
(1973) 10 MP CK 0007
In the Madhya Pradesh High Court
Case No : M.P. No. 797 of 1972

Sone Singh and others

APPELLANT

Vs

State Industrial Court, Indore and others

RESPONDENT

Date of Decision : 30-10-1973

Acts Referred:

Constitution of India, 1950 — Article 136, 226
Contract Act, 1872 — Section 2(18), 2(35), 26, 27, 27

Citation : (1979) ILR (MP) 311 : (1974) MPLJ 40

Hon'ble Judges : Suraj Bhan Grover, J; G.P. Singh, J

Bench : Division Bench

Advocate : Gulab Gupta, for the Appellant; I.M. Nanavati, R.S. Dabir and A.P. Tare, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Singh, J.

This petition under Article 226 of the Constitution is by five employees of Katni Fire Bricks and Pottery Works, owned by the Associated Companies Ltd., and it seeks to challenge an award dated November 15, 1972 made by the State Industrial Court, Indore, by which dearness allowance payable to employees has been reduced.

The facts material for decision of the petition are that the dearness allowance to daily rated workman was provided for by an agreement dated December 9, 1963 between the management and the Cement Mazdoor Panchayat which was then the representative Union of the Workmen. By this agreement the parties agreed to a variable dearness allowance linked to the Jabalpur Cost of living Index taking the year 1949 as the base. The dearness allowance was fixed at Rs. 52/- at Index 141 and for every rise or fall of 3 points over the datum Index of 141 the rate of variation was fixed at 14.7 Paise per day. This agreement was subsequently extended to other workmen. In January 1966 there was a modification in one clause of the agreement which dealt with grain concession. In

1969 the management contended that the formula for increase in dearness allowance provided in the agreement of 1963 was erroneous as it worked out to 206% neutralisation when the workmen were not entitled to more than 100% neutralisation, that it imposed a crushing financial liability and that it was also not justified on industry cum region basis. The management terminated the agreement by issuing a notice dated January 13, 1969 u/s 99 of the Madhya Pradesh Industrial Relations Act, 1960, hereinafter referred to as the Act, which was followed by a notice of change in March 1969. The employees were not agreeable to any change in the dearness allowance which gave rise to an industrial dispute. Eventually, the State Government on August 4, 1969 referred the dispute relating to the reduction of dearness allowance and its rate to the Industrial Court, Indore.

By its award delivered on November 15, 1971, the Industrial Court held that the formula contained in the agreement of 1963 for variation of dearness allowance resulted in granting 206% neutralisation when the employees could at the most get 100% neutralisation, that the said formula was unfair and erroneous and it could not be justified even on industry cum region basis, and that it imposed a heavy financial burden on the resources of the industry. On these findings the Industrial Court awarded that the employees shall be entitled in future to dearness allowance at the rate of 7 paise per day per unit of every 3 points rise in the cost of living index over the datum figure 141 which will secure to them 100% neutralisation. In the proceedings before the Industrial Court the employees were first represented by the Pottery Mazdoor Panchayat which was then the representative Union. During the pendency of the proceedings, Pottery Mazdoor Panchayat ceased to be the representative Union and Katni Pottery Karmchari Sangh became the representative Union in its place and the employees were represented by this Union. The Karmachari Sangh then filed a miscellaneous petition under Article 226 of the Constitution (M. P. No. 689 of 1971) challenging the award. This petition was dismissed in motion by another Division Bench of this Court on December 6, 1967. In dismissing the petition, the learned Judges passed the following order:

This is a petition against an award by which the Dearness Allowance has been considered on merits and 100% neutralisation has been allowed by the Award. These are all matters of fact and the decision is given after the application of the Full Bench formula in all its aspects. We see no reason to interfere in that matter.

The only other ground argued was that the notice of termination had not been given to the petitioner Katni Pottery Karmachari Sangh. This Karmachari Sangh was not a representative body when the notice was given. Consequently there was no question of the notice being served on this Sangh.

There is no force in this writ petition. It is rejected.

Thereafter the Karmachari Sangh gave a notice of change on January 3, 1972, u/s 31(2) of the Act for the revision of wages. After negotiations, an agreement

was reached between the Karmachari Sangh and the Management on January 21, 1972. By this agreement, which was registered u/s 32 of the Act, the management agreed to certain increase in wages and house rent allowance of the employees and in consideration of this the Union agreed to accept the award of the Industrial Court pertaining to reduction of dearness allowance and it further agreed not to challenge the said award by any further legal action. This agreement is to remain in force for two years. The material clause of the agreement for our purposes is clause 3 which reads as follows:

The parties agree that this Agreement is in the nature of a package deal. The Union agrees that in consideration of the benefits which will be given by the Company to the workmen in terms of this Agreement, the Union shall not take recourse to any further legal action in any Court against the Award dated 15th November 1971 of the Industrial Court in Reference No. 27/MPiR/69 of 1969 or against the order dated 6-12-1971 of the M. P. High Court in Writ Petition No. 689 of 1971.

The management has given effect to the said agreement and is paying the increased wages and house rent allowance to its employees in terms of the agreement. Thereafter the five petitioners who are employees of the Pottery Works filed the present petition on November 30, 1972 for quashing the award of the Industrial Court.

The learned counsel appearing for the management at the outset submitted three preliminary objections to the maintainability of the petition. These objections are that the petitions are barred by resjudicata because of the dismissal of the earlier petition filed by the representative Union that the petitioners have no right to challenge the award during the continuance of the agreement entered into between the representative Union and the management on January 21, 1972, and that the petitioners having accepted the benefit under the said agreement are even otherwise estopped in challenging the award which was affirmed by that agreement. Learned counsel for the petitioners in reply submitted that none of these objections were substantial and that he wanted to raise only one point on merits, which was not raised in the earlier petition, that the award was bad as the Industrial Court did not follow the principles laid down by the Supreme Court in the case of Ahmedabad Mill Owners' Association Etc. Vs. The Textile Labour Association, on the question of reduction of dearness allowance.

Having heard learned counsel on the preliminary objections, we are satisfied that the objections must be upheld.

It is now settled law that principles of res judicata apply to proceedings under Article 226 and when a petition is dismissed on merits it operates as res judicata and bars a fresh petition; Daryao and Others Vs. The State of U.P. and Others, . There is no merit in the argument of the learned counsel for the petitioners that the bar can apply only when the earlier petition is dismissed after hearing the

other side. As explained in the case of Virudhunagar Steel Rolling Mills Limited Vs. The Government of Madras, the bar of res judicata applies even when the earlier petition is dismissed without notice to the other side, provided the order of dismissal is a speaking order and the petition is disposed of on merits. Learned counsel for the petitioners relied on the case of Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, , but that case does not support him ; it only decides that when the earlier petition is not dismissed on merits the bar of res judicata or principles analogous to it do not apply. Then it is also settled that general principles of res judicata that apply to proceedings under Article 226 include the rule of constructive res judicata when the subsequent writ petition is based on the same cause of action on which the earlier petition was based; [see Denial v. Sales Tax O. Ratlam A I R 1965 S C 1150 which explains the case of The Amalgamated Coalfields Ltd. and Another Vs. The Janapada Sabha, Chhindwara, . In Devilal's case the Supreme Court held that the doctrine of constructive res judicata is also based on public policy and if it is not applied to writ proceedings, it would be open to a party to take one proceeding after another on the same cause of action and urge new grounds every time which would be inconsistent with considerations of public policy and would mean harassment and hardship to the opponent. The case of Amalgamated Coal Fields was explained on the ground that the subsequent writ petition in that case challenged the assessment of tax for a different period and thus the cause of action in the subsequent writ petition was different from the cause of action in the earlier writ petition and, therefore, the principle of constructive res judicata was not applicable. Devilal's case is, in our opinion, a clear authority on the question that when two writ petitions are based on the same cause of action, principle of constructive res judicata will apply to the trial of the subsequent writ petition which is filed after dismissal on merits of the earlier writ petition.

We have already quoted the order passed by the Court in the earlier writ petition which was filed by the Karmachari Sangh. That petition was, do doubt, dismissed in motion without hearing the other side, yet the order is a speaking order passed on merits. The first paragraph of the order clearly shows that the Court found no reason to interfere with the dearness allowance fixed by the award as it had allowed 100% neutralisation after considering all relevant matters. The reference to Full Bench Formula, no doubt, appears to be an error, but we are here not sitting in appeal against that order and we have only to see whether the Court dismissed the petition on merits. Whether the reasoning in the first para of the order be right or wrong, we are satisfied that the learned Judges, after considering the merits, did not see any reason to interfere with the award. The second para of the order deals with a legal objection that the notice maintaining the agreement of 1963 was not given to the Karmachari Sangh. This objection was also negatived on the ground that the Karmachari Sangh was not a representative Union when notice terminating the agreement was given by the management. After considering the points argued the Court found no force in the

writ petition and dismissed it. In our opinion, the order read as a whole is clearly a speaking order passed on merits.

But it is still to be seen whether the present petitioners can be said to be parties to the earlier writ petition through the Karmachari Sangh which had filed the petition, for if the parties in the present petition are different the principle of res judicata cannot be applied. It is not disputed before us that the Karmachari Sangh became a representative Union of employees in place of the Pottery Mazdoor Panchayat during the pendency of the reference before the Industrial Court. A representative Union represents all the employees in the industry in the local area for which it is registered and recognised. It has a preferential right to represent the employees as against other Unions as provided in section 27 of the Act. The learned counsel for the petitioners does not dispute this legal position. But he contends that the authority of a representative Union to represent the employees collectively is restricted to proceedings under the Act and the Union has no legal authority to represent the employees in a proceeding under Art. 226. It is true that sections 26 to 28 of the Act deal with the question of representation in any proceeding under the Act, therefore, it may or may not be possible for a representative Union to approach the High Court in a representative capacity on a matter which is unconnected with any proceeding under the Act; this is a question on which we express no opinion as it does not arise in the present case. But, in our opinion, when a representative Union is a party to a proceeding under the Act as representing the employees, it can as a party in the same capacity file a petition under Article 226 to challenge an order passed in that proceeding. In *Textile Labour Association v. Ahmedabad Millowners' Association* (1971) 40 F. J. 451 the Supreme Court sustained an appeal by a representative Union under Article 136 against an award made under the Bombay Industrial Relations Act which contains substantially similar provisions. The only material difference between the Bombay Act and the Madhya Pradesh Act is that under the Bombay Act when a representative Union enters appearance in a proceeding under the Act, the employees individually are not entitled to appear; whereas under the Madhya Pradesh Act the Court or the tribunal before which a proceeding is pending under the Act has a discretion to allow the appearance of any employee. This distinction, however, is not material on the point under consideration. If a representative Union can file an appeal under Article 136 against an award made under the Act, we find no difficulty in holding that, it can also as a party file a petition under Article 226 to challenge the award. We have also been referred to a decision of this Court in *Bhilai Steel Employees Association v. Shri A. W. Kanmadikar*, Member Judge, Industrial Court M. P. Indore 1973 M P L J 1025 (M. P. No. 421 of 1972 decided on the 24th August 1973 in which it was held that the employees individually have sufficient interest to file a petition under Article 226 to challenge an award affecting their interest. But it was not held in that case that a representative Union cannot file a petition under Article 226 to challenge an award made under the Act and, therefore, that case does not in any way go against the view that we are taking

in the instant case. We are, therefore, of opinion that the, Karmachari Sangh was entitled to file the earlier petition under Article 226, in its capacity as a representative Union of the employees to challenge the award and the petitioners as also other employees must be deemed to be parties in that petition through the Karmachari Sangh. The petitioners are, therefore, clearly bound by the order passed in the earlier writ petition. It is implicit in that order that the Industrial Court applied correct principles in fixing the rate of dearness allowance But even if it be held that the point that the award was invalid as it was against the principles laid down by the Supreme Court in Ahmedabad Millowners' Association v. Textile Labour Association (supra), which the petitioners now want to raise, was not raised in the earlier petition, the raising of this so called new point will be barred by constructive res judicata for the two petitions challenge the same award and are based on the same cause of action. Viewed from any angle, the present petition is clearly barred by res judicata.

The next question is whether the agreement entered into between the management and the Karmachari Sangh on January 21, 1972 is binding on the petitioners and they cannot challenge the award on the ground that it was stipulated in the agreement that no further legal action will be taken against the award. As the Karmachari Sangh was a representative Union of employees, the agreement was binding as provided in proviso (b) to section 97 (1) of the Act on the petitioners and all employees in the industry in the local area represented by the Karmachari Sangh. Indeed, this position is not disputed. The learned counsel for the petitioners assails the agreement on two grounds: (1) that it contravenes section 28 of the Contract Act and is void and (2) that the provision in it that the award shall not be further challenged does not relate to any industrial matter and hence this part does not fall under the provisions of the Act and is not binding.

Section 28 of the Contract Act invalidates an agreement when the restraint put by it of usual legal proceedings in the ordinary tribunals is absolute. In the instant case before the agreement in question was entered into, legal proceedings by way of a writ petition had already been taken by the Karmachari Sangh to challenge the award and the High Court by dismissing the writ petition had upheld the award. An agreement or a compromise at this stage preventing further challenge to the award or the order of the High Court cannot be said to be in absolute restraint of legal proceedings within section 28 of the Contract Act. On the same principle It has been held in a number of cases that an agreement not to appeal against a decree or order which is supported by consideration is not hit by section 28; See Anant Das v. Ashburner & Co. (1976) 1 All. 267 (F. B.), Bashir Ahmed v. Sadiq Ali A I R 1929 Ondh. 451 , Bhirgunath Prasad Singh Vs. Mt. Annapurna Dai Sijuarin, and Kedarnath Gangagopal Misra Vs. Sitaram Narayan Moharil, . Further, an agreement to fall within section 28 must be one which restrains enforcement of "rights under or in respect of any contract". An agreement not to challenge the award or the order of the High Court in the earlier writ petition cannot be said to restrain enforcement of rights under or in respect of any contract so as to fall within section 28. We are, therefore, clearly

of opinion that the agreement of January 21, 1972 is not violative of section 28 of the Contract Act.

As regards the argument that the agreement in so far as it restrains further challenge to the award or the order of the High Court is not in respect of an industrial matter, in our opinion, any particular term in the agreement should not be seen in isolation. The agreement must be read as a whole to see whether it is in respect of an industrial matter falling under the Act. The expression "Industrial matter" is defined in section 2(18) of the Act and means any matter relating to employment, work, wages etc. Section 2(35) contains the definition of "wages" in very wide terms and it includes dearness allowance. The award made by the Industrial Court was in respect of dearness allowance, i. e. wages, and the order of the High Court confirmed that award. The representative Union then gave a notice of change in respect of wages u/s 31(2) which was followed by the agreement u/s 32 of the Act. By this agreement the management undertook to pay increased wages and the Union in consideration of this promise by the management agreed not to further challenge the award or the order of the High Court upholding it. In our opinion, the whole of the agreement was in respect of wages for which the notice of change was given by the Union. By agreeing not to challenge the award or the order of the High Court the Union, in consideration of higher wages, in effect accepted to take the dearness allowance allowed by the award. Thus clause 3 of the agreement even independently is in respect of wages which is an industrial matter and there is no merit in the argument that this clause of the agreement is not in respect of any industrial matter. The agreement entered into by the representative Union was not in any way invalid and was binding on the petitioners and they were precluded by that agreement to file this writ petition challenging the award.

As we are upholding the first two preliminary objections, we do not find it necessary to consider the third objection based on estoppel.

As a result of the above discussion, the petition fails and is dismissed with costs. Counsel's fee Rs. 100/-. The outstanding amount of security deposit shall be refunded to the petitioners.