

(2011) 02 BOM CK 0154

In the Bombay High Court

Case No : Writ Petition No. 4680 of 1999

Shri S.D. Muley and Others

APPELLANT

Vs

Jaihind Industries and Another

RESPONDENT

Date of Decision : 09-02-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 18(1), 2

Citation : (2011) 7 ALLMR 126 : (2011) 129 FLR 929 : (2011) 3 LLJ 851 :
(2011) 3 MhLj 299

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : Neeta Karnik, for the Appellant; Mahesh Londhe, for the Respondent

Final Decision : Dismissed

Judgement

Nishita Mhatre, J.—This petition impugns the judgment and order of the Industrial Court in complaint (ULP) No. 172 of 1998 whereby the complaint filed by the Petitioners has been dismissed.

2. All the Petitioners are employees of Respondent No. 1 and are employed till today with the company. A settlement was arrived at between Respondent No. 1 and Sarva Shramik Sanghatana on 20.7.1997. That settlement was signed u/s 2(p) r/w 18(1) of the Industrial Disputes Act, 1947. The Sarva Shramik Sanghatana (for short, hereinafter referred to as 'Sanghatana') represented a majority of the workmen employed with Respondent No. 1. Admittedly the Petitioners were not members of the Sanghatana at the relevant time. According to them, the benefits of this settlement dated 20.7.1997 were not extended to them only because they were not members of the Sanghatana. It appears that the Petitioners complained to the Assistant Commissioner of Labour who called upon Respondent No. 1 to forward a copy of the settlement to the Petitioners. The settlement stipulated that for securing the benefits under the settlement, the workmen were required to give an undertaking in the format annexed to the settlement. It appears that though the Petitioners signed the undertaking it was

not submitted within the prescribed time of two weeks from the date of the settlement. Moreover, the undertaking which was submitted by the Petitioners was conditional.

3. As the benefits of the settlement were not extended to the Petitioners they filed complaint (ULP) No. 172 of 1998 under Items 5 and 9 of Schedule IV of the MRTU & PULP Act. They contended that they were entitled to the benefits of the settlement like all other workers from 1.7.1977. According to the Petitioners by not paying the benefits of the settlement Respondent No. 1 had indulged in discrimination against one set of workers which was an unfair labour practice. The non-implementation of this settlement according to the Petitioners also amounted to an unfair labour practice under Item 9 of Schedule IV. The Petitioners conceded that they had been extended the benefits of the settlement from August 1998 after they submitted unconditional undertakings with their letter dated 7.8.1998.

4. Respondent No. 1 in its written statement contended that the benefits had been extended after receipt of the unconditional undertakings from the Petitioners, though they were received belatedly. It was contended that the settlement was signed with the Sanghatana and only the members of the Sanghatana were entitled to the benefits of the settlement. However, these benefits were extended to the Petitioners on receiving unconditional undertakings from them in the format annexed to the settlement.

5. Evidence of the Petitioner No. 20 was recorded on behalf of all the Petitioners in support of the complaint. This witness conceded that they became aware of the settlement having been signed after the members of the Sanghatana had celebrated the signing of the settlement. He has also stated that none of the complainants were members of the Sanghatana. He has deposed that they had signed copies of an undertaking after making alterations/modifications in the required undertaking unilaterally. This witness has accepted the fact that after the undertaking was signed unconditionally by the workmen they had all received benefits of the settlement.

6. The Industrial Court has dismissed the complaint by concluding that the workmen had failed to prove that there was any unfair labour practice committed by Respondent No. 1. It was held that since the workmen were not members of the Sanghatana they were not entitled to benefits of the Settlement signed u/s 2(p) r/w 18(1) as a matter of right. The workmen concerned were entitled to the benefits only after they submitted undertakings in the specified format and, therefore according to the Industrial Court there was no unfair labour practice on the part of Respondent No. 1. It was further held that the Petitioners ought not to have inserted a "note" indicating that they reserved their right to accept only some of the terms & conditions of the settlement. The Industrial Court held that such a conditional undertaking was not envisaged for extending the benefits of the settlement.

7. Ms. Karnik, appearing for the Petitioners, has submitted that the Industrial Court has erred in concluding that the settlement which was signed u/s 2(p) r/w 18(1) need not be extended to all workmen employed in the establishment. She submits that all the workmen including the Petitioners were similarly situated and, therefore, Respondent No. 1 could not have discriminated against the Petitioners. According to her, the evidence indicates that though the Petitioners had sent a letter on 29.7.1997 to Respondent No. 1 calling upon it to furnish copies of the settlement it had not done so. It was only after the Assistant Labour Commissioner, Pune had directed the Respondent No. 1 to furnish a copy that the Petitioners became aware of the terms and conditions of the settlement. She, therefore, submits that the workmen were not able to furnish the undertaking within two weeks as stipulated in the settlement as they received it only on 20.9.1997, almost two months after the settlement was signed. Ms. Karnik, therefore, submits that the Industrial Court ought to have directed Respondent No. 1 to extend the benefits of the settlement to the workmen from 1.7.1997 itself as stipulated in the settlement.

8. In my opinion, these submissions of Ms. Karnik cannot be accepted. The settlement was signed with an unrecognised union representing some of the workmen employed with Respondent No. 1. Admittedly, the Petitioners were not members of the Sanghatana which was a party to the settlement. u/s 18(1) only those persons who are members of a particular union which is unrecognised would be entitled to the benefits of the settlement. Had there been a recognised union the benefits of the settlement though signed u/s 2(p) r/w 18(1) would have to be extended to all workmen, irrespective of whether they were members of the recognised union, as stipulated in the proviso to Section 18(1). In the present case, the settlement required the workmen to sign a certain undertaking which was included as part of the settlement. The workmen had initially submitted the undertaking with a stipulation that they would abide by only some terms of the settlement. It is in these circumstances that the Respondent No. 1 did not extend the benefits.

9. In my view, since the settlement was signed with an unrecognised union u/s 2(p) r/w 18(1) only those persons who were members of that union would be entitled to the benefits of the settlement. Furthermore, the union had agreed on behalf of its members that the benefits should be extended to the workers only if they signed the undertaking. If any other workmen wished to be covered by the settlement, though not a member of the union, he would have had to comply with the terms and conditions. In the present case, there is material on record to indicate that the settlement was extended to cover the Petitioners once they submitted an unconditional undertaking in the format required. In my opinion, the Industrial Court has not committed any error in dismissing the complaint.

10. Writ Petition is therefore dismissed. Rule discharged. No costs.