
(2008) 04 AHC CK 0166
In the Allahabad High Court
Case No : Writ Petition No. 4377 of 1993 (S S)

Phool Chand

APPELLANT

Vs

Presiding Officer, Labour Court, U.P., Lucknow and Others

RESPONDENT

Date of Decision : 09-04-2008

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 11C, 4K

Citation : (2008) 04 AHC CK 0166

Hon'ble Judges : V.K.Shukla, J

Final Decision : Disposed Of

Judgement

V.K. Shukla, J.—Present writ petition has been filed by the petitioner Phool Chand claiming for following relief which are being extracted below:

"(i) to issue a writ, order or direction in the nature of certiorari quashing the impugned order and judgment dated 22nd October, 1986 as passed by Opp. party No. 1, as contained in Annexure 3.

(ii) to issue a writ, order or direction in the nature of certiorari quashing the impugned order of termination dated 20 23071983 as passed by opp. party No. 3, as contained in Annexure 4.

(iii) to issue a writ, order or direction in the nature of certiorari quashing the impugned agreement settlement dtd. 9.9.1986 as contained in Annexure 5 to the writ petition as entered between the opp. party No. 3 and 4 and any further agreement in pursuance there on.

(iv) to issue a writ, order or direction in the nature of mandamus commanding the opp. parties to consider the case of petitioner sympathetically and dispose of his representation as contained. in Annexures 1 and 2 to this writ petition and to direct the opposite parties to reinstate him in service with continuity and with back wages.

(v) to issue any other writ, order or direction deemed it and proper in the

circumstances of the case in the interest of justice in favour of the petitioner including cost of this petition."

2. Brief background of the case is that petitioner was appointed as unskilled worker in Scooters India Limited on 1.8.1975. Petitioner was subsequently promoted on semi skilled category vide order dated 12.2.1982. On 30.6.1983 petitioner was chargesheeted for availing false L.T.C. claim from the company and in this background explanation was called for and petitioner was called upon to submit the same within 48 hours from the date of issuance of the chargesheet. Petitioner further submits that pursuant to said chargesheet he wrote letter dated 14.7.1983 seeking time to submit his explanation on the ground that matter was being taken up at the Union level. Petitioner further submits that thereafter another letter was sent in continuance of the same on 20.7.1983 and qua these two letters no response has been sent and thereafter petitioner was served with copy of the order dated 20.7.1983 dispensing with the service as per standing order of company. After said order has been passed petitioner in the year 1985 moved an application under Section 11C of U.P. Industrial Disputes Act, 1947 and on the said application being moved, Labour Court framed following two issues :

"(i) Whether the Standing Orders 14.2.1 and 14.21(4) have been applied in the circumstances of the case,

(ii) If not what is the result."

3. During the pendency of aforesaid proceedings the recognized Union of the workmen at that time "SIL Employees Union" had submitted a charter of demand on 9.10.1985 and issuance of charge sheeted terminated employees on the ground of false LTC claim was also included in the charter of demand. The Union came in touch with members, whose services were terminated on the ground of false LTC claim, to give them authority and pursuant to the same Phool Chand petitioner also gave affidavit and power of attorney in favour of the Union for settling his case on 21.7.1986. After various discussion inter se Company, Union and Conciliation Officer, a memorandum of settlement was signed between the Union and the management and registered with the Conciliation Officer under the provision of U.P. Industrial Disputes Act, 1947 and as per term and condition of the settlement Clause C(1) incumbent whose services have been terminated on the ground of false LTC Claim and they had submitted their authority in favour of the SIL Employee Union will get Rs. 30,000 along with Provident Fund, Gratuity as per rules for their full and final settlement. On 22.10.1986, case No. 5 of 1985, which was filed by the petitioner in the Labour Court under Section 11 C of U. P. Industrial Disputes Act, 1947, has been rejected and petitioner thereafter contacted the company for payment of an amount of Rs. 30,000 as per memorandum of settlement dated 9.9.1986 signed between SIL and Union of Employees in term of settlement dated 9.9.1986 and consequent thereon petitioner received an amount of Rs. 29,472. After seven year of acceptance of amount present writ petition has been filed before this Court and on presentation

of present writ petition, it was connected alongwith the record of other writ petition and there after present writ petition has been decided alongwith connected writ petition by common judgment dated 31.8.1999 and thereafter judgment in question dated 31.8.1999 has been reviewed and present writ petition is now to be decided on merit.

4. Pleadings inter se parties have been exchanged and thereafter present writ petition has been taken up for final hearing and disposal with the consent of the parties.

5. Sri Abdul Moin, Advocate appearing for petitioner contended with vehemence that in the present case application under Section 11C of U.P. Industrial Disputes Act, 1947 has wrongly been rejected and further agreement in question was not at all binding and same was also not at all in consonance with the provisions of U.P. Industrial Disputes Act, 1947 and further in the matter of according punishment there should not be disparity as similarly situated incumbents have been reinstated back in service and are still continuing as such claim of the petitioner has been grossly discriminated and as petitioner has been metted with arbitrary and discriminatory treatment, as such writ petition deserves to be allowed.

6. Countering the said submission Sri Rakesh Chandra Tewari appearing for Scooters India Ltd. contended that proceedings under Section 11C of U.P. Industrial Disputes Act, 1947 were clearly not maintainable and rightful view has been taken in the matter and coupled with this petitioner has authorized the Union to enter into agreement and said agreement has been duly entered upon and has been acted upon and in this background petitioner cannot say that there is disparity in effecting punishment rather 30 incumbents authorized Union to enter into agreement and were part to the settlement, and each one has accepted the amount in question and they form separate class on account of such " settlement as such writ petition as it has been framed and drawn deserves to be dismissed.

7. After respective arguments have been advanced, factual position which is emerging in the present case is that petitioner was discharging duties as unskilled worker in Scooters India Limited on 1.8.1975 and petitioner has chargesheeted for availing false L.T.C. claim from the company and in this background explanation was called for and petitioner was called upon to submit his explanation within 48 hours from the issuance of the chargesheet. Admitted position is that no reply what so ever had been submitted to the show cause notice rather request has been made for grant of time on the pretext that Union in question had been negotiating the matter. At no point of time any industrial dispute has been raised by the petitioner which could be referred under Section 4K of U.P. I.D. Act, 1947 for answering the reference as to whether termination order dated 207 23.07:1983 was valid action or invalid action in the eyes of law. Petitioner however moved an application under Section 11C of U.P. I.D. Act 1947. Section 11C of U.P. Industrial Disputes Act, 1947 reads as follows:

"Interpretation, etc. of standing orders. If any question arises as to the application or interpretation of a standing order certified under the Industrial Employment (Standing Orders) Act, 1946, any employer or workman may refer the question to any one of the Labour Courts specified for the disposal of such proceedings by the State Government by notification in the official Gazette, and the Labour Court to which the question is so referred shall, after giving the parties an opportunity of being heard decide the question and such decision shall be final and binding on the parties."

8. Bare perusal of Section 11C of the U.P. I.D. Act 1947 would go to show that in case question arises qua application or interpretation etc. of standing order certified under the Industrial Employment (Standing Orders) Act, 1946, then in that event any employer or workman may refer the question to any one of the Labour Court specified for the disposal of such proceedings by the State Government by notification in the official Gazette, and the Labour Court thereafter to which the question is so referred shall, after giving the parties an opportunity of being heard decide the question and such decision shall be final and binding on the parties. This particular provision has been subject matter of interpretation, by this Court in the case of *Lord Krishna Sugar Mills Ltd. v. Labour Court*, 1962 (1) LLJ 678 and view taken has been, that Labour Court under Section 11C of U.P.I.D. Act 1947 has no other or greater power than to decide about application or interpretation of standing order. Relevant extract of said judgment is being extracted below:

"the object of Section 13A of the Industrial Employment (Standing Orders) Act, 1946 is not to provide a forum for deciding industrial disputes but only to provide a procedure by which labour Court could decide doubtful questions relating to the condition of the employment and interpretation of standing orders so that the stage of industrial Dispute may not reach at all. The scope of Section 11C of the U.P. Industrial Disputes Act is not wider than that of Section 13A of the Central Act and in as much as the Central Act does not deal with industrial disputes Section 13A, could not possibly have any application to these disputes and its counterpart Section 11 C of U.P.I.D. Act has also got nothing to do with adjudication of industrial disputes. By merely interpreting of deciding about the applicability of a standing order, an industrial dispute cannot be adjudicated upon. The labour Court under Section 11C has no other or greater power than to decide about the application or interpretation of a standing order. In deciding an industrial dispute the labour Court may have to interpret or decide about the applicability of the standing order but its functions do not end at that. The finding with regard to the interpretation or application of a standing order will be something in the nature of decision on one of these issues in a case and cannot operate as a decision of the case itself. Before an industrial dispute is decided, the labour Court would in addition to interpreting or deciding about the applicability of a standing order also have to decide as to who has infringed the standing order, and what are its consequence on the case of the parties and then to pass an order or made an award calling upon the parties to do particular acts or to act

in a particular manner. For all these additional matters, there is no provision in Sec. 11C of the Act which only provides for application or interpretation of a standing order and stops short at that. The decision with regard to the interpretation or application of standing order cannot be decision with regard to an industrial dispute. In other words the decision in an industrial dispute is bound to be much more comprehensive than a mere decision with regard to the application or interpretation of a standing order. Giving the words occurring in " Section 11 C their plain meanings the conclusion seems to be inevitable that the functions of the labour Court under that section do not extend to the decision of an industrial dispute.

The provision which deals with industrial disputes are: Sections 4K and 6 of the U.P. Industrial Disputes Act the former providing for the reference of an industrial dispute and the latter dealing with the manner in which the award is to be made by the labour Court or an industrial tribunal. Having provided for industrial disputes in Sections 4K and 6 the legislature would not have provided for the same things in Section 11 of the Act. It is well known that the legislature does not usually repeat itself nor provides for the same thing by enacting two parallel provisions in the same Act. There was no reason to enact Section 11C if its purpose was the same as that of Sections 4K and 6 of the Act.

Hence the labour Court on an application by the concerned workman under Section 11C of the U.P. Industrial Disputes Act would not have jurisdiction to decide that the order of dismissal made against the applicant workman was bad and unjustified and to declare that the applicant was entitled to his wages from the date of his dismissal onwards."

9. The decision on question of application and interpretation of Standing order is well within the domain of Labour Court and same will be in the nature of deciding one of the issues but in the garb of the said proceedings industrial dispute cannot be adjudicated. Labour Court on the reference being made proceeded to consider the said question and vice order dated 22.10.1986 came to the conclusion that Labour Court under Section 11C of U.P. I. D. Act 1947 would not have jurisdiction to decide the question of validity of order of dismissal and application I made is unjustifiable. The view taken by the Labour Court cannot be faulted in the facts of present case in as much as, as to whether order of dismissal is good or bad same could have been decided only on reference being made to the Labour Court by the State Government in its authority vested under Section 4K of U.P.I.D. Act 1947 but while considering the reference made under Section 11G of U.P.I.D. Act 1947 the Labour Court was competent to answer questions arising in respect of application or interpretation of standing order. In case on account of wrongful application of provisions of Standing Order, any wrongful decision has been taken then said wrongful decision could have been reversed only in the manner prescribed but in proceedings under Section 11C of U.P. I.D. Act 1947, collaterally order of dismissal could not have been challenged.

10. In the fact and circumstances of the case order dated 22.10.1986 cannot be said to be incorrect and wrongful order.

11. Next question to be considered is as to what would be the effect of settlement arrived at in between Union and workers and whether petitioner can be permitted to wriggle out of the said settlement merely on the ground that in the matter of grant of punishment quaothor similarly situated incumbents different punishment has been awarded.

12. At this junction relevant provision which covers the field of settlement is being looked into:

Clause (p) of Section 2 of the Act defines "settlement" as under:

"Section 2 (p) "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties hereto in such manner as may be prescribed and a copy there of has been sent to an officer authorized in this behalf by the appropriate Government and the Conciliation Officer."Section 18(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proeeeding shall be binding on the parties to the agreement.

(2) Subject to the provisions of subsection (3) an Arbitration Award which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.

(3) A settlement arrived at in the course of conciliation proceeding under this Act or an Arbitration Award in a case where a notification has been issued under subsection (3A) of Section 10Aoran Award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on

(a) all parties to the industrial dispute;

(b) all other parties summoned to appear to the proceeding as parties to the dispute, unless the Board, Arbitrator, labour Court, Tribunal or National Tribunal as the case may be records the opinion that they were so summoned without proper cause;

(c) where a party referred to in Clause (a) or Clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

(d) where a party referred to in Clause (a) or (b) is composed of workmen, all persons who are employed in the establishment or part of the establishment as the case may be to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part."

An analysis of the above mentioned clause would show that it envisages two categories of settlements (i) a settlement which is arrived at in the course of

conciliation proceeding, i.e. which is arrived at with the assistance and concurrence of the Conciliation Officer who is duty bound to promote a right settlement and to do everything he can to induce the parties to come to a fair and amicable settlement of the dispute and (ii) a written agreement between employer and workmen arrived at otherwise than in the course of conciliation proceeding. The consequence of the aforesaid two categories of settlement which are quite distinct are set out in Section 18 of the Act."

13. A bare perusal of the above quoted section would show that where as a settlement arrived at by agreement between the employer and the workmen otherwise than in the course of conciliation proceeding is binding only on the parties to the agreement, a settlement arrived in the course of conciliation proceeding under the Act is binding not only the parties to the settlement but also tm other persons specified in Clause (b), (c) and (d) of subsection (3) of Section 18 of the Act. Therefore, if the settlement arrived at between the employer and the workmen, otherwise than in the course of conciliation proceedings, with which we are concerned in this case, it shall be binding on the parties to the settlement. The phrase "parties to the settlement" includes both employer and an individual employee or the union representing the employees. If the settlement is between the employer and workman it would be binding on that particular employee and the employer; if it is between a recognized union of the employees and the employer, it will bind all the members of the union and the employer. That it would be binding on all the member of the union is a necessary corollary of collective bargaining in the absence of allegation of makes or fraud. Merely because an individual employee or some of the employees do not agree to the terms of the settlement entered into between a recognized union and the employer, he they cannot be permitted to contend that it is not binding on him them. Therefore, the settlement entered into by the Union with the employer would be binding on its members.

14. The aims and objeci of the provisions of the Industrial Disputes Act include industrial peace which is essential to the industrial development and economy of the nation. Great emphasis is, therefore, and on the settlements as they set atrestall the disputes and controversies between the employer and the employees. In the case of *Herbertsons Limited v. The Workmen of Herbertsons Ltd. and others*, 1976 (4) S.C.C. 736, the Apex Court considered the effect of the settlement arrived at by the recognized union of majority workers. It was observed by Goswami, J, speaking for the Court that when a recognized union negotiates with an employer, the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognized union, which is expected to protect the legitimate interests of labour enters into a settlement in the best interests of labour. This would be the normal rule. There may be exceptional cases where there may be allegations of makes, fraud or even corruption or other inducements. But in the absence of such allegations a settlement in the course of collective bargaining is entitled to due weight and consideration. In

connection with justness and fairness of the settlement it was observed that this has to be considered in the light of the conditions that were in force at the time of the reference. When, therefore, negotiations take place which have to be encouraged, particularly between labour and employer in the interest of industrial peace and well being, there is always give and take. The settlement has to be taken as a package deal and when labour has gained in the matter of wages and if there is some reduction in the matter of dearness allowance so far as the Award is concerned, it cannot be said that the settlement as a whole is unfair and unjust. It was further observed that it is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be slow to hold a settlement as unfair and unjust. The settlement has to be accepted or rejected as a whole.

15. In the case of *K. C.P. Ltd. v. Presiding Officer and others*, 1996 (4) STC 725 (SC) : 1996 (2) L. L.N. 970 : 1996 (74) F.L.R. 2540, Hon'ble Apex Court considered the concept of settlement entered into between the employer and the union representing the employees. In that case, the settlement arrived at by the union with company was not in the course of conciliation proceedings. The facts were that the issue of dismissal of 29 workmen, by way of punishment was pending for a judgment and during such pendency, the recognised union entered into a settlement regarding these 29 workmen as well as it was agreed that an opinion would be given to them either to accept reinstatement without back wages or a lump sum amount of Rs. 75,000/ with other monetary benefits may be accepted by the concerned workmen in lieu of reinstatement; 17 workmen accepted the settlements and remaining 12 challenged the said settlement and pressed for adjudication being continued by the Labour Court. The contesting workmen contended before the Supreme Court that the settlement regarding their interest as entered between the management and recognised union during pendency of adjudication of the dispute was illegal and was not binding on them. It was also submitted that they were not parties to the settlement and hence it did not bind them. The Hon'ble Apex Court held that the settlement arrived at by direct negotiations between the management and union was valid and legal and the recognised union had represented 29 dismissed workmen. Speaking for the Bench Majumdar, observed :

"It has to be kept in view that under the scheme of labour legislation like the Act in the present case, collective bargaining and the principle of industrial democracy permeate the relations between the management on the one hand and the union which resorts to collective bargaining on behalf of its members workmen with the management on the other. Such a collective bargaining which may result in just and fair settlement would always be beneficial to the management as well as to the body of workmen and society at large as there would be industrial peace and tranquility pursuant to such settlement and which would avoid unnecessary social strife and tribulation on the one hand and

promote industrial commercial development on the other hand. Keeping in view the aforesaid salient features of the Act the settlement which is sought to be impugned has to be scanned and scrutinized. Settlement of Labour disputes by direct negotiation and collective bargaining is always to be preferred for it is the best guarantee of industrial peace which is the aim of all legislations for settlement of labour disputes. In order to bring about such a settlement more easily and to make it more workable and effective it may not be always possible or necessary that such a settlement is arrived at in the course of conciliation proceeding which may be the first step towards resolving the industrial dispute which may be lingering between the employers and their workmen represented by their unions but even if at that stage such settlement does not take place and the industrial dispute gets referred for adjudication, even pending such disputes, the parties can arrive at amicable settlement which may be binding on the parties to the settlement unlike settlement arrived at during conciliation proceedings which may be binding not only on the parties to the settlement but even to the entire labour force working in the concerned organization even though they may not be members of the union which might have entered into settlement during conciliation proceedings".

16. In the case of *Balmer Lawrie Workers Union and another v. Balmer Lawrie & Co. Ltd. and others*, 1985 (50) FLR 186, Clause 17 of the settlement entered into between the management and the recognized union came to be challenged and as per the said Clause the company was to collect, from each workman, an amount equivalent to 15 percent of the gross arrears payable to each employee under the settlement as contribution to the union fund, and it was, in turn to be paid to the union within three days of the payment of the arrears. It was *inter alia* contended by the petitioner union that the said clause was in breach of the provisions of the Payment of Wages Act and while rejecting the challenge the Supreme Court observed:

"It is well known that no deduction could be made from the wages and salary payable to a workman governed to be the Payment of Wages Act unless authorised by the Act. A settlement arrived at on consent of parties can however permit a deduction as it is the outcome of understanding between the parties even though such deduction may not be authorized or legally permissible under the Payment of Wages Act." in the instant case, it is not disputed that the settlement arrived by the union with the appellant company was not in the course of conciliation proceedings. Therefore, it would be binding on the parties to agreement namely the appellant company on the one hand and the union representing the respondent workman who was its member. In the circumstances, the respondent workman also would be ordinarily bound by the settlement entered into by his representative union with the company unless it is shown that the said settlement was *ex facie* unfair, unjust or *mala fide*. No such case was even alleged much less made out by the respondent's workman either before the Tribunal or before the learned Single Judge. It is interesting to note that before the learned Single Judge the only argument put forward on behalf of

the respondent workman was that he was not a party to the settlement and his consent was not taken by the union and, therefore, it was not binding on him. Once it is kept in view that the industrial dispute was raised by the union on behalf of the retrenched workmen including respondent workman, and it was an industrial dispute covered by Section 2(k) it cannot be held that the settlement which was entered into under Section 2 (p) read with Section 18 (1) of the Act is not binding on the individual workman."

17. Hon"ble Apex Court in the case of M/s Jai Hind Roadways v. Matahdi Transport and others, JT 2005 (12) SC 57, has taken the view that when issues are being raised as to whether settlement is tainted with or unfair, the same can be decided only when specific reference is made on that aspect. Paragraphs 8, 9, 10 and 11 of the judgment being relevant are being quoted below:

"8. Whether settlement is tainted or unfair has to be decided if specific reference is made on that aspect. In National Engineering Industries Ltd. v. State of Rajasthan and others, JT 1999 (9) SC 377 at para 24, it was observed as follows:

"It will be thus seen that High Court has jurisdiction to entertain a writ petition when there is allegation that there is no industrial dispute and none apprehended which could be subject matter of reference for adjudication to the Industrial Tribunal under Section 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 writ jurisdiction. It is the existence of the industrial tribunal 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 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 bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements it could be 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. Subsections (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 limited application in that it merely binds the parties to the agreement but the settlement belonging to the second category has extended application since 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 recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which has objected to the same. Recognised union having majority of members is expected to protect the legitimate interest of labour and enter into a settlement in the best interest of 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 minority union from 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 unions that are signatories to such settlement under Section 12(3) of the Act. 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. Management of Lotus Mills*, (1998) 1 SCC 650 : (1998 AIR SCW 145 : AIR 1998 SC 554:1998 Lab IC 834). In all these negotiations based on collective bargaining 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.

9. The position was recently examined in *State of Uttaranchal v. Jagpal Singh Tyagi*, Civil Appeal No. 6505 of 2004 decided on 31 st August, 2005, it was held as follows :

"Learned Counsel for the State appellant submitted that there was nothing on record to show that there was any pressure put on the respondent employee or that undue influence was exercised. The conclusion was arrived at without pleadings in this regard. For the first time in the counter affidavit filed before the High Court, stand to that effect was taken. Without any material to support the contention, the High Court held that settlement was not proper and in order to frustrate the order passed by the High Court the same was arrived at. The effect of the affidavits and the undertaking was totally ignored."

10. We find there was really no issue raised regarding fairness of the settlement. The Tribunal as well as the High Court came to the conclusion without any material that settlements were not fair. As noted in *National Engineering case* (supra) and *State of Uttaranchal's case* (supra) there has to be a specific reference in this issue which was not there before the Tribunal and in any event no material was placed or any positive stand taken by any workman.

11. In the aforesaid background the orders of the learned Single Judge and the Division Bench of the High Court as well as that of the Tribunal are set aside. The Tribunal shall decide the matter within six months from the date of receipt of a copy of the judgment. If, however, a competent person raises a dispute

regarding fairness of the settlement with in a month from today before the appropriate Government with a copy of our judgment the same shall be examined with in two months from the date dispute is raised. It shall take a decision whether a reference is called for. We make it clear that we have not expressed any opinion on the desirability or otherwise of making the reference."

18, Hon"ble Apex Court, in the case of A.N.Z. Grindlays Bank Ltd. v. Union of India, 2006 (108) FLR 7, has taken the view that settlement arrived at is binding. Paragraphs 7, 9 and 11 being relevant are extracted below:

"7. It may be mentioned at the very outset that the appellant Bank had entered into the settlement dated 18.8.1996 with the Association (third respondent) and members of the Grindlays Bank Employees Union, Calcutta, after holding discussions and negotiations. The settlement had not been entered into either before a conciliation officer or labour Court or industrial tribunal. In view of Section 18(1) of the Act the settlement was binding only upon the parties there to. Section 18 of the Act reads as under:

"18. Persons on whom settlements and awards are binding.(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

(2) Subject to the provisions of subsection (3), an arbitration award which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.

(3) A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under subsection (3A) of Section 10A or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on

(a) all parties to the industrial dispute;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;

(c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part."

A plain reading of the provisions of Section 18 would show that where a settlement is arrived at by agreement between the employer and the workman

otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement in view of the clear language used in subsection (1) thereof. Subsections (2) and (3) of Section 18 contemplate different situations where an arbitration award has been given or a settlement has been arrived at in the course of conciliation proceedings. In *M/s. Tata Chemicals Ltd. v. The Workmen employed under M/s. Tata Chemicals Ltd.*, AIR 1978 SC 828, it was held as under:

"Whereas a settlement arrived at by agreement between the employer and the workman otherwise than in the course of conciliation proceeding is binding only on the parties to the agreement, a settlement arrived at in the course of conciliation proceeding under the Act is binding not only on the parties to the industrial dispute but also on other persons specified in Clauses (b), (c) and (d) of subsection (3) of S. 18 of the Act."

9. Mr. S.N. Bhat, learned Counsel for the Federation (second respondent), has submitted that under the settlement such employees of the bank, who were not members of the Association (third respondent), were required to give a receipt in writing in order to avail of the benefits of the settlement and this was clearly illegal. We are unable to accept the submission made. As already stated, the settlement was arrived at between the Bank and the Association (third respondent) and by virtue of subsection (1) of Section 18 of the Act it bound only the members of the Association (third respondent). However, the Bank also extended the benefit of settlement to such other employees, who were not members of the Association. In order to avail of the benefit they had to give a receipt that they were accepting the settlement and the same shall be binding upon them and the format of the receipt, which has been reproduced earlier, does not contain any such term, which may be of detriment to them. To protect its interest the Bank was perfectly justified in asking for a receipt from those employees, who were not members of the Association (third respondent), but wanted to avail of the benefit of the settlement. Therefore, we do not find anything wrong in the Bank asking for a receipt from the aforesaid category of employees.

11. A plain reading of the reference made by the Central Government would show that it does not refer to any dispute or apprehended "dispute between the Bank and the Federation (second respondent). It does not refer to any demand or claim made by the Federation or alleged refusal thereof by the Bank. In such circumstances, it is not possible to hold that on account of the settlement dated 18.8.1996 arrived at between the Bank and the Association (third respondent), any dispute or apprehended dispute has come into existence between the Bank and the Federation (second respondent). The action of the Bank in asking for a receipt from those employees, who are not members of the Association (third respondent) but wanted to avail of the benefit of the settlement, again does not give rise to any kind of dispute between the Bank and the Federation (second respondent). Thus, the reference made by the Central Government by the order

dated 29.12,1997 for adjudication by the Industrial Tribunal is wholly redundant and uncalled for.

19. Thus, inevitable conclusion is that any agreement settlement entered into between Union and Employers i.e. Union representing the Workman and Employer i.e. the Company in question has a binding effect on the parties till it is not cancelled modified and right of parties would flow from the said agreement, and when issues are sought to be raised qua validity of the same, then same has to be answered by way of Industrial Reference.

20. On the touchstone of the provision quoted above, and the pronouncement of Hon"ble Apex Court noted above fact of the present case are being adverted to. In the present case undisputed position is that petitioner at earlier point of time had not at all filed reply to the charges dated 30.6.1983 and categorical mention was made by him vide letter dated 14.7.1983 and 20.7.1983 that Union has been negotiating the matter. This fact has also not been disputed that Union has contacted their members, whose services were terminated on account of availing false LT.C. claim, to give authority in their favour and out of 47 members, 30 members have given authority and petitioner, Phool Chand is one of them who had given power of attorney. Agreement had been arrived at in between Company and Union and same was registered with Conciliation Officer on 9.9.1986 and pursuant to the same petitioner has accepted amount in question through Cheque No. 879621. Once agreement had been arrived at and same has worked then said agreement has binding effect and in case any dispute has been sought to be raised qua the validity of the said agreement the remedy of the petitioner lies in approaching Industrial Court where in such question can be adjudicated and not before this Court, as under Article 226 of the Constitution of India, settlement could be interfered with only when it is opposed to public policy or same is in violation of statutory provision. Here neither of two prerequisite conditions are fulfilled, as settlement arrived at is neither opposed to any public nor same is in violation of statutory provision. Petitioner has accepted the benefit of agreement and then after seven years present writ petition has been filed questioning the validity of the said decision taken on the ground that there has been disparity in granting punishment. Settlement till date has not at all been reversed by the Labour Court, same has binding effect and the petitioner having accepted the benefits of said settlement then, cannot be permitted to resile from the same. At this juncture petitioner has tried to submit that merely because amount in question has been accepted, petitioner cannot be estopped in law in questioning the validity of decision and for this submission petitioner has placed reliance on the judgment in the case of Aar Singh Pal v. Union of India, 2003 SCC 558 (para 13). Said judgment will not at all come to rescue of the petitioner, in as much as in the said judgment retrenchment was made and re-trenchment compensation was accepted, but the action taken was held to be punitive and stigmatic in nature, in this background view was taken that it would not mean that he had surrendered his all constitutional right merely by acceptance of monetary benefits.

21. Here in the present case conscious decision has been taken as at the point of time when charge sheet in question has been issued petitioner submitted reply by contending that Union is negotiating the matter and there after for entering into agreement which is statutory agreement under the provision of U.P. I.D. Act 1947 and till said agreement has not been done away with and said agreement is binding. Retrenchment is unilateral act of employer, where as settlement is bilateral act, where in participation of both the parties are there i.e. of the worker himself through recognized or the Union employer. In cases of unilateral act merely because amount in question has been accepted, same will not come in the way of assailing the validity of action taken but in cases when there is bipartite settlement as per law and amount in question has been accepted, position would be different. Fact of the of presaid case as such cannot come to the rescue of the petitioner in the fact of the present case.

22. Much emphasis has been laid that various incumbents have charged for false LTC claim and various incumbents have been reinstated back and they are yet in service, as such petitioner should also be reinstated back. For this reliance has been placed on the judgment in the case of *Te co v. Jitendra Prasad*, 2001 (10) SCC 530.

23. In the present case undisputed position is that against various incumbents action has been taken for submitting false LTC bili including petitioner and against them order of dispensing of service has been passed. Various incumbents nad adopted various channels forum as provided under the law, for questioning the validity of the action taken. Various incumbents raised industrial dispute and qua them Labour Court has directed for reinstatement in service and substituting punishment of without holding of three increments with the rightsof refund of amount realized to them as order being disproportionate. Said group of persons have been reinstated back and are functioning. There is another group of persons whose services have been disengaged and they through their recognized Union of workmen came forward to settle their case. Petitioner is one of them, who gave affidavit and power of attorney in favour of Union to settle his case. There after agreement settlement has taken place, and as per the terms of settlement, relationship of master and servant was to cease from the date of termination of service and it was to be deemed that concerned workman has resigned from the said date. In respect of petitioner precise settlement has been made, which is evident from Annexure CA3. The incumbents, who have been reinstated back cannot be said to be similarly situated, in as much as their disengagement had been set aside and as far as compromise is concerned same is nothing but package. Once voluntary settlement had been entered upon and the benefit of the same has been undertaken and petitioner's claim has been accepted as one of resignation then it cannot be said that there is disparity in the award of punishment. Consequently in the facts and circumstances of the present case no relief can be accorded to the petitioner.

24. For the reasons stated above present writ petition as it has been framed and

drawn is dismissed.

25. No order as to cost.