

(2002) 02 MAD CK 0114

In the Madras High Court

Case No : Writ Petition No. 10976 of 1996

R. Paulmanickam, K. Krishnan, R. Natesan, A. Sargunam, P. Annadurai, R. Chinnappan, C. Saminathan, S. Paramasivam, P. Palanisamy, A. Subramaniam, C. Chengodan, T.K. Shanmugam, K. Natarajan, C. Nanjappan, K. Shanmugam, P.C. Narayanan, A.L. Udhayashankar and P. Selvaraj

APPELLANT

Vs

The Presiding Officer, Labour Court, Salem and The Management of Madras Aluminium Company Ltd., Mettur Dam, Salem District

RESPONDENT

Date of Decision : 26-02-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 300A

Industrial Disputes Act, 1947 — Section 12, 12(2), 12(3), 18, 33C(2)

Citation : (2003) 96 FLR 464 : (2003) 1 LLJ 721

Hon'ble Judges : D. Murugesan, J

Bench : Single Bench

Advocate : N.G.R. Prasad and Row and Reddy, for the Appellant; S. Ravindran, for T.S. Gopalan and Co., for the Respondent

Final Decision : Allowed

Judgement

D. Murugesan, J.—The petitioners, who are 18 in number have filed this writ petition, challenging the common order passed by the first

respondent / Labour Court, Salem in C.P.Nos.894/94 to 928/1994, 3/95 to 6/95 and 10/95 to 13/95 dated 05.02.1996 and quash the same in

so far as it relates to the petitioners in C.P.Nos.913/94, 897/94, 911/94, 909/94, 900/94, 912/94, 899/94, 926/94, 915/94, 910/94, 895/94,

914/94, 902/94, 10/95, 12/95, 11/95, 3/95 and 13/95 and for consequential direction to the second respondent / Management to pay the

petitioners' wages from 01.04.1992 to October 1994, less the advance given

during the period the petitioners worked.

2. The petitioners were all employed in the second respondent factory at Mettur Dam. On and from 01.04.1992, all the workmen except those

who were in charge of essential services like Security, Water Supply, Sanitation, Electricity etc., were asked not to report for duty. The petitioners,

who belonged to essential service, were required to report for duty and the petitioners continued to work from 01.04.1992 also. The second

respondent factory resumed normal operation in October 1994. The petitioners were not paid the wages for the period from 01.04.1992 to

October 1994, when the second respondent / factory resumed normal operations and were paid only Rs.750/- per month as against the salary of

Rs.4000/- to each of the petitioners. Hence, the petitioners along with similarly placed workmen filed claim petitions before the first respondent /

Labour Court.

3. The petitioners examined two witnesses and marked five documents. The second respondent / management examined one witness and marked

one document.

4. The Labour Court, after considering both oral and documentary evidence let in on behalf of the writ petitioners and the second respondent /

management, finally by the impugned common order dismissed all the claim petitions. While rejecting the claim petitions, the Labour Court had

taken note of the settlement dated 22.09.1994 (Ex.M.1) entered into between the second respondent / Management and the Unions representing

the workmen. As against the said common order, the petitioners have preferred the present writ petition.

5. Mr.N.G.R.Prasad, learned counsel appearing for the petitioners would challenge the common order passed by the first respondent / Labour

Court on the following grounds:

1. The settlement dated 22.09.1994 is not binding on the petitioners since the facts that they were asked to work even after 01.04.1992 and they

were paid only ex-gratia payment were not placed before the Labour Officer for his consideration. In the absence of those materials, there was

total non-application of mind by the Labour Officer as to the service conditions of the petitioners after 01.04.1992. Clause (2) of the terms of

settlement depriving the salary of the petitioners for the period for which they

worked from 01.04.1992 cannot be put against the petitioners, as the said settlement is not binding on the petitioners.

2. The petitioners are entitled to their earned wages for the period from 01.04.1992 to October 1994, during which period, the petitioners admitted worked.

3. The wages, which the petitioners have earned is to be considered as property and the right to property cannot be deprived except by due

process of law under Article 300-A of the Constitution of India, inasmuch as the settlement dated 22.09.1994 is not binding on the petitioners and

the deprivation of the wages earned by the petitioners would amount to deprivation of their property without due process of law.

4. The earned wages cannot be taken away by contract, which would be opposed to public policy; and finally

5. Wages cannot be deprived except a notice u/s 9-A of the Industrial Disputes Act read with Item I of Schedule IV.

6. In reply to the said submissions, Mr. S.Ravindran, learned counsel appearing for the second respondent submitted that due to liquidity

problems, by a notice dated 01.04.1992, put on 18.05.1992, the employees at all levels were notified that they were not required to report for

duty from 01.04.1992. However, in order to maintain essential services, like Security, Water Supply, Sanitation, Electricity, etc., and for

formulation and preparation of rehabilitation schemes, the petitioners were allowed to report for duty even from 01.04.1992 with a clear

understanding that these employees are not entitled to salaries and wages in accordance with the previous terms and conditions of service and the

emoluments for the period from 01.04.1992 till the company reopens, on the basis of the rehabilitation scheme to be approved by B.I.F.R.

Thereafter, a settlement dated 22.09.1994 was reached between the second respondent / management and the Unions of the Workmen. Learned

counsel further submitted that the settlement dated 22.09.1994 is binding on all the workmen, including the petitioners. In fact, the validity of the

settlement has not been challenged in the proceedings u/s 33C(2) of the Industrial Disputes Act. As per clause 2 of the settlement, it was agreed

that for the period from 01.04.1992 to the date when regular operations are resumed, no wages or salaries or any other benefits shall be payable

to any of the workmen or staff, as in the case of officers and executives. In respect of the workmen whose services are utilized during the above said period, they shall not be entitled to any compensation other than whatever amounts were paid to them under any nomenclature and as provided in the settlement. Therefore, the said settlement is binding on the petitioners and they were paid only a sum of Rs.1000/- per head as ex-gratia, pending final orders approving the rehabilitation scheme by B.I.F.R. As per the settlement, the petitioners were not entitled to wages for the period from 01.04.1992 to October 1994, as the said wages cannot be considered as wages earned by the petitioners and therefore, there is no question of deprivation of the right of the petitioners to the wages under Article 300-A of the Constitution of India would arise.

7. Learned counsel also placed reliance upon clause 18 and 19 of the settlement dated 22.09.1994 and submitted that the settlement shall be deemed to have settled all outstanding issues and during the currency of the settlement, the workmen shall not make any demand or raise any dispute which would interfere with the viable operations of the plant or any additional financial commitment to the company. Hence, learned counsel submitted that the first respondent / Labour Court has rightly held that the settlement u/s 12(3) of the Industrial Dispute is like an award and is binding all workmen and consequently, rejected the claim petitions. Learned counsel also contended that the petitioners have not challenged the settlement u/s 12(3) of the Industrial Disputes Act before the Labour Court and therefore, they cannot put a new case before this Court in the writ petition, challenging the said settlement itself.

8. I have given my due consideration to the submissions of the learned counsel for the petitioners and also the respondents.

9. The second respondent / Factory stopped its production of Aluminium and products from April 1991 and of Alumina from October 1991. The second respondent / management was paying full wages and salaries to all the employees till February 1992. Due to liquidity problems, the employees at all levels were notified, by a notice dated 01.04.1992 put on notice Board on 18.05.1992, that the employees at all levels were not required to report for duty from 01.04.1992. However, in order to maintain essential services like Security, Water Supply, Sanitation, Electricity

etc., and for formulation and preparation of rehabilitation schemes, the Company required specified and limited number of employees to report for

duty from time to time. In view of the above, the petitioners along with other employees who were employed in essential services were directed to

report for duty on 01.04.1992. In the said notice, it was made known to the employees that they were not entitled to salaries and wages in

accordance with the provisions of the previous terms and conditions and the emoluments for the period from 01.04.1992 till the company reopens

on the basis of rehabilitation scheme to be approved by B.I.F.R. This notice was sought to be relied upon by the second respondent / management

to contend that the petitioners who are employed in essential services are not entitled to their salaries and wages in accordance with the previous

terms and conditions. However, in the said notice, it was also made clear that whatever has been paid during the interim period ""as advance"" will

be adjusted ""towards Salary"". As whatever is paid during the interim period is only ""advance"" which would be adjusted against ""salary"" payable as

determined after re-opening. Therefore, by the said notice, the second respondent / management had assured the petitioners that they will be paid

only advance during 01.04.1992 till the company re-opens and the said interim payment will be adjusted towards salary payable as determined by

B.I.F.R, after re-opening. Accepting the said condition, the petitioners reported duty and in fact worked from 01.04.1992 till October 1994.

10. While that being so, on 22.09.1994, the second respondent / Management and the Workmen of The Madras Aluminium Company Ltd.,

entered into a settlement u/s 12(3) of the Industrial Disputes Act before the Special Deputy Commissioner of Labour, Madras. For the disposal of

the writ petition, relevant clauses of the settlement are extracted as follows:

(1) This settlement is arrived at as a package deal in the larger interests of all concerned for the revival of the company and for its sustained viable working.

(2) It is agreed that for the period from 01.04.1992 to the date when regular operations would be resumed, no wages or salaries or any other

benefits shall be payable to any of the workmen or staff, as in the case of officers and executives. In respect of any workmen and staff whose

services were utilized during the above said period, they shall not be entitled to

any compensation other than whatever amounts were paid to them under any nomenclature and as provided below. They shall be entitled to payments as per paras 3 and 4 below and in addition an exgratia of Rs.1000/- (Rupees One Thousand Only) per head to be paid within the period mentioned in para 3.

(18) This settlement shall be deemed to have settled all outstanding issues and it shall remain in operation for a period of three years from the date of reopening of the plant at Mettur.

(19) During the currency of this settlement, the workmen shall not make any demand or raise any dispute which would interfere with the viable operations of the plant or any additional financial commitment to the Company. They also agree that they will extend full co-operation to maintain peace and discipline and discharge their duties wholeheartedly for increase in production".

11. As per Clause 2 of the settlement, it was agreed that for the period from 01.04.1992 to the date when regular operations would be resumed, no wages or salaries or any other benefits shall be payable to any of the workmen or staff, as in the case of officers and executives. The said clause was with reference to the workmen who were directed not to report for duty from 01.04.1992. Second portion of the said clause states that in respect of any workmen and staff whose services were utilized during the aforesaid period, they shall not be entitled to any compensation other than whatever amounts were paid to them under any nomenclature and they shall be entitled to payments as per clauses 3 and 4 of the settlement, in addition to ex-gratia payment of Rs.1000/- per head. As per clause 3 of the settlement, they are entitled to an amount equal to three months wages/salary based on the rate of wages/salary including all allowances, payable to them for March 1992 and clause 4 relates to workmen who are not living in Company's quarters. As already pointed out, the first portion of the said clause relates to the workmen, who were directed not to report for duty and the second portion of the clause relates to the workmen who were directed to report for duty.

12. The grievance of the petitioners is that second portion of the second clause in the settlement is not binding on them as they were not parties to the settlement and the fact that the petitioners are in fact working in the second

respondent / management was not placed before the Special Deputy Commissioner of Labour before whom the settlement was reached. It is one thing to contend that the petitioners had not challenged the settlement before the Labour Court and other thing to say that the settlement is not binding the petitioners. Even though it was argued by the learned counsel for the second respondent that the petitioners have not challenged the settlement before the Labour Court and therefore, they cannot plead a different case before this Court in writ proceedings, I am unable to accept the said contention since the petitioners cannot challenge the validity of the settlement in the proceedings u/s 33C(2) of the Industrial Disputes Act. All that the petitioners could plead before the Labour court on justifiable ground is that the terms and conditions of the settlement are not binding. In the claim statements filed by the petitioners, it is contended that the petitioner were attending duty as per the rules as usual and the second respondent / management promised the workmen that the salaries and other dues shall be paid on resumption of production. The said claim of the petitioners is fully substantiated from the very notice issued by the second respondent dated 01.04.1992. The relevant portion of the said notice is extracted hereunder:

However, in order to maintain essential services like Security, Water Supply, Sanitation, Electricity, etc., and for formulation and preparation of rehabilitation schemes, the company required specified and limited number of employees to report to duty from time to time. The management wants to make it clear that these employees are not entitled to salaries and wages in accordance with the previous terms and conditions of service and the emoluments for the period from 01.04.1992 till the company reopens, on the basis of the rehabilitation scheme to be approved by the B.I.F.R., will be decided after the re-opening of the Company. Whatever, has been paid during the interim period, as advance will be adjusted towards salary. As whatever is paid during the interim period is only advance which would be adjusted against salary payable as determined after reopening, no income tax will be deducted at source".

By the said notice, the petitioners were made to belief that whatever the amount paid during the interim period as advance will be adjusted towards salary, which would be determined after re-opening of the factory. Only on that

understanding, the petitioners have worked from 01.04.1992. The said salary assured to the petitioners are sought to be deprived of by clause 2 of the settlement dated 22.09.1994.

13. Of course, the validity of the settlement could be challenged only by way of writ petitions and the petitioners are not entitled to challenge the

same before the Labour Court in a petition filed u/s 33C(2) of the Industrial Disputes Act, since the settlement entered into u/s 12(3) of the

Industrial Disputes Act is like an award and is binding on the workmen. However, what the petitioners have pleaded before this Court is that the

said settlement entered into was without notice and knowledge of the petitioners who are differently placed than the workmen who were stopped

from working. In the notice dated 01.04.1992, it was made clear that no salary could be paid to the workmen who were required not to report for

duty. However, insofar as the workmen, who were directed to report for duty, they were paid advance amount only by duly taking into

consideration of the financial position of the Company. However, in the said notice, those workmen like the petitioners, who were asked to work

from 01.04.1992 were assured of their salary after the factory re-opens. Therefore, the workmen who were stopped from work and the workmen

who were directed to report for duty like the petitioners cannot be placed on par. Further, both the workmen who were stopped from work and

the workmen who were directed to report for duty were treated alike in clause 2 of the settlement for the purpose of payment of salary. Therefore,

it has to be considered as to whether the workmen who did not work and the workmen who actually work from 01.04.1992 could be treated

alike and as to whether the workmen who actually worked were parties to the said settlement and consequentially, the same is binding on them.

14. In the judgment reported in *The Bata Shoe Co. (P) Ltd. Vs. D.N. Ganguly and Others*, while considering the scope of the challenge to the

settlements entered into u/s 12(3) of the Industrial Disputes Act, the Supreme Court held as follows:-

7. The question thus posed raised the question as to what is meant by the words ""in the course of conciliation proceedings"" appearing in Section

18 of the Act. One thing is clear that these words refer to the duration when the conciliation proceedings are pending and it may be accepted that

the conciliation proceeding with respect to these dismissals, which began sometime before May 1, 1954, were certainly pending upto September

6, 1954 and may be a little later, as is clear from the two letters of the Labour Commissioner. But, do these words mean that any agreement

arrived at between the parties during this period would be binding u/s 18 of the Act? Or do they mean that a settlement arrived at in the course of

conciliation proceedings postulate that that settlement should have been arrived at between the parties with the concurrence of the conciliation

officer? As we read this provision, we feel that the legislature when it made a settlement reached during the course of conciliation proceedings

binding not only on the parties thereto but also on all present and future workmen intended that such settlement was arrived at with the assistance

of the conciliation officer and was considered by him to be reasonable and therefore had his concurrence. Section 12 of the Act prescribes duties

of the conciliation officer and provides that the conciliation officer shall for the purpose of brining about settlement of the dispute without delay

investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he may think fit for the

purpose of inducing the parties to come to a fair and amicable settlement of the dispute. (Vide S. 12(2)) Then comes Section 12(3), which

provides,

If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings, the conciliation officer

shall send a report thereof to the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute"".

8. Reading these two provisions along with Section 18 of the Act, it seems to us clear beyond doubt that a settlement which is made binding u/s 18

on the ground that it is arrived at in the course of conciliation proceedings is a settlement arrived at with the assistance and concurrence of the

conciliation officer, for it is the duty of the conciliation officer 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. It is only such a settlement which is arrived at while conciliation proceedings are pending that

can be binding u/s 18.

15. In view of the above law laid down by the Supreme Court, it should be held

that it is the duty of the conciliation officer 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. In this connection, the evidence of the Special Deputy Commissioner of Labour, Madras, before whom the settlement was entered, is relevant. The said conciliation officer was examined as W.W.2. He has specifically deposed that conciliation was held only in respect of the workmen, who were required not to report for duty and the Management has not informed him as to the workmen who were required to report for duty and actually worked. For better appreciation of the evidence, some of the relevant paragraphs are extracted hereunder:

fjtilg;gpd; nghJ ntiyf;Fr; bry;yhj bjhHpyhsh;fis gw;wp jhd; vd; Kd;g[rkur ngr;Rthh;j;ij ele;jj/ eph;thfKk;. bjhHpyhsh;fSk; gzpf;Fr; bry;gth;fis gw;wp vd; Kd;g[VJk; vLj;Jiuf;fg;gltpy;iy/ ngr;Rthh;j;ijapd; nghJ fjtilg;gpd; gpd;g[k; Miyf;Fr; bry;Yk; bjhHpyhsh;fs; xU gFjp vd;Wk;. Miyf;Fr; bry;yhj Ml;fs; xU gFjp vd;Wk;. vd; Kd;g[ahUk; bjhptpf;fhjjhy;. mijg; gw;wp ehd; bjhppe;J bfhs;stpy;iy/ fjtilg;g[f;F gpd;g[k; ntiyf;Fr; bry;gth;fs; bjhHpw;r";fj;jpd; m";fj;jpdh;fs; vd;Wk;. mth;fis Fwpj;J tprhhpj;jjhft[k;. xg;ge;jj;jpy; Fwpg;gpl;L brhy;ytpy;iy/ eph;thfk; fjtilg;gpw;F gpd;g[gzpf;Fr; bry;gth;fis Fwpj;J rk;gsk; bfhLg;gJ Fwpj;J thf;FWjp gw;wp vdf;Fj; bjhpahJ/

16. The evidence of the Conciliation Officer, W.W.2, would go to show that the facts that the petitioners were directed to report for duty and they were assured salary after the factory reopens and as to whether what amount they are paid as an interim advance till the factory re-opens were not at all brought to the notice of the said officer. In the said circumstances, the said officer could not have applied his mind to those facts before the settlement was arrived between the second respondent management and the Unions of the workmen. In the said circumstances, whether it could be called that the said clause, which deprives the salary of the petitioners, would be binding on them?

17. Binding nature of Section 18(1) settlement came up for consideration before the Apex Court in the Judgment reported in Royal Calcutta Golf Club Mazudur Union Vs. State of West Bengal and Others, wherein the Supreme Court held,

the main task of the conciliation officer is to go from one camp to the other and

find out the greatest common measure of agreement. He has to investigate the dispute and do all such things as he thinks fit for the purpose of inducing the parties to arrive at a fair and amicable settlement of the disputes"".

18. The above said judgment of the Supreme Court has been followed by this Court in WORKERS OF BUCKINGHAM AND CARNATIC

COMPANY..VS.. COMMISSIONER OF LABOUR AND CHIEF CONCILIATION OFFICER 1964 I L.L.J. 253 wherein a Division Bench

of this Court held as follows:

A conciliation is more or less a matter of negotiation between the parties. The function of a conciliator is to bring the management and the workers

together with a view to enter into discussions on the points in dispute and to discover means of settlement acceptable to both. Under the Industrial

Disputes Act, the conciliation officer is an independent agency created with a view to promote industrial peace by making available governmental

facilities in the process of collective bargaining. His presence and participation at the discussions does often facilitate an objectivity of approach in

the matter of the bargain between the management and the Labour.

Therefore, when there is an industrial dispute brought up for conciliation at the instance of one union, that union is no doubt the bargaining party.

But, the bargain being made with the assistance of the conciliation officer can be expected to be fair to all the workers including those who are not

members of the union. It is this principle that distinguishes a mere settlement between one Union and the management by direct approach, and a

settlement reached after conciliation.

19. In view of the above categorical pronouncement and on the facts of the present case, it is no doubt clear that in the absence of the application

of mind on the part of the Special Deputy Commissioner of Labour, Madras as to the assurance given by the second respondent / management to

the petitioners for payment of salary after re-opening of the company as indicated in the notice dated 01.04.1992 and also the two sets of

workmen namely, those who were directed not to report for duty with clear instructions that they will not be eligible for salary and those who were

directed to report for duty subject to the assurance that they will be paid advance from 01.04.1992 till the Company reopens and the salary as

determined after re-opening of the Company will be paid to them, after adjusting the advance already paid to them, the claim of the petitioners that

they were not parties to the settlement assumes importance. Had the above facts made known to the Special Deputy Commissioner of Labour, he

could have called the petitioners for conciliation before any settlement was arrived, containing terms adversely affecting the rights of the petitioners.

Hence, in my considered view, Clause 2 of the settlement insofar as it deprives the rights of the petitioners to their salary for the period from

01.04.1992 till October 1994 will not be binding on the petitioners. The fact that the Special Deputy Commissioner of Labour had not applied his

mind to the claim of the petitioners has been completely overlooked by the Labour Court. Such an order of the Labour Court, contrary to the well

established principles of law shall be termed only as ""perverse"" and is subject to interference by this Court under Article 226 of the Constitution of

India.

20. The submission of the learned counsel for the second respondent that the petitioners cannot challenge the settlement in an application u/s

33C(2) of the Act cannot be disputed. However, from the facts, I find all that the petitioners had claimed before the Labour Court was that clause

2 of the settlement is not binding on them since they were entitled to salaries on the basis of notice dated 01.04.1992 and the same has been

deprived of by a settlement u/s 12(3) of the Industrial Disputes Act, to which they are not parties. When once it is concluded that the portion of

clause 2 of the settlement dated 22.09.1994, which deprives the rights of the petitioners to their salary for the period from 01.04.1992 to October

1994 is not binding on the petitioners and the award is set aside on that ground, the other points raised by the learned counsel for the petitioners

need not be gone into. For the above reasons, I reject the submission of the learned counsel for the second respondent that the settlement dated

22.09.1994 is binding all the workmen, including the petitioners and the petitioners are pleading a new case before this Court in writ proceedings.

21. In view of my above findings, the common order dated 05.02.1996 passed by the first respondent / Labour Court in C.P.Nos.894/94 to

928/1994, 3/95 to 6/95 and 10/95 to 13/95 dated 05.02.1996 is unsustainable and accordingly, the same is hereby quashed. Consequently, it is

held that the petitioners in C.P.Nos.913/94, 897/94, 911/94, 909/94, 900/94, 912/94, 899/94, 926/94, 915/94, 910/94, 895/94, 914/94, 902/94, 10/95, 12/95, 11/95, 3/95 and 13/95 are entitled to their salaries less the advance already paid to them, during the period the petitioners worked. The writ petition is allowed on the above said terms. No costs.