

(2003) 08 MAD CK 0073

In the Madras High Court

Case No : Writ Petition No. 5401 of 1996, WMP No. 8539 of 1996 and WPMP No. 26134 of 2003

S. Rajagopalan

APPELLANT

Vs

Kattabomman Transport Corporation Ltd.

RESPONDENT

Date of Decision : 07-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 08 MAD CK 0073

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Advocate : S.M. Subbiah, for the Appellant; John, for Ramasubramaniam Associates, for the Respondent

Judgement

K.P. Sivasubramaniam, J.—In this writ petition, the petitioner seeks the issue of a Writ of Certiorarified Mandamus to quash and set aside

the settlement arrived at between the parties u/s 18(1) of the Industrial Disputes Act as void and unenforceable in law.

2. Having regard to the nature of the disposal of the writ petition, I do not propose to deal with the detailed pleadings and the merits of the mutual contentions.

3. The following facts are sufficient for the disposal of this writ petition.

The petitioner was appointed on 22.1.1982 as a "Trainee Clerk" by the respondent State Transport Corporation. Subsequently, he was confirmed

as a Junior Assistant on 30.7.1984. Disciplinary proceedings were initiated against him during the year 1991 on a charge of misappropriation of

Rs.500/-. An enquiry was conducted and he was dismissed from service on 14.6.1991. The management had approached the Industrial Tribunal,

Madras in Petition No. 138 of 1991 u/s 33(2)(b) for confirmation of the dismissal. The Tribunal by its order dated 26.6.1992 dismissed the

approval petition after holding that there was no ground for punishing the respondent.

4. However, though the employee/the petitioner had succeeded before the Tribunal, he entered into a settlement u/s 18(1) of the Industrial

Disputes Act, 1947, with the management on 3.11.1992 which is as follows:-

Short recital of the case:

Thiru S. Rajagopalan, Assistant, EDP No. 154 was dismissed from service, on account of the proven charges of misappropriation of

Corporation's money vide this Office Order No. 1158/Admn.1/KTC/91 dated 14.6.1991. This Ex-Assistant submitted a mercy petition dated

12.11.1992 to the Manager Director of this Corporation with a request not to prefer appeal against the Order of the Industrial Tribunal dated 26th

June 1992 in Petition No. 138 of 1991 and request to take back as a fresh entrant as Junior Assistant. The Management after analysing the mercy

petition with relevant documents, consider the case on humanitarian and sympathetic grounds and decided to reinstate the petitioner into service of

this Corporation as a fresh entrant as Junior Assistant on daily wage after arriving at a settlement u/s 18(1) of the Industrial Disputes Act 1947.

Hence a Memorandum of Settlement u/s 18(1) of the Industrial Disputes Act 1947 is arrived at between the Management of K.T.C. Ltd.,

Tirunelveli and the petitioner Thiru S. Rajagopalan regarding the re-employment on the following terms.

Terms of Settlement:

1. It is agreed to reinstate Thiru S. Rajagopalan into service of this Corporation as a Junior Assistant on Daily Wage afresh with effect from the

date of his joining.

2. It is also agreed that the past service prior to the non-employment will not count for the purpose of future increment, review and other service

benefits.

3. He will not claim the benefits of earlier service and back wages (including his period of non-employment) if any in future.

Both the Parties agree to the above terms"".

5. On 12.11.1992, he has also given a letter to the management which is as follows:-

vdJ FLk;gk; fle;j 21 khjkhf ntiy,y;yhjjhy; kpft[k; fc≶gLfpwJ/ vdnt eph;thfk; nky;KiwaPL vJt[k; vdJ tHf;fpy; bra;ahky; (I.D. No. 138/1991 of

Industrial Tribunal) vdJ g[jpa EiHthuhf vd;id nrh;j;J vd;ida[k; vdJ FLk;gj;ija[k; fhg;ghw;WkhW fUiz bra;J vdf;F gzp xJf;fPL bra;J jUkhW tz";fp

nfl;Lf;bfhs;fpnwd;/ vdJ FLk;gk; mjpfkhd fldpy; ,Ug;gjhy; eph;thfk; VjhtJ xU bra;J fhg;ghw;Wk;go nfl;Lf;bfhs;fpnwd;/

eph;thfk; vdf;F g[jpatuhf EiHtjw;F (Jr. Asst.) ehd; rk;kjpf;fpnwd;/ ve;j xU gzpa[k; ehd; fliknahLk; bghWg;ngHlK; epiwntw;Wntd;/ vdnt eph;thf

,af;Fdh; mth;fs; fUiz bra;J vd;id kPz;Lk; gzpf;F bry;y cj;jutpLkhW tz";fp nfl;Lf;bfhs;fpnwd;/@

6. Subsequently, he joined the services as a fresh entrant pursuant to the order of the management dated 2.12.1992, whereby he was appointed as

the Junior Assistant on daily wages on the terms and conditions mentioned therein. His services were subsequently confirmed on 16.11.1993.

7. On 21.10.1995, he made a representation, requesting continuity of service from the date of his original appointment after stating that earlier he

had agreed to be appointed as a fresh appointee only due to poverty which he was suffering from. As the management was not agreeable, the

petitioner had filed the present writ petition on 17.4.1996.

8. Mr. S.M. Subbiah learned counsel for the petitioner very vehemently contends that the agreement u/s 18(1) of the Act entered into between the

parties, was unjust, unconscionable and one sided. The petitioner was suffering from poverty and hence the respondent had taken advantage of the

situation and the petitioner was forced to sign the agreement which was totally illegal and hence the agreement was liable to be held as void.

Learned counsel also states that there is no proper compliance of the rules requiring the communication of the agreement to the appropriate

authorities.

9. Learned counsel relies on the judgment of the Supreme Court in Central Inland Water Transport Corporation Limited and Another Vs. Brojo

Nath Ganguly and Another, and the learned counsel relies on the following observations of the Supreme Court:-

The principle deducible from the above discussions on this part of the case is in

consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Art.14. This principle is that the Courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power"".

10. Per contra, learned counsel for the respondent while denying the allegations of coercion and fraud, contends that the above writ petition cannot be maintained and that the appropriate remedy is only to raise a dispute before the Labour Court/Tribunal. He also contends that by signing the agreement, the employee had prevented the management from taking further proceedings. The petitioner has also approached this Court with considerable delay and the action of the petitioner cannot result in putting the petitioner in a disadvantageous position.

11. Mr. S.M. Subbiah, learned counsel for the petitioner, in reply contends that the question of delay cannot be put against the employee and the learned counsel relies on the judgment of the Supreme Court in G.P. Doval and Others Vs. Chief Secretary, Government of U.P. and Others, .

Learned counsel relies on the observation that when the department was not finalising the seniority list for 12 years, nor giving reply to the representations of the petitioner, and considering that the petitioner belonged to the lower ranks of the service, the Supreme Court refused to throw out the petition on the ground of delay.

12. I have considered the submissions of both sides.

13. It is true that the petitioner had succeeded before the Industrial Tribunal and he need not have entered into an agreement which is totally one sided and it is surprising that the he should have agreed to be appointed as a fresh appointee that too on daily wages without any guarantee of continuance in service. The said features no doubt lead to a prima facie view that the worker had entered into the agreement u/s 18(1) of the Act, out of pressure. While according to the learned counsel for the petitioner, the management had no case at all to be proceeded further as against the order of the Tribunal, according to the learned counsel for the management, the order of the Tribunal was unsustainable. In fact, even before the order of the dismissal, the petitioner had repaid the amount misappropriated by

him on 2.3.1991, after admitting his misconduct and hence the management could have pursued further remedies against the order of the Tribunal but for the request of the petitioner to take him back in employment. The management need not have taken him back in employment and could have pursued further remedy successfully. However, the request of the employee was sympathetically considered and was reinstated into service subject to certain conditions. The petitioner knew fully well that having regard to his own admission and other evidence he had no chances and in fact that was the reason why he had agreed for the fresh appointment. His conduct of questioning the agreement after 3-1/2 years exposed lack of bona fides.

14. Having regard to the rival contentions as above, I am inclined to hold that the petition under Article 226 of the Constitution is not the proper remedy to adjudicate the issue which depends on evidence to be adduced by both the parties regarding the alleged fraud and coercion in the execution of the settlement u/s 18(1) of the Act. It is true that there can be no jurisdictional bar for the High Court to examine the issue under Article 226. But at the same time, when a proper remedy is available, the petitioner cannot be permitted to raise the issues of fraud and coercion which depends on oral and documentary evidence.

15. In *Workmen by Secretary vs. Management of M/s. Orient Pharm* and another, this Court in W.A. No. 2318 of 1987 dated 27.9.1989, while dealing with the settlement arrived at between the Union and the Management u/s 12(3) of the Act, the Division Bench held that if the workers had a grievance against the Secretary of the Union on the ground that the settlement was vitiated by fraud, they have to workout their rights in other forums and proceedings and the question of fraud vitiating the settlement will fall outside the scope of writ petition.

16. In *(Capt.) S.C. Adhikari and Others vs. Air India (through its Managing Director) and Others* 2001 (1) L.L.N. 1119, the Division Bench of the Bombay High Court held that the question where a particular clause in the said settlement was just and fair cannot be examined by the High Court in its writ jurisdiction and the same can be challenged by raising an Industrial Dispute.

17. The Supreme Court in a recent judgment has taken the same view in

Mayurakshi Cotton Mills and Others Vs. Panchra Mayurkshi Cotton

Mills Employees" Union and Others, . In the said writ petition before the High Court, the workers" union challenged the validity of the settlement

on the ground that the settlement was unfair. The Supreme Court held that the proper remedy for determination of the said issue was by way of

raising an Industrial Dispute and not by way of a writ petition. The learned single Judge of the High Court relegated the parties to the remedy of

Industrial Dispute but the Division Bench on appeal annulled the settlement. The Supreme Court allowed the appeal and held that the appropriate

remedy for determination of the issue was only by raising an Industrial Dispute.

18. Therefore, I am inclined to hold that the petitioner cannot be permitted to raise the said issue under Article 226 without first approaching the

proper forum. With the result, in this case, this Court is inclined to direct the Government to refer the dispute before the appropriate authority.

19. Learned counsel for the respondent contends that if such an opportunity has to be given to the petitioner, then the respondent should also be

put in the same position as before. If the petitioner had not signed the agreement, the management would have questioned the dismissal of the

approval petition before the appropriate forum. Learned counsel also contends that the writ petition itself was filed only after 3-1/2 years after

signing the agreement and the management cannot be prejudiced by the self serving conduct of the petitioner. I am inclined to feel that nothing

prevented the management to have taken appropriate proceedings immediately after receiving notice on the above writ petition. I can only observe

that it is left open to the management and they are at liberty to pursue their remedies in a manner known to law. The petitioner in this writ petition

had wrongly approached this Court and in the interest of justice, he should be permitted to approach the appropriate forum. But at the same time,

the conduct of the petitioner cannot also result in any injustice or prejudice to the management and hence the management is at liberty to pursue all

remedies open to it in the circumstances of the case.

20. With the result, I am inclined to pass the following order:

i. The petitioner is directed to forward a petition to the Government of Tamil Nadu along with a copy of this order to refer the dispute before the

appropriate forum to declare the settlement u/s 18(1) of the Act as illegal and

not binding on the employee. Such representation will be sent within a period of two weeks from the date of receipt of a copy of this order.

ii. On receipt of the said petition from the petitioner, the Government of Tamil Nadu is directed to refer the dispute to the appropriate forum within a period of eight weeks thereafter.

iii. The Tribunal/Labour Court is directed to deal with the dispute and pass final orders within a period of four months from the date of receipt of the orders of the Government referring the dispute.

21. The writ petition is ordered subject to the above observations. No costs. Consequently, connected WMP and WPMP are closed.