

(1991) 12 MAD CK 0039

In the Madras High Court

Case No : Writ Appeal No. 1288 of 1991

Provisional Liquidator, Ramakrishna Industries (Pvt.) Ltd. and
others

APPELLANT

Vs

Workers Jothi Mills and others

RESPONDENT

Date of Decision : 18-12-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 12, 18

Citation : (1992) 2 LLJ 797

Hon'ble Judges : S. Nainar Sundaram, Acting C.J.; T. Somasundaram, J

Bench : Division Bench

Judgement

Nainar Sundaram, Ag. C.J.

1. Respondents 8, 2 and 3 in W.P. No. 3035 of 1988 are the appellants in this writ appeal. Petitioners 1 to 5 in the writ petition are respondents 1

to 5 in this writ appeal. Respondents 1, 4 and 7 and 9 and 11 in the writ petition are respondents 6 to 13 in this writ appeal. For the sake of

convenience we are referring to the parties as per their nomenclature in the writ petition. The petitioners came to this Court by way of the writ

petition, projecting the following prayer :

For the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble Court be pleased to issue a writ of certiorari or any other

appropriate writ, order, or direction in the nature of writ, calling for the records of the respondents culminated in Settlement Rc. No. 442 of 1988

dated March 7, 1988 signed by respondents 1 to 7 u/s 12(3) of the Industrial Disputes Act, 1947 and quash the same and pass such further or

other orders as this Hon'ble Court may deem fit and proper".

To sustain the prayer in the writ petition on behalf of the petitioner, contentions were raised on three bases. The first one is that the Conciliation

Officer did not induce the parties to come to a fair and amicable settlement of the dispute, and, on the other hand, he merely and mechanically

signed at the bottom of the settlement without any application of mind. The second one is that the settlement has not conformed to the provisions of

Sections 12(2) and 12(3) of the Industrial Disputes Act, 1947, hereinafter referred to as "the Act". The third one is that the settlement is opposed

to Chapter V-A and Chapter V-B of the Act, besides patently containing arbitrary and unreasonable stipulations, without rhyme and reason. The

learned single Judge examined every one of the contentions raised on behalf of the petitioners and they have been accepted by the learned single

Judge. As a result, the learned single Judge issued a declaration that the settlement in question is not one arrived at in the course of conciliation

proceedings u/s 12(3) of the Act, and in so far as the petitioners are concerned, the same shall be void and of no effect. This writ appeal is

directed against the order of the learned single Judge.

2. Mr. S. Jayaraman, learned counsel for respondents 8, 2 and 3/appellants herein, would submit that in every case where there has been a

consensus between the parties, there is no need to insist for the Conciliation Officer trying to conciliate and induce the parties to come to fair and

amicable settlement and the Conciliation Officer could straightway accept whatever terms agreed to by consensus. Learned Counsel for

respondents 8, 2 and 3 has not lost sight of the pronouncements, which speak about the position, other way about. The uniform view is that a

settlement will not have the effect of a settlement u/s 12(3) of the Act unless it is brought about with the assistance and concurrence of the

Conciliation Officer and he has got a significant role to play to see to it that the terms arrived at are fair to both the parties. Apart from making the

above statement at the Bar by the learned counsel for respondents 8, 2 and 3, he did not cite any authority, which has countenanced such a

settlement.

3. Then learned counsel for respondents 8, 2 and 3 would submit that even if a settlement could not survive as one u/s 12 of the Act, yet it could

survive u/s 18(1) of the Act. Here learned counsel for respondents 8, 2 and 3 has

to overcome the other hurdle, namely, the settlement has been found by the learned single Judge as violating the provisions of Chapter V-A and Chapter V-B of the Act. It is here learned counsel for respondents 8, 2 and 3 would submit that it is a case of a voluntary retirement and he draws our attention to the expressions used in the impugned settlement. The fact remains that there is non-compliance with the provisions of Chapter V-A and Chapter V-B of the Act. A case of voluntary retirement cannot be so naively accepted, and such a proposition, when advanced, has got to be substantiated by adequate materials placed before Court in that behalf. We are not prepared to take the expressions referred to above as conclusive on the question. Respondents 8, 2 and 3 have not travelled beyond their pleadings and they have not cared to place before the learned single Judge any adequate material to show that it is a case of voluntary retirement. On the other hand, the finding of the learned single Judge is that unreasonableness is writ large and the terms bristle with unjustness and unfair labour practice, and even as a package deal, the terms do not stand to reason. In the said background, it is not possible for us to accept the theory of voluntary retirement in the absence of adequate proof thereof. Lastly, Mr. S. Jayaraman, learned counsel Judge for respondents 8, 2 and 3 would submit that the question raised before the learned single Judge ought to have found adjudication in a properly raised industrial dispute by the petitioners and there ought not to have been any investigation into these questions, exercising powers under Article 226 of the Constitution of India. When certain features are patent, as found by the learned single Judge, and those features establish that what happened are gross violations of the mandates of law, we do not think that we should envisage the throwing of the writ petition on the present ground urged by the learned counsel for respondents 8, 2 and 3. None of the contentions raised by the learned counsel for respondents 8, 2 and 3 survives. As a result, this writ appeal fails and the same is dismissed. No costs.