

(2010) 12 MAD CK 0281

In the Madras High Court

Case No : Writ Petition No. 35076 of 2004

P.N. Balasubramanian

APPELLANT

Vs

Presiding Officer, I Additional Labour Court and Others

RESPONDENT

Date of Decision : 22-12-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 10(1), 11A, 12(3), 18(1), 2

Citation : (2011) 3 LLJ 222

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : K.M. Ramesh, for the Appellant; S. Raveendran, for T.S. Gopalan and Company, for the Respondent

Final Decision : Dismissed

Judgement

P. Jyothimani, J.—The writ petition is filed by the Petitioner/employee against the common award passed by the I Additional Labour Court, Chennai in I.D. No. 556/1993 insofar as it relates to the claim of the Petitioner for computation of benefits to which he is entitled as per the terms of General Office Orders of EID Parry (India) Limited, the second Respondent.

2. The second Respondent is engaged in the manufacture and sale of sugar, fertilizer pesticides, chemicals, ceramics, etc. having branches all over India. The Petitioner joined as a Clerk on June 1, 1962 and having worked in various branches, he lastly worked as Clerk in Farm Inputs Division, Dare House, Chennai. He became a member of EID Staff Association, which is a registered Union and he worked as an Executive Committee Member.

(a) Under the General office Orders issued by the second Respondent, as per Clause 26, the employees are entitled for full pension, if they complete 30 years of service and in case where an employee has put in more than 20 years of service, he is entitled to proportionate pension.

(b) The dispute regarding payment of pension with the second Respondent was ultimately settled by the Hon"ble Supreme Court in Civil Appeal No. 1450 and 1458/1990, wherein it was held that the second Respondent, is liable to pay pension to its employees under General Office Order No-26. It in also stated that several claim petitions filed before the Labour Court based on the same were allowed.

(c) There was a charter of demands submitted on March 31, 1989 and May 31, 1989 before the second Respondent by the EID Parry Staff Association and that was not considered and the matter was referred for conciliation and ultimately the dispute was referred in I.D. No. 16/1991 on the file of Industrial Tribunal, Chennai. That related to the claims of 244 workmen for enhanced D.A. and other benefits. There was an interim award passed by "the Tribunal in favour of the workmen against which writ petitions were filed followed by appeals.

(d) It is stated that the second Respondent in order to divide the Union, made five of Committee members to file a settlement before the Tribunal entered u/s 18(1) of the Industrial Disputes Act, 1947 and based on the said settlement between the management and five members of the Committee of the Union, The Tribunal passed an award which has bean challenged in the writ petitions.

(e) The Tribunal passed the award in I.D. No. 16/1991 on April 27, 1992 and the Petitioner has questioned the Settlement entered with five Committee members u/s 18(1) of the Industrial Disputes Act, 1947. On June 26, 1992, the Petitioner was informed that he was under the orders of transfer to Delhi and in his interest, the Petitioner wanted to retire from service under voluntary separation scheme.

(f) It is stated that the Petitioner was informed by the General Manager, Mr. Ramesh Rao that under the said scheme, he would be paid 1,20,000/- as compensation apart from other benefits like, provident fund, gratuity, encashment of leave, etc. and if the Petitioner was not willing for the voluntary separation, he would be transferred to Delhi.

(g) It is stated that at that time, the Petitioner got salary of 3750.50 per month and since he was unable to go to Delhi, he accepted to go for voluntary separation scheme on the basis that he would be paid 1,20,000/-for the rest of his service apart from other benefits. It is stated that the Manager, Accounts, farm Inputs Division obtained his signature in the copy of the letter addressed to Deputy General Manager, Marketing, Form Inputs Division and in the said letter, a sum of 1,20,000/- representing the amount of compensation was also filled by the Petitioner apart from filling up the address.

(h) It is stated that, on July 3, 1992, the Petitioner was paid 1,37,111.27 which includes the compensation of 1,20,000/-under voluntary separation scheme, 6285.77 towards leave wages:, 7217/- toward ex gratia payment and 3608.50 towards notice pay. The Petitioner was directed to sign in the settlement u/s 18(1) of the I.D. Act which denied pension and therefore, the Petitioner objected

to sign. It was because of the threat that he would be transferred to Delhi, he had to sign the settlement u/s 18(1) of the Industrial Disputes Act and the receipt was: passed on July 3, 1992 stating that except provident fund and gratuity, there were no other claim due to the Petitioner against the second Respondent.

(i) It is stated that out of five Union members, Thiru P.V. Sarangan, who refused to sign the settlement u/s 18(1) of the I.D. Act was transferred to Hospet Mixing Centre to which he was not familiar and according to the Petitioner, the same is unfair" labour practice and a dispute regarding unfair labour practice is also pending before the Labour Court. It was, in those circumstances, the second Respondent management terminated the service of other Office bearers of the Union and Committee members.

(j) According to the Petitioner, the voluntary separation scheme is only forced resignation obtained from him and that would amount to illegal termination. It is stated that by exerting pressure, certain statements were obtained presumably u/s 12(3) of the Industrial Disputes Act which have the tendency of freezing the salary of workmen to 3000/- and 2650/-. It was agreed by Mr. K.V. Ramachandran, then vice President (Personnel) to lift the salary freeze which was affected by him in 1985 settlement and later he was found dead in a suspicious manner. When the issue was raised, the Petitioner was threatened to be transferred or to go for voluntary separation scheme.

(k) It was on July 3, 1992, the Petitioner submitted a letter to the 2nd Respondent objecting to the denial of pension to him. The second Respondent on July 10, 1992 directed the Petitioner to join duty, for which the Petitioner was willing and sent a letter dated July 15, 1992 stating that he would pay back the money and rejoin duty provided he would be given assurance that he would not be transferred to Delhi and that was objected to by the second Respondent by letter dated July 15, 1992 stating that such condition could not be imposed by the employee, thereby forcing the Petitioner to go for voluntary separation scheme. It was under the said situation, the signature of the Petitioner was obtained and as per the General Office Order No. 26, the Petitioner is entitled for pension because, under the voluntary separation scheme, the Petitioner was terminated from service based on the said 18(1) settlement which was not voluntary.

(l) It is stated that in normal circumstances, the Petitioner would have continued in service till December 31, 1999 and by virtue of voluntary separation, he lost 19 months service. He was given compensation of 1,20,000/- only for having put in 30 years of honest and faithful service in the company. According to him, he is entitled to 1,485.45 per month towards pension from July, 1992 onwards and he has not given up his right for pension. He sought for his right of pension and raised I.D. No. 556/1993 and similar disputes were also raised by some other persons and all of them were taken up together for joint trial and by common award, the industrial disputes were dismissed.

3. The Petitioner has filed the writ petition against the dismissal of industrial dispute on the basis that the award has been passed without application of mind and there is error apparent on the face of the record and the Petitioners right to get benefit as per General Office Orders cannot be taken away and the finding of the Labour Court is contrary to the evidence on record and the oral and documentary evidence has not been properly appreciated in the manner known to law and the Labour Court ought to have considered that there was coercion and threat by the second Respondent management in obtaining the signature and it was due to the pressure of transfer to Delhi, the so-called 18(1) settlement was entered and the Labour Court failed to take the case of the workmen but accepted the case of the employer that there was no threat. It is also stated that the Labour Court refused the counsel for the Petitioner to cross-examine the witnesses and therefore, non-suiting the Petitioner is on improper and illegal grounds and the appreciation of evidence on the side of employer and acceptance of the same by the Labour Court is opposed to law and the order of the Labour Court is against Section 11-A of the Industrial Disputes Act and the findings of the Labour Court are unsustainable.

4. In the counter affidavit filed by the second Respondent it is stated that Parry and Company Limited is a subsidiary of the second Respondent and it had no manufacturing establishment and had only commercial establishment. It is stated that, the covenanted staff are not workmen u/s 2(c) of the Industrial Disputes Act and the non-covenanted staff were clerical staff and lower grade employees like, Peons, Drivers, etc. and the General Office Order No. 26 deals with the allowance applicable to non-covenanted staff and that provides for payment of retiring allowance to non-covenanted staff who retire after putting 30 years of service or those who leave the service after completion of 20 years of service.

(a) There was a scheme in 1956 by way of settlement regarding payment of gratuity and regarding pre-1947 employees, they were given an option to seek payment of retiring allowance in lieu of gratuity and gratuity was a rule and retiring allowance was an exception and available only to those who were eligible to opt for it. It is stated that the non-covenanted staff in commercial establishments of the Respondent and in commercial establishments in Parry and Company Ltd. were members of EID Parry Staff Association, which was recognised by the employer to represent all non-covenanted staff.

(b) There was a demand made by the Union in the year 1967 seeking that, the option for payment of retiring allowance, should be extended to post-1947 employees also and the same was referred to the Industrial Tribunal, Chennai in I.D. No. 55/1968. In the meantime, the Payment of Gratuity Act came into force on September 16, 1972 and the award was passed by the Industrial Tribunal in I.D. No. 55/1968 holding that after passing of Payment of Gratuity Act, even pre-1947 employees could not opt for retiring allowance in lieu of gratuity as the gratuity became mandatory for all.

(c) The EID Parry Staff Association took up the matter before the High Court in

W.P. No. 4696/1975 and a Division Bench of this Court dismissed the writ petition upholding the award of the Industrial Tribunal and holding that the retiring allowance was no longer available after the Payment of Gratuity Act came into force. The retiring allowance was subject matter of litigation in various forums and all these matters culminated into an order of the Hon'ble Supreme Court dated March 21, 1997.

(d) In the year 1992, there was a set back to the second Respondent's business which resulted in redeployment in various establishments and at that time the Voluntary Retirement/Separation Scheme came up and that was extended to the employees in June, 1992 giving time to submit their applications up to June 30, 1992. It is stated that 44 employees including the Petitioner gave letters seeking voluntary separation. It was at that time, regarding G.O.26, there were conflicting views before the same was settled by the Supreme Court.

(e) As per the scheme, every employee who opts for voluntary separation scheme is required to sign a settlement u/s 10(1) of the Industrial Disputes Act giving up retiring benefits viz., pension and the person opting for voluntary separation scheme should receive the amount offered in full and final settlement with no scope for future claim. It is stated that on June 26, 1992, the Petitioner gave a letter offering to leave the service under voluntary separation scheme and that was accepted and on July 3, 1992 the settlement u/s 18(1) of the Industrial Disputes Act was signed, in which the Petitioner agreed for the Clause 9 as well as other terms of the settlement and he was paid a sum of 1,37,111.27, which the Petitioner received in full and final settlement and the said amount given by way of cheque was credited to his account also.

(f) It was, after the amount was credited on July 6, 1992, the Petitioner sent a registered letter dated July 3, 1992 alleging that he was forced to sign the settlement under the threat of transfer. It is stated that after allowing the amount to be credited in his account, on July 6, 1992 the Petitioner sent a registered letter dated July 3, 1992 raising an objection against the settlement. It is also stated that after submitting the letter dated June 26, 1992 opting for voluntary separation, the Petitioner also submitted his application for settlement of provident fund dues on June 30, 1992. It was after receiving the said complaint on July 10, 1992, the second Respondent informed the Petitioner to refund the amount of 1,37,111.27 and report for duty, however, on August 3, 1992 the Petitioner wrote a letter to the trustees that he accepted the voluntary separation settlement and accordingly, the provident fund amount was settled.

(g) There after, the Petitioner raised a dispute u/s 2-A of the Industrial Disputes Act challenging the termination of employment and restricting his claim for getting the benefit of pension. Along with the Petitioner, 12 other persons also raised industrial disputes and they were adjudicated, jointly. The claim of the Petitioner was that the settlement dated July 3, 1992 was not voluntary settlement. Even though he challenges the settlement, he restricts his claim only for retirement benefits.

(h) After taking up all the cases together, the Labour Court recorded evidence on the side of Petitioners in which 10 witnesses were workman and also marked documents, Exhibits W-1 to W-349. The Labour Court also recorded the evidence of three witnesses and marking 39 documents as Exhibits M-1 to M-39 on the aide of second Respondent. After 12 years of pendency before it, the Labour Court, on appreciation of evidence dismissed the industrial disputes. It is stated that the Labour Court gave the finding based on appreciation of evidence and the factual finding given by the Labour Court was that there was no coercion and hence, there is nothing for this Court under Article 226 of the Constitution of India to go into the finding rendered by the Labour Court and according to the second Respondent, the award of the Labour Court cannot be said to be either illegal, or perverse warranting this Court to interfere.

5. The above said counter affidavit is adopted by the third Respondent.

6. Mr. K.M. Ramesh, learned Counsel appearing for the Petitioner, while taking me to the factual matrix which is not in dispute, would submit that, the Labour Court has totally considered the case of the management only and the Labour Court should have considered the points as to whether the settlement u/s 18(1) of the I.D. Act was signed by the Petitioner by way of coercion and whether the Petitioner is entitled for pension.

7. On the other hand, it is the contention of Mr. S. Raveendran, learned Counsel appearing for the second Respondent that the conduct of the Petitioner in having encashed the amount and thereafter sent the notice on July 6, 1992 by dating the same as having been sent on January 3, 1992 shows that the Petitioner's intention is not bona fide. He would rely upon the judgment in Management of Bata India Ltd., Hosur and Anr. v. Presiding Officer, Industrial Tribunal, Tamil Nadu, Chennai and Ors. 2010 XI LLJ 175 (Mad). He would also rely upon the judgment in EID Parry (India) Ltd. Vs. M.N. Padmanabhan and Another, to substantiate his contention that the Labour Court award needs no interference by this Court.

8. On a reference to the award of the Labour Court, it is seen that the Labour Court has framed various points for consideration and three points which are relevant for the purpose of considering the case of the Petitioner are as follows:

1. Whether the settlement u/s 18(1) of I.D. Act dated July 1, 1992, July 2, 1992, July 3, 1992 and July 4, 1992 are obtained under coercion and under threat, of transfer and if so, whether the termination of service of the Petitioners is illegal?

2. Whether the Petitioners are entitled to get pension benefit in terms of General Office Order. No. 26?

3. Whether the validity of the settlement made u/s 18(1) of I.D. Act, 1947 can be questioned in a dispute raised under Section-2A(2) of I.D. Act?

9. The execution of 18(1) settlement individually by the Petitioner and Ors. is not in dispute, but the case of the Petitioner is that it was entered into by way of

coercion and threat of transfer. The voluntary separation scheme was also signed by the Petitioner. Therefore, as correctly found by the Labour Court, it was for the Petitioner to prove that he signed 18(1) settlement under coercion and threat of transfer. The Petitioner was examined as W.W.2. The Petitioner as W.W.2 executed 18(1) settlement on July 3, 1992. The Labour Court considered the evidence of the Petitioner and found that even though the Petitioner in chief-examination has stated that the voluntary separation scheme was a forced resignation, during the course of cross-examination, he has admitted that he did not know who threatened him in the Respondent organization and did not see whether the representative of the second Respondent was physically present at the time of threatening.

10. The Labour Court also found that the Petitioner was not able to specify the person who had actually threatened him. The Labour Court has also considered that the Petitioner as W.W.2 fairly admitted that no transfer order was passed against him. The Labour Court has considered that the other Petitioners who were examined as W.W. 1 and W.W.3 to W.W. 10 did not whisper anything about the threat either directly or indirectly influencing by way of coercion for signing the settlement u/s 18(1) of the Act. It was, in those circumstances, on the evidence of the Petitioner, the Labour Court has come to the conclusion that there was nothing to show about any coercion exercised for the purpose of obtaining signature on 18(1) settlement and there was no unfair labour practice.

11. The Labour Court has also considered the evidence of the Petitioner in I.D. No. 560/1993 viz. R. Neelakandan who signed Exhibit W-77 on July 1, 1992 in which Ramesh Rao, Manager (Accounts) signed as witness and the said Petitioner received 1,33,327.81 and Passed the receipt marked as Exhibit 78 and he as clearly stated that the said Ramesh Rao has not coerced him to sign Exhibit W-77 by way of threat of transfer to Bhupaneswar and the said Petitioner left the service voluntarily. Exhibit M-9 was the 18(1) settlement signed by the Petitioner and the Labour Court by taking note of the said 18(1) settlement along with the evidence of W.W.2 as well as M.W.3 has come to the conclusion that there is no evidence of coercion. The Labour Court has also considered the evidence of M.W.1 and M.W.3 as sufficient to disprove the case of the Petitioners and held that the second Respondent through the stated evidence of M.W.1 and M.W.3 has proved that 18(1) settlements, in pursuance of voluntary separation scheme were executed by the Petitioners in all the industrial disputes on their own volition and will and without any coercion.

12. As per the terms of the said 18(1) settlement, it is clear that the Petitioner is not eligible or entitled to claim any benefit including the retirement benefits such as pension, since the amount was paid as one lump sum and by finding that the Petitioner and Ors. were also paid compensation, the Labour Court has accepted the case of the management. In respect of the Petitioner, while considering Exhibit M-7, the letter of the Petitioner dated July 3, 1992, which was sent to controvert the signing of 18(1) settlement and Exhibit M-8 postal cover, the

Labour Court has found that Exhibit M-7 letter dated July 3, 1992 was posted, as it is seen in Exhibit M-8, only on July 6, 1992 and the date of registration of the said letter was July 6, 1992 while the same was received by the management on July 7, 1992. It is also seen that a suggestion was put to W.W.2, the Petitioner herein that the cheque received by him in full settlement was honoured and the amount was credited to the Petitioner's account on July 6, 1992 and after receipt of the said amount, the Petitioner chose to post the letter dated July 3, 1992.

13. It. was, in those circumstances, it is clear that after receiving the amount under 18(1) settlement, with an ulterior motive, the Petitioner sent the letter Exhibit M-7 by dating it as July 3, 1992 and the same has been found by the Labour Court. The Labour Court has also found that under Exhibit W-111, the management sent a letter stating that they are prepared for withdrawal of the option directing the Petitioner to repay the amount immediately. It has also been found by the Labour Court that the receipt of the said letter Exhibit W-111 by the Petitioner is not disputed. The Labour Court found that the Petitioner was not willing to repay the amount at all and all the Petitioners examined were also not willing to repay the amount received under the voluntary separation scheme. Therefore, the Labour Court has found that the Petitioner and Ors. having not been willing to repay the amount received under one time settlement, have continued to claim the pension and the said finding, in my considered view, cannot be said to be either perverse or illegal.

14. The Labour Court has also referred to the order of the Industrial Tribunal marked as Exhibit M-36 wherein it was held that after the Payment of Gratuity Act came into existence from September 16, 1972, the General Office Orders providing option for retiring allowance in lieu of gratuity was no longer available and the said order of the Industrial Tribunal came to be confirmed by the High Court in Exhibit M-23. The Labour Court has also considered Exhibit M-31, which is the judgment of the Hon'ble Apex Court dated May 2, 1991, wherein it was held that the General officer Order would still be available to the qualified employees and that is available only to the workers of Ranipet factory and that judgment was The General Manager, E.I.D. Parry (India) Ltd. Vs. The Presiding Officer, 2nd Addl. Labour Court, Madras and others, . The Labour Court has also found that the Petitioner admittedly has not worked in Ranipet factory and therefore, the question of: applicability of the said judgment does not arise and in my considered view, the said finding cannot be said to be either perverse or illegal. The reason given by the Labour Court for not applying the benefit given by the Hon'ble Apex Court to the Petitioner is not opposed to Exhibit M-31 judgment itself.

15. An attempt is made on the side of the Petitioner to rely on Exhibit W-148 series which are some of pages in Exhibit W-149 stated to be a book, in the name, "Parrys 200 Sadha of Resilience" to show that the settlement u/s 18(1) of the Industrial Disputes Act is to be treated as disproved, but the Labour Court on merit, after referring to the said document, has come to the conclusion that

there is nothing in Exhibit W-148 series to show that 18(1) settlement is to be doubted and therefore, the Labour Court has come to the conclusion that 18(1) settlement entered into between the parties has been effected voluntarily and there was no threat of transfer at all.

16. In *EID Parry (India) Limited, Chennai v. M.N. Padhmanabhan and Anr.* (supra) in respect of other employees viz., M.N. Parmanatha and Anr. under the same 18(1) settlement, the Division Bench confirmed the award of the Labour Court by setting aside the judgment of the single Judge. It was held that after the employee encashes the amount under the settlement, the jural relationship comes to an end and the relevant portion of the judgment is as follows:

13. The Voluntary Retirement Scheme (VRS), which is sometimes called Voluntary Separation Scheme (VSS), introduced by the companies and industrial establishments in order to reduce the surplus staff and to bring in financial efficiency. A considerable amount is paid to an employee towards ex gratia besides the terminal benefits in case he opts for voluntary retirement under the Scheme and his option is accepted. The amount is paid not for doing any work or rendering any service. It is paid in lieu of the employee himself leaving the services of the company or the industrial establishment and foregoing all his claims or rights in the same. It is a package deal of give and take. The main purpose of paying this amount is to bring about a complete cessation of the jural relationship between the employer and the employee. After the amount is paid and the employee ceases to be under the employment of the company or the undertaking, he leaves with all his rights and there is no question of his again agitating for any kind of his post rights with his erstwhile employer including making any claim with regard to pension.

14. In the case on hand, the first Respondent, having opted for VRS and after entering into the Settlement having fully understood the terms of Settlement and particularly Clause 9 thereof and also encashing the amount of Settlement arising thereon, claimed further benefits in the name of. pension. If the first Respondent is permitted to raise such a grievance even after he has opted for Voluntary Retirement Scheme and accepted the amounts paid to him thereunder, the very object and the purpose of introducing the Scheme will be defeated. As the first Respondent has already ceased to be a workman and on cessation of the jural relationship and on claiming the entire amount of settlement and receiving the same, there cannot be any scope to construe that there is a dispute still existing to raise a claim u/s 2-A of the Act. Therefore this Court has no reason to believe that there exists any dispute in this case. However, the learned single Judge, without going into the entire facts and circumstances of the case, has come to the conclusion that pension being an amount which would be payable only to an ex-employee has an intimate link with termination and, therefore, the reference u/s 2-A cannot, be rejected, which, in our considered opinion, cannot be sustained.

17. Unless there is any manifest error in the decision of the Labour Court, the

High Court has no jurisdiction to interfere with the same in the writ proceedings and the High Court exercising jurisdiction under Article 226 of the Constitution of India, while deciding about the validity of an award passed by the Labour Court, is not sitting in appeal. Unless it is proved that the Labour Court award is having a manifest error or the same has been passed contrary to the provisions of law or without jurisdiction or passed with extraneous reasons, there is no question of reappreciation of evidence by the High Court. It was in *Management of Bata India limited, Hosur and Anr. v. Presiding Officer, Industrial Tribunal, Tamil Nadu, Chennai and Ors.* (supra) had an occasion to decide about the jurisdiction of this Court under Article 226 of the Constitution of India and after narrating various case laws about the jurisdiction under Article 226 of the Constitution of India. Commencing from the judgments in *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, , *Shri Ambica Mills Co. Ltd. Vs. S.B. Bhatt and Another*, , *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, , *Parry and Co. Ltd. Vs. P.C. Pal and Others*, , *Ramniklal N. Bhutta and another Vs. State of Maharashtra and others*, and *Shama Prashant Raje Vs. Ganpatrao and Others*, , I held as follows:

18. From the above said categorical legal position, it is clear that the scope of jurisdiction of this Court under Article 226 of the Constitution of India in issuing writ of Certiorari is restricted to cases where there are manifest error in the impugned order or the order is contrary to the provisions of-law or the order has been passed without jurisdiction or in cases where the authority, while passing orders has taken into consideration certain extraneous matters which are not relevant or in cases where the authority has failed to take into consideration certain relevant factors, particularly the basic principle that on the materials available, no ordinary reasonable person would come to such a conclusion.

18. In view of the said legal position about the jurisdiction of this Court while exercising the powers under Article 226 of the Constitution of India, applying the same to the factual matrix this case, I am of the considered view that the Labour Court has in fact analysed the evidence, especially the evidence of the Petitioner, who was examined as W.W.2, and there is absolutely nothing to decide as to whether the Labour Court award is perverse.

19. In such view of the matter, I have absolutely no hesitation to hold that there is nothing to interfere with the award of the Labour Court. Accordingly, the award passed by the Labour Court insofar as the Petitioner is concerned stands confirmed and the writ petition stands dismissed. No costs.