

(1990) 12 P&H CK 0060
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 109 of 1983

Punjab Kesri Printing Press

APPELLANT

Vs

Rattan Singh and Others

RESPONDENT

Date of Decision : 12-12-1990

Acts Referred:

Industrial Disputes Act, 1947 — Section 18(1), 2
Punjab Industrial Disputes Rules, 1958 — Rule 58

Citation : (1992) 1 LLJ 759 : (1991) 99 PLR 350

Hon'ble Judges : J.V. Gupta, C.J.; R.S. Mongia, J

Bench : Division Bench

Advocate : M.K. Sodhi and Romesh Kumar, for the Appellant; J.C. Verma and R.K. Sharma, for the Respondent

Final Decision : Allowed

Judgement

R.S. Mongia, J.—This is a Letters Patent Appeal by Punjab Kesri Printing Press, Jullundur City, against the judgment of learned single Judge, who had allowed the writ petition of the workmen by reversing the award of the Labour Court.

2. Briefly, the facts of the case are that Rattan Singh, writ petitioner, was appointed as a clerk by the appellant on May 14, 1969, and his services were terminated on May 8, 1971. He is alleged to have filed a complaint with the Labour-cum-Conciliation Officer on May 10, 1971, and according to the management, a settlement/compromise was entered into between the parties on May 19, 1971, copy of which has been attached as Annexure P-2 to the writ petition. The appellant has alleged that the workman resiled from the agreement and raised an industrial dispute. The matter was referred to the Labour Court for adjudication as to whether the termination of services of Rattan Singh workman was justified and in order and if not, to what relief/exact amount of compensation was he entitled?

3. A preliminary objection was taken by the appellant-management before the Labour Court that the reference was illegal and invalid in view of the settlement

arrived at between the parties before the Labour Inspector, Jullundur, on May 19, 1971, and it was the workman who had refused to receive the stipulated amount as per the settlement and had backed out of it. The Labour Court after appraising the evidence on the record (to which reference would be made in the latter part of the judgment) came to the conclusion that the preliminary objection was well-founded, that the reference was baseless and void and dismissed the same. The workman filed a writ petition, challenging the award of the Labour Court. The learned single Judge allowed the writ petition by holding that neither the settlement between the parties was in Form H prescribed under the Industrial Disputes (Punjab) Rules, 1958 (in short "Rules"), nor other formalities required under Rule 58 of the Rules had been complied with, and, therefore, the alleged settlement was not binding in terms of Section 18 of the Industrial Disputes Act, 1947 (in short "the Act"), as the requisite formalities of the settlement had not been complied with.

4. To appreciate the respective contentions of the parties, it will be appropriate to notice the definition of "settlement" given u/s 2(p) of the Act, as also Section 18(1), which gives the binding effect of the settlement, Rule 58 of the Rules, which prescribes as to what formalities are to be gone into and how the settlement is to be written is also reproduced:

"Section 2. In this Act, unless there is anything repugnant in the subject or context, -

(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 thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised 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 proceeding shall be binding on the parties to the agreement.

Rule 58. - Memorandum of Settlement.- (1) A settlement arrived at in the course of conciliation proceedings or otherwise, shall be in Form H.

(2) The settlement shall be signed by, -

(a) in the case of an employer, the employer himself, or by his authorised agent, or when the employer is an incorporated company, or other body corporate, by the agent, manager or other principal officer of the corporation;

(b) in the case of workmen,

(i) The President and Secretary of a Trade Union of workmen; or

(ii) The President, Vice-President, Secretary or General Secretary of the Trade Union of workmen preferably one of the aggrieved workmen; or

(iii) Five representatives of the workmen duly authorised in this behalf at a meeting of the workmen held for the purpose.

(c) in the case of an individual workman, in an industrial dispute u/s 2A, by the workman concerned.

(3) Where a settlement is arrived at in the course of conciliation proceedings, the Conciliation Officer shall send a report thereof to the State Government together with a copy of the memorandum of settlement signed by the Parties to the dispute.

(4) Where a settlement is arrived at between an employer and his workmen otherwise than in the course of conciliation proceedings before a Board or a Conciliation Officer, the parties to the settlement shall jointly send a copy thereof to the State Government, the Labour Commissioner, Punjab and to the Conciliation Officer concerned."

5. The learned counsel for the appellant submitted that the learned single Judge had gone wrong in upsetting the award when he held that the settlement was not of the kind envisaged by Section 18(1) of the Act, inasmuch as the requisite formalities provided under Rule 58 of the Rules had not been complied with. According to the learned counsel, there are only two requirements of Rule 58, firstly, that the settlement arrived at between the parties has to be in form H and secondly, the settlement which has been arrived at has to be sent to the Labour Commissioner. The learned counsel went on to argue that both these requirements were directory and not mandatory and in any case he submitted that in fact there was a compliance of these provisions. We find force in the arguments of the learned counsel for the appellant that there was in fact compliance with Rule 58 of the Rules. Before the Labour Court, evidence had been led by the management where a copy of letter dated July 19, 1971, had been produced to show that the Labour Officer had written a letter to the Labour Commissioner in regard to the settlement. This would show that the settlement had been sent to the Labour Commissioner. As the settlement which had been sent along with a letter dated July 19, 1971, was not forthcoming. it necessitated the management to lead secondary evidence whereby it was amply proved that a settlement had been arrived at between the parties, the copy of which was produced before the Labour Court as exhibit M-8. This being a pure finding of fact on the appreciation of evidence that a settlement between the parties had been sent to the Labour Commissioner and the contents thereof were as contained in exhibit M-8, we are of the opinion that this part of Rule 58 had been duly complied with.

6. As far as the other aspect of the matter that the settlement has to be in form H, we find from Form H to the Rules that it only requires that the names of the parties to be mentioned, terms of settlement, the signatures of the parties and the signatures of the witnesses and the Conciliation Officer are to be there. In the present case, we find from the copy of the settlement that all these

requirements have been met, inasmuch as it mentions that the parties are present who have compromised, the terms of the compromise are mentioned, it is signed by both the parties as well as by a witness and Labour Inspector. In view of this, we find that the settlement though it is not a typed Form H, but it contains all the ingredients which were required to be filled in Form H. Under the circumstances, it is held that the settlement arrived at between the parties was : substantially in the same format as Form H. It is not necessary that it should necessarily be written or jotted down on Form H, and if it is not on Form H, in no case it can be acted upon. In each case, it will have to be seen how the settlement : has been written.

7. The learned counsel for the respondent-workman cited *The Jhagrakhan Collieries (P) Ltd. Vs. Shri G.C. Agrawal, Presiding Officer, Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur and Others,), Eastern Coalfields Ltd. v. Central Government Labour Court, (1982) Lab IC. 2 (Cal)* and *Delhi Cloth and General Mills Co. Ltd. Vs. Union of India and Others,),* to contend that unless the statutory requirements as envisaged under Rule 58 are complied with, no binding settlement comes into being. He further contended that exhibit M-8 was not the settlement which was arrived at between the parties. On the view we have taken above, it is not necessary to deal with the authorities cited above by the learned counsel, as we are holding that there was due compliance of Rule 58 of the Rules. As far as the question that exhibit M-8 was not the settlement between the parties, a finding of fact was duly recorded by the Labour Court that exhibit M-8 was the settlement between the parties. Moreover, the learned single Judge has not upset that finding but only held that the settlement was not in accordance with Rule 58. Otherwise also, the learned counsel has not even suggested as to what was the other settlement which had been arrived at between the parties, if exhibit M-8 was not the settlement.

8. For the reasons recorded above, we allow the appeal and set aside the judgement of the learned single Judge and uphold the award of the Labour Court dated February 20, 1975. There will be no order as to costs.