

(2001) 12 J&K CK 0006

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 339/1996

Sat Pal Parihar

APPELLANT

Vs

National Hydro Electric Power Corporation Complex, Sec.33
Faridabad and Ors.

RESPONDENT

Date of Decision : 31-12-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 18(1)

Citation : (2002) KashLJ 504 : (2002) 3 SCT 827

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : M.Koul, J.S.Kotwal, J.P.Singh, Advocates appearing for the Parties

Judgement

1. The petitioner has come to this court with a plea that when order dated 7th of March 1996 was passed by the respondents complete justice

was done to him. The order of promotion has been given w.e.f. 1st of Jan' 1990. According to the petitioner in terms of order dated 31st of

March 1986, this should have been made effective w.e.f. 1st of Jan'1985. This order has been placed on the file as Annexure ""p2"". The petitioner

seeks benefit of order dated 3.4.1992. This is annexure p8. It is basically this plea which is being projected by the petitioner. In addition to this, it

is submitted that the respondents of their own have considered the issue and have made a recommendation in favour of the petitioner. The

recommendation is said to be signed by the General Manager of the respondentcorporation. This is a confidential communication. Nevertheless the

petitioner is in possession of the same. In a nutshell the case of the petitioner is that he is entitled to the benefit of order dated 31st of Jan 1986 and

if benefit of this is given and recommendation referred to above are taken note

of, then he would be entitled to promotion with effect from a date earlier to 1st of Jan'1991.

2. The stand taken by the respondent is that so far as relief claimed by the petitioner that his claims be considered with effect from the date order

dated 31st of Jan 1986 was passed is concerned, the same cannot be made subject matter in this petition. It is submitted that the petitioner had

earlier filed a writ petition bearing No. SWP No. 1319 of 1988. This was dismissed in default on 20th of Nov 1992. It was submitted that the

earlier dismissal of the writ petition would stand in the way of the petitioner. It is urged that issue covered by earlier writ petition cannot be

reagitated, in the present petition. The plea of resjudicate and estoppel is being put across by the respondents. In addition to this, It is submitted

that no doubt order dated 31st of Jan 1986 was passed, but this was withdrawn on 27th of Oct'1988. The reason for this is that a collective

representative settlement was arrived between the representative of workmen and the Management. It is submitted that an agreement was also

executed between the management of Dul Hasti Hydro Electric Project with the representative of workmen of the project. It was specifically

agreed that the Tracers/Ferro Printers would not be entitled to the revised payscales. This settlement was arrived at under Section 18(1) of the

Industrial Dispute Act. It is stated that notwithstanding this settlement by inadvertence and oversight. The petitioner was given the benefit of the

revised payscale of Rs.425800 and this benefit having been given erroneously was rightly withdrawn.

3. Notwithstanding the above position, the petitioner submits that the respondents have taken a decision that even in the case of workmen where

the settlement was given effect to and benefit was with drawn was ordered to be reconsidered, and therefore, the petitioner's claims are required

to be considered.

4. The learned counsel for the respondents submits that the matter which stood agitated in earlier writ petition which came to be dismissed in

default cannot be reagitated on account of bar of principles of resjudicate. Nevertheless a plea has been taken in view of the observations made by

the Division Bench of this Court in LPA (SW) 172 of 2001 decided on 19.9.2001, the issue can be considered. In the above case it was observed:

Mr.J.P. Singh, learned counsel appearing on behalf of respondents fairly submits that impugned order dated 7.3.1996, assailed in SWP

No.336/96 was a subsequent to the filling of earlier SWP No. 1319/88. If that is so, SWP No 339/96 survives because of the subsequent order

dated 7.3.1996. In the facts and circumstances stated above, we set aside the impugned dated 14.5.2001 and SWP No.339/96 is restored to file.

It shall be listed before the learned Single Judge in the week after the next and the learned Single Judge shall hear the matter and dispose of the

same on merits strictly in terms of impugned order dated 7.3.1996, impugned in that writ petition.

5. It was urged that the observations made by the Division bench are to the effect that the issue is to be considered on merits and not to be

disposed of technically.

6. So far as merit of controversy is considered, it is not in dispute that this benefit was withdrawn on account of the reasons noticed above; it is

also not in dispute that the settlement was arrived between the workmen and the Management and a decision was taken not to give the benefit

which came to conferred on the petitioner.

7. At this stage provisions of Section 18(1) and Section 19 (1) & (2) be noticed.

18. Persons on whom settlements and awards are binding. (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.

19. Period of operation of settlement and awards

(1) A settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date

on which the memorandum of the settlement is signed by the parties to the dispute.

(2) Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six

months from the date on which the memorandum of settlement is signed by the parties to the dispute and shall continue to be binding on the parties

after the expiry of the period aforesaid, until the expiry of the two months from the date on which a notice in writing of an intention to terminate the

settlement is given by one of the parties to the other party or parties to the

settlement.

8. Thus the settlement arrived at by an agreement between the employer and workmen are binding on the parties. When this settlement has been

arrived at between the representatives of the workmen and the representative of the employer, then all workmen would be bound by it. Any other

interpretation would lead to consequences which are not conducive to industrial peace and harmony.

9. The position of law is well settled i.e. if a settlement has been recorded in terms of Section 18(1) of the Industrial Dispute Act, then clarification

regarding the same can be sought before the forums constituted under the Industrial Dispute Act. In AIR 1975 SC 2238. the Premier Automobiles

Ltd.Vs.Kamalakar Shantaram Wadke and others, it has been held :

To sum up, the principles applicable to the jurisdiction of the Civil Court in relation to an industrial dispute may be stated thus:

1. If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy less only in the civil court.

2. If the dispute is an industrial dispute arising out of a right or liability under the general common law and not under the Act, the jurisdiction of the

Civil Court is alternative leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to the grant in a

particular remedy.

3. If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is

to get adjudication under the Act.

4. If the right which is ought to be enforced is a right created under the Act such as chapter VA then the remedy for its enforcement is either

section 33 C or the raising of an industrial dispute as the case may be.

10. Thus a change in the terms of settlement can be brought about by resorting to the provisions of Industrial Dispute Act. This is one aspect of the

matter.

11. Even if the argument put across by the petitioner is considered on merits and the two orders on which reliance is being placed are taken note of

i.e. order dated 3rd of Jan'1986 and recommendation dated 18th of June 1998 Annexure '1' with the CMP No. 58D/2000, then it be comes

apparent that this recommendation is to be accepted or rejected by the respondents corporation. As per the respondents this has been rejected.

Therefore, in case a decision has been taken in representative capacity that benefit of revised scale has to be given to tracers and Ferro Printers

only, then that decision based in terms of settlement has to be respected and enforced. This court cannot issue a direction which may run counter

to the terms of the settlement.

12. In view of the above, I am of the opinion that no relief can be granted to the petitioner. Let the order of rejection if not already conveyed to the

petitioner be now conveyed to the petitioner within a period of six weeks from today.

13. Disposed of as such.