

(1996) 12 KAR CK 0001
In the Karnataka High Court
Case No : Writ Petition No. 2528 of 1993

Shri R. Balaji Singh

APPELLANT

Vs

The Hindustan Machine Tools Limited

RESPONDENT

Date of Decision : 05-12-1996

Acts Referred:

Constitution of India, 1950 — Article 14
Industrial Disputes Act, 1947 — Section 18 (3) (d)

Citation : (1998) 79 FLR 542 : (1998) ILR (Kar) 1394 : (1997) 2 LLJ 484

Hon'ble Judges : V.P. Mohan Kumar, J

Bench : Single Bench

Advocate : K. Subba Rao, for the Appellant; K. Kasturi, for the Respondent

Judgement

1. The short question that has been raised for consideration inter alia is whether the petitioner, an employee is entitled to challenge a clause in the conciliation settlement entered into between the employer and the unions on the ground that is arbitrary and violates the guarantee of equality enshrined in Article 14 of the Constitution of India.

2. The brief facts are as follows : The petitioner herein was an employee under the respondent. He resigned his employment on January 31, 1989. Subsequent thereto on July 7, 1989 the employer entered into a conciliation settlement after negotiation between various unions representing the employees and Annexure-B is the copy thereof produced by the petitioner (the complete text thereof produced by the Management as Annexure-I). It contained the following clauses :

"10 Lumpsum Payment :

For the period from January 1, 1987 to April 30, 1987, a lumpsum amount of Rs. 1600/- Rs. 100/- per month will be paid to those workmen who were on the rolls of the Company as on January 1, 1987 and continue to be on the rolls on the date of signing of this settlement.

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11.3 Workmen who superannuated/voluntarily retired or died while in service between January 1, 1987 and the date of signing the settlement will be eligible for arrears of wages proportionately."

(The italicized portion is the infringing terms impugned by the petitioner) The petitioner being an employee who resigned is not entitled to claim the above said benefits. The grievance of the petitioner is that persons who have resigned and who have retired stand on the same footing, that an artificial classification is made which bears no nexus to the object to be achieved. The further grievance of the petitioner is that as far as the Officers are concerned Annexure-E is the settlement. In Para 1.1 of the said settlement it is made clear the benefits thereof are conferred on all the employees in employment as on the day noted irrespective of the fact that he has resigned or not subsequently. This according to the petitioner is another leg of discrimination. He therefore contends that he submitted a representation to remove the discrimination and to extend the benefit to him as well under Annexure-B settlement ignoring the fact of resignation. By communication dated January 28, 1992 Annexure-D the request has been rejected. The petitioner has hence moved this Court on January 20, 1993, challenging the above said infringing clauses in the agreement.

3. The Management has entered appearance and has filed detailed objections. They deny the claim inter alia contending that, it is not open to a single worker to maintain the writ petition challenging the settlement in view of Section 18(3) (d) of the I.D.Act, that the class of employees who resigned form a defined class by themselves and it cannot be contended that they are to be treated as similarly placed who retired, that those who benefitted as per Annexure-E is a separate class from workers covered by Annexure-B and that there is no violation of Article 14 of the Constitution, that the settlement was brought about by collective bargaining and conciliation and after protracted negotiation, that the same is in the realm of contract and that in any event without the junction of the other unions who are parties to the settlement and without averment regarding their misconduct the writ petition is not maintainable.

4. Mr. Subba Rao, learned counsel for the petitioner formulated the following four points:

(i) That a person who resigns and a person who voluntarily retires belong to the same class and cannot be differently treated;

(ii) That there is no reasonableness in excluding person who has resigned from the purview of the settlement Annexure-B, and also in treating Officers benefitted by Annexure-E settlement differently from the workers;

(iii) That equality guaranteed in Article 14 of the Constitution of India is infringed;

(iv) That in any event the ground on which person who resigned from service is excluded from the above said clauses is arbitrary.

5. Mr. Kasturi, learned counsel for the Management contended that before these

contentions are examined it may be useful if the statutory provision of the D. Act are adverted to. In particular he invited this Court to advert to Section 18(3)(d) of the I. D. Act which reads thus:

"18 (3) (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who we're employed in the establishment or part Of the establishment, as the case may be, to which the dispute relates on die date of the dispute and all persons who subsequently become employed in that establishment or part".

Interpreting the scope of the statutory provision, the Supreme Court had in Barauni Refinery Pragahsheel Shramik Patishad v. Indian Oil Corporation Ltd. and Others 1991 I LLJ 46 stated thus at p. 51 :

"It may he seen on a plain reading of sub-sections (1) and (3) of S. 18 that settlements are divided into two categories, namely, (i) those arrived at outside the conciliation proceedings and (ii) those arrived at in the course of conciliation proceedings. A settlement which belongs to the first category has limited application in that it merely binds the parties to the agreement but the settlement belonging to the second category has extended application since it is binding on all parties to the industrial dispute, to all others who were summoned to appear in the conciliation proceedings and to all persons employed in the establishment or part of the establishment, as the case may be, to which the dispute related on the date of the dispute and to all others who joined the establishment thereafter. Therefore, a settlement arrived at in the course of conciliation proceedings with a recognized majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same To that extent it departs from the ordinary law of contract. The object obviously is to uphold the sanctity of settlement reached with the active assistance of Conciliation 50 Officer and to discourage an individual employee or a minority union from scuttling the 486 settlement. There is an underlying assumption that a settlement reached with the help of the Conciliation Officer must be fair and reasonable and can, therefore, safely be made binding not only on the workmen belonging to the union signing the settlement but also on others. That is why a settlement arrived at in the course of conciliation proceedings is put on par with an award made by an adjudicatory authority."

Therefore according to the employer it is not open to a solitary worker like the petitioner to make a pin prick to a settlement brought about in a conciliation proceedings by protracted 15 negotiation between various unions (A perusal of the copy of the settlement Annexure produced by the respondent would disclose that the settlement is after conciliation. Annexure-B produced by the petitioner is an incomplete copy). It might be a case where the union of the workers may have given up the present claim at the bargain table for some other benefits. At best the workers may be entitled to challenge the settlement on the ground of mala fide or such other fraudulent intention on the part of the union and for such

attack is also essential that the union be on party array. Otherwise this Court cannot open up the issue and even attempt to examine the same. Besides when it comes to a settlement to which Section 18(3) of the I.D. Act applies, as noted by the Supreme Court, even this attempt has also to be discouraged and rejected. Otherwise the whole atmosphere of industrial peace sought to be achieved by 35 conciliation and settlement will be the casualty. Perhaps, this instant case may be an instance where the clause is introduced whereby the Management had convinced and satisfied the union the need of such a clause. This can at best be dislodged and established to be incorrect only in the presence of those unions and with cogent materials. A brandish of Article 14 is not at all a measure to get over a clause in a conciliation settlement. At the same time it is not to be understood that this Court is granting a seal of approval, to allow to remain, any clause in an agreement which basically infringes any of the fundamental rights guaranteed under the Constitution of India or which would whittle down the directive principles of State policies. This Court is not powerless to examine such instances in a given case. But this too, the exercise can be undertaken only in the presence of necessary parties.

6. The employee who resigned from the company is certainly not on the same footing as an employee who retires after putting in the required length of service. Those who resigned are the category of persons who can be classified as those who have moved in search of "pastures new and green." They felt that the continued employment under the employer may not be in furtherance of their interest. They therefore decided to quit the company in search of better prospects else where. It may be also a case where the employee resigned to avert an impending disciplinary action. In view of such resignation he might have avoided a dismissal. Whereas an employee who served the company for the optimum period to the satisfaction of the employee and took his retirement is a faithful employee qua the employer. He has reposed his career in the hands of the employer and in return the employer reposed its confidence in him. He remained with the employer through thick and thin and through out his career for good or for worse. There is nothing unreasonable in the employer treating him as a loyal employee in contrast with an employee who resigns. In this background one cannot say that both the class of employees are entitled to be treated on the same footing and there is no difference between them. Each form separate distinct identifiable class and meeting out, differential treatment to these separate identifiable categories cannot be described as arbitrary or artificial and therefore suffers from the vice of discrimination contemplated under Article 40, 14 of the Constitution of India.

7. Mr. Subba Rao, learned counsel wanted to buttress his submission by relying on the principles laid down by the Supreme Court in *D.S. Nakara and Others Vs. Union of India (UOI)*, . If the infringing provision disclosed an intelligible differentia distinguishing the class of persons grouped together from those left out and it is shown that there is rational with object to be achieved, then the challenge on the ground of violation of Article 14 should fail. If this is so shown

then the Principles in D.S. Nakara and Others Vs. Union of India (UOI), is also not attract . In this case there is ascertainable reason demonstrated by the Management as to why the class of persons who are given the benefit under clause 10 and 11.3 referred to above are separate from the class of persons like the petitioner who are left out. A person who resigned from service is a separate Class vis-a-vis an employee who retired. The reason for the class of persons who have been left out is also clearly identifiable. That reason cannot be described as arbitrary or illogical. Therefore the attack of the clause relying on the decision of D.S. Nakara and Others Vs. Union of India (UOI), has to fail.

8. As regards the discrimination between is employees and Officers made out by relying on Annexure-E it need not be pointed out that Officers form a Class by themselves and are separate. The service of the Officer is under a contract with the employer whereas the workers by industrial enactments itself is treated as a separate class. Hence there is nothing illegal, if the company also places him in different, distinct and separate category.

9. The petitioner submits that Article 14 of the Constitution strikes at all arbitrary actions and it has overriding effect over the provision of the I. D. Act. No one can dispute this proposition. But, one has to remember that the said constitutional guarantee is not panacea for all assumed illegalities. The territory where it operates is delineated by interpretation of the said Article by the Supreme Court in a catena of decisions. When the impugned action deinonstrates an intelligible and rational basis and discloses a reasonable nexus with the object it intends to achieve, the touch stone of Article 14 will not be available to the person who pleads of its violation. As stated earlier a brandish of the said article in place and out of place only nunibs its edges and does not lead us anywhere. This guarantee is always useful to those who deserve the protection but would be vexatious to those who have nothing as in the present case. While advertng to the plea raised by the petitioner it would be apposite to recall what with Mr. Justice Frankfurter said in Dennis v. United States is 339 US 162, 184, (1950)

"It was a wise man who said that there is no greater inequality than the equal treatment of unequals."

This is the situation attempted to be achieved by the petitioner in the instant case. The plea of the petitioner is to mete out equal treatment to those who are unequals. This Court cannot issue a writ to achieve such a result.

10. The settlement in question is arrived at on the basis of conciliation. The binding nature of such settlement is as held by the Supreme Court in 1991 I LLJ 46 (SC) (supra) referred to above. As stated earlier it makes a departure from the realms of law of contract. If that be so, the petitioner cannot succeed in this proceeding. The writ petition has to fail. It is accordingly dismissed. No costs.