labour Court had found that if the case of the workmen is to be believed that they were asked to sign blank papers or papers which were typed in English, which they could neither read nor understand, then their assertion would have to be proved by them because the burden of proof would be on the workmen to show that such signatures were taken in a fraudulent manner.

17. The Labour Court found on a consideration of evidence that 47 workmen had individually signed receipts with regard to various amounts received by them from the employers. Out of 47 only 14 had come forward and made the

allegation that they signed the paper under a mis-conception and also due to mis-representation made by the employers. A detailed inquiry was made and evidence was considered by the Labour Court that money was received by each of the workmen commensurate with their respective days of working with the respondent No.2. Some of the workmen had disputed the amounts received and the Company had recalculated the days of working and issued further cheques after verifying the claims of these workmen. The cheques that had been received by these workmen was deposited in their bank accounts and the same were also encashed.

18. The learned Labour Court had considered the statement of some of the workmen and also defence witnesses produced by the employer and it came to the conclusion that the fact of signatures being made on the agreement have not been disputed by any of the workmen. It is not their case that their signatures were forged. It was their case that the signatures were taken by mis-representation. If such signatures were taken by misrepresentation, and such mis-representation was discovered later on the workmen, then such workmen should have made efforts to return the money or the cheques which they had received. Neither the cheques which were later on encashed nor the money, was ever offered to be returned. After considering the evidence produced before it and the statements of the workmen as well as of the representatives of the employers, the Labour Court has considered, whether the burden of proof regarding the Company having obtained the signatures fraudulently had been sufficiently discharged by the workmen.

19. The Labour Court has noticed that although Evidence Act in all its strictness does not apply in the proceedings of the Labour Court, it could be easily found out whether the workmen were making self serving statements in the witness box or not. This could be done through consideration of circumstantial evidence. The Exhibit-1, which was the "agreement" clearly showed that signatures had been made by each side to the agreement alongwith signatures of two witnesses. In the 14 cases before it, payments were made in pursuance to the said agreement of amounts ranging from Rs.14,000/- to Rs. 23, 500/-. It was also evident from the statements before the Labour Court that no arrears of wages of any of the workmen were pending to be released at the time when the said settlement was signed. There was also no announcement by the Company that the wages had been revised upwards. Hence, it cannot be said as to how the workmen came to the conclusion that their wages had been increased and the difference in the wages already received and the increased wages was being given by the employer. Since, the workmen could not produce any evidence that there were indeed arrears of wages, which were left to be given by the employers, nor could they produce any evidence that the wages had been increased and it was difference in wages which was given through cheques to them, the Labour Court correctly drew the conclusion that having received various amounts ranging from Rs. 14,000/- to Rs. 23,500/- through cheques and having deposited them in their bank accounts and then encashing them also, the

workmen could not now turn around and say that this amount was given not as full and final settlement of their claims on the employer, but as increased wages or arrears of wages.

20. With regard to the case of the workmen that under Section- 6 B of the U.P. Industrial Dispute Act read with Section-2(t), such settlement needed to be sent to the State Government through the Conciliation Officer and ought to have been registered, the Labour Court has come to a finding that "agreements" were reached individually between the employer and each of the workmen concerned.

21. It was neither the case of the employers nor of the workmen that a group settlement was arrived at. The employers had insisted that none of these workmen had worked for 240 days in the preceding 12 months and therefore none of them were entitled to any retrenchment compensation. Infact, there was no retrenchment at all. It was a case of agreement between the parties, wherein each of the workmen individually agreed to receive a certain amount as lump sum compensation for all claims / dues against the Company.

22. The Labour Court has rightly come to the conclusion that in getting the signatures of the workmen concerned on the agreements, no fraud was played by the management. The workmen knew exactly what papers they were signing and also derived benefits out of these papers by encashing the cheques that were deposited in their bank accounts. Thirty three of the forty seven workmen did not approach the Labour Court nor raise any dispute. Only 14 of such workmen raised an ingenious plea that the papers were signed by them on misrepresentation of the employers, which could not be termed as valid settlement under the U.P. Industrial Dispute Act. The employers all along had set up a case that it was not a settlement in between a group of workmen and the employers. It was a case of individual agreements, which were signed between the employers and workmen on the basis of which compensation was offered for the number of days each of the the workmen had actually worked. An oral agreement had been reached between the parties after continuous discussions which had led to the papers being signed.

23. I have carefully perused the award impugned which clearly shows that the respondent No.1 considered Section-2(t) of the U.P. Industrial Dispute Act and Section-6 B of the U.P. Industrial Dispute Act also. Personal and private agreements do not come within the purview of the said sections. Hence, the requirement of sending copies of the agreement to the Conciliation Officer and to the State Government and registration of the agreement was not necessary. Since, it could not be established by the workmen that these individual agreements were the result of fraud and mis-representation, there was no reason for the Labour Court to reject the argument raised by the employers with regard to their validity.

24. The judgments as relied upon by the learned counsel for the workmen were all distinguishable as they related to "settlement" arrived between registered

employees" union with their employers. For individual settlements with each of the workmen by the employer concerned, no judgment was cited before the learned Labour Court and therefore the learned Labour Court applied the general law of the land and came to the conclusion that the burden of proof would lie upon the one who asserted that such agreement was entered into only because of fraud practiced upon the signatory. Such fraudulent practice or unfair labour practice could not be proved. None of the workmen could prove that they had worked for 240 days continuously in the preceding calendar year and therefore their claim that they had been illegally retrenched was also not believed by the respondent No.1.

25. At the time of argument the learned counsel for the respondent placed before this Court judgment rendered by the Gujrat High Court reported in 1999 Labour and Industrial Cases 2759, (Gokulesh Petroleum Pvt. Ltd. vs Himalaya R. Shah), wherein the Court was considering an individual agreement signed between the workman with regard to receiving a certain sum of money as full and final settlement of his claim and observed that in so far as the definition of word "settlement" in the act is concerned, the same refers to a settlement between "workmen" and employers. It does not refer to an agreement reached between an individual workman and his employers. Similarly, under Section-19 such settlement is between a group of "workmen" and their employers. It does not refer to an agreement between a single individual workman and his employers. Thus the procedure prescribed under the act and rules for communication and registration of such settlement is only applicable to settlement arrived at between group of workmen and their employers. With regard to individual workman, he was free under civil law to enter into an agreement with the other party so as to end the dispute. The scheme of the Act relates to settlement of individual disputes, either through adjudication or through settlement. Such settlement as referred to in the Act was only relatable to protecting community interest through collective bargaining.

26. The Court therefore, observed in Para-24 thus:-

"-----24. Therefore, in my opinion, the non-recognition of the compromise between the disputing parties to an individual dispute under which one may agree to withdraw from the dispute recognising that no dispute exist between them that needs adjudication, as incompetent, is not warranted. Agreement in the present case if otherwise found to be voluntary and not contrary to law, merely is, not to seek adjudication of dispute to resurrect the employer employee relationship which is already put to an end.-----"

"Construed in proper prospective such agreement or compromise does not fall within the purview of "settlement" envisaged under Section-2(p) of Industrial Disputes Act, to invite applicability of rules as to form and procedure of communication.-----"

27. The Court considered the fact that common civil law provided that a

compromise signed between the parties out of free-will was to be binding upon them. It is not the requirement of law that an agreement of compromise should be attested by witnesses. The fact that it may be desirable to do so cannot be raised to the status of being a mandatory statutory condition for the validity of the document itself. Individual disputes can be raised before the Labour Court or the Industrial Tribunal and the law recognises agreement as one of the ways in which parties can enter into compromise and resolve individual disputes also through negotiation between the parties to the dispute. Referring to Section-18 of the Central Industrial Disputes and Section-2(p), which is *pari materia* to Section-2(t) of the U.P. Industrial Dispute Act, the Court held that the very fact that the word "workmen" in its plural form was used and not in its singular form, excluded the applicability of Section-18 on individual agreement arrived at between one workman and his employers, after considering the law laid down by the Hon'ble Supreme Court in the case of *Newspapers Ltd vs The State Industrial Tribunal* reported in AIR 1957 SC 532 wherein, the Supreme Court has clarified that the use of the word "workmen" and the word "workman" at respective places in the Act is clearly indicative of the intention of the legislature with regard to individual disputes and collective disputes.

28. Section-2(k) envisages consideration of individual dispute of a workman and after the introduction of the amendment to the Industrial Dispute Act individual dispute, as also common class actions, were both cognizable by Labour Court's and Tribunals. With regard to common class actions involving community interest, the definition of settlement and the procedure for arriving at such binding settlement has been given under the relevant section of the Act. On the other hand, with regard to individual rights including the right of an individual to withdraw from his dispute at his own free-will by agreeing to the terms which are best suited to him in his individual capacity, it cannot be said that such provisions as are related to collective bargaining and collective settlements could be applied to such individual compromise. Agreement in such cases, if otherwise found to be voluntary and not contrary to law can be relied upon by the employer to successfully contest a case where individual disputes are being raised. Such individual agreements or compromise did not fall within the purview of settlement as envisaged under Section-2(t) of the Act and therefore are not required to follow the procedure of registration and communication as required under Section-6 B of the Act.

29. It has also been argued by the respondents that on the basis of judgment rendered by the Hon'ble Supreme Court in the case of *Man Singh vs Maruti Suzuki India Ltd.* and Another reported in 2011 (5) LLN 33 that the Supreme Court has already observed that if, it is the case of the workmen that they were compelled to accept the amount they received under coercion and duress as full and final settlement of all their claims and dues against the employer then in that event, the workmen had to return the benefits that they had so received. It cannot be allowed that the workmen keep the benefit and not part with the said benefit, and yet challenge the action of the employers.

30. In this case, the workman concerned, who had approached the Labour Court in adjudication cases as aforesaid had never offered to return the benefits they received out of the agreement, which is alleged to have been entered into by them under duress and out of fraud.

31. Looking into the totality of the circumstances as mentioned in the award impugned, I find there is neither factual nor legal infirmity in the order challenged in this writ petition. The Labour Court has recorded a finding on the basis of relevant record submitted by the workmen. This is also admitted by the petitioners that they had indeed signed the agreement and received money through cheques, which they encashed later on. A finding of fact had been recorded and the workman had not been able to prove that they had completed 240 days in one calendar year and were entitled to retrenchment compensation but their services were illegally terminated by making them sign agreements to accept money, which was far less than the retrenchment compensation they were entitled to.

32. In such a situation, the Labour Court had rightly come to the conclusion that the workman had not been able to prove their case that the agreement entered into between them and the employers was invalid.

33. The Supreme Court has held repeatedly that the High Court under Article-226 of the Constitution will not interfere in the findings of fact recorded by the Labour Court unless the same are perverse. The petitioners have not been able to show that the findings arrived at by the Labour Court are in any way perverse. The writ petition is accordingly dismissed as devoid of merit.