

(2007) 03 JH CK 0049

In the Jharkhand High Court

Case No : Letter Patent Appeal No. 232 of 2006

Steel Authority of India Ltd.

APPELLANT

Vs

Md. Shamshad Ansari

RESPONDENT

Date of Decision : 02-03-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 18, 18(1), 19(2), 2

Citation : (2008) 1 LLJ 108 : (2007) 114 FLR 285 : (2007) 2 JCR 262

Hon'ble Judges : M. Karpaga Vinayagam, C.J.;Permod Kohli, J

Bench : Division Bench

Advocate : G.M. Mishra, for the Appellant; Manoj Tandon, Ashok Kumar, Arbind Kumar and Rashmi Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Permod Kohli, J.—Correctness and validity of the order dated 4th April, 2006 passed in W.P.(L) No. 6058 of 2005 is under challenge in this appeal, whereby, the writ petition filed by the appellant herein, challenging the validity of the order of the Labour Court dated 22nd June, 2005 in M.J. Case No. 6 of 2002, has been dismissed, upholding the order of the Labour Court.

2. It is useful to briefly notice the facts, giving rise to the present appeal. Respondent herein was an employee of the appellant-company having been appointed on 6th October, 1980. He was dismissed from service on the basis of charge of absent from duties vide order dated 25th September, 1982. The respondent-workman raised industrial dispute and a reference was made to the Labour Court by the appropriate Government in terms of Section 10 of the Industrial Disputes Act, 1947 (hereinafter to be referred as "the Act"). This reference was registered as Reference Case No. 3 of 1995. The Labour Court after holding enquiry passed an award on 21st December, 1999 setting aside the dismissal order with a direction to re-instate the workman in service with full back wages and other consequential benefits. The award was required to be implemented within three months from the date of pronouncement of the award.

Award was pronounced on 19th June, 2000. It was on 14th August, 2000 the workman submitted a letter to the appellant for settlement, asking for immediate reinstatement and payment of only 50% of the back wages. He further surrendered all his claims of other monetary benefits. A settlement in writing was arrived at between the management of the appellant-company and the respondent-workman on 5th December, 2000. Based upon this settlement, the respondent was allowed to join on 6th December, 2000. The respondent-workman joined the services and a formal order of reinstatement was passed on 15th December, 2000, which was followed by another order dated 3rd February, 2002 regarding payment of 50% of back wages in terms of the settlement and an amount of Rs. 3,69,491.57 was paid to the respondent-workman. In addition to this, some other amounts were also paid on account of House Rent etc. The respondent-workman, however, filed a petition on 9th July, 2002 u/s 33C(2) of the Industrial Disputes Act before the Labour Court, Bokaro Steel City, Bokaro, claiming payment of balance 50% wages and various other claims. The appellant-company contested the application on the question of maintainability and pleaded the settlement, arrived at between the parties. This application was, however, granted by the Labour Court vide order dated 22nd June, 2005 and the respondent-workman was allowed full back wages in implementation of the original award dated 21st December, 1999, pronounced on 19th June, 2000. Aggrieved of the order of the Labour Court, the appellant-company preferred W.P. (L) No. 6058 of 2005, which has been dismissed vide the impugned judgment dated 4th April, 2006. The order of the Labour Court, impugned in the writ petition, was sought to be assailed on the grounds: (i) proceedings u/s 33C of the Act are in the nature of execution proceedings and while exercising such a jurisdiction, the Labour Court cannot assume adjudicatory role to examine the validity of the settlement; (ii) the Labour Court has failed to appreciate that the workman after having entered into settlement acted upon the same and derived the benefits thereunder and it was only after two years, he filed the petition u/s 33C(2) of the Act; (iii) There was no material or ground for setting aside the settlement voluntarily entered into between the parties; and (iv) some of the claims made by the workman and allowed by the Labour Court were not payable, as such claims relate to performance of actual duties. Admittedly, the workman being out of service for a number of years had not performed the actual duties and, thus, such claims were not admissible under law.

3. On the other hand, learned Counsel appearing for the respondent-workman has stated that it was within the province of the Labour Court to decide the question of validity of the settlement, while determining the right of the workman, particularly when the issue was raised by the appellant-employer. He has further stated that the settlement arrived at was not a settlement as provided under the provisions of the Industrial Disputes Act, 1947 and, thus, the Labour Court has rightly declared the settlement as inoperative in presence of the award, passed by it earlier. It has been further urged that the settlement was arrived at after expiry of the period for implementation of the award when it had

attained finality and, thus, such a settlement had no binding effect upon the parties and does not interfere with the final award validly passed by the Labour Court, not challenged by the appellant-company.

4. We have heard learned Counsel for the parties and examined the order dated 22nd June, 2005 passed by the Labour Court in proceedings u/s 33C(2) of the Act. The Labour Court on the basis of the pleadings of the parties framed the following points for determination:

(1) Whether the memorandum of settlement entered into on 5.12.2000 in between the O.P.-management and its workman (applicant) after pronouncement of award dt. 19.6.2000 in Ref. Case No. 3/95 is valid and binding upon the claimant-applicant as per provisions of Clause 18(1) of the I.D. Act, 1947?

(2) Whether the applicant is entitled for determination of the amount as per pronouncement of the Award dt. 19.6.2000 and also for interpretation of the award in this case so filed u/s 33C(2) in Ref. Case No. 3/95 or as per the terms of settlement dt. 5.12.2000 the applicant is entitled thereto?

(3) Whether the applicant is entitled for money/monitory benefits as per detailed in Annexure- A to M?

(4) To what relief or reliefs, if any, the applicant is entitled to?

5. While deciding Point No. (1) the Labour Court set aside the settlement by making observations:

When there was an order for reinstatement with full back wages as per the award there was no question by the applicant-workman subjected himself with his own sweet will to agree upon 50% back wages. Though, there was an application so filed on behalf of the applicant on 14.8.2000 vide Ext. M-1 for reinstating him only on 50% back wages but this application has not been proved on behalf of the o.p. as conclusive evidence to be filed with own sweet will of the applicant rather as per the claim application and as per evidence of A.W.1 he has stated that the management-O.P. subjected him to file such application for implementation of award for his reinstatement on such pretext that O.P.-management has to challenge the validity of the award but will not challenge before the Hon"ble High Court. So in view of the observation of the Hon"ble Apex Court in the case reported in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, it can be very well sensed that there had not been equal bargaining power as per Ext. M-2 and the stronger party like management of SAIL (present Management-O.P.) had prevailed upon the weaker party like the applicant and subjecting him to concede to the terms of settlement.

6. The learned Single Judge while concurring with the conclusion of the Labour Court regarding the validity of the settlement, in paragraph No. 13 of the judgment observed as under:

13. It is the specific case of the workman that Management threatened him to come to a settlement otherwise it would challenge the Award in the High Court and under such threat & coercion, the workman signed the memorandum of Settlement. This averment finds support from para.8 of the Memorandum of Settlement quoted hereinabove which clearly indicates that the Management had the idea to challenge the Award passed by the Labour Court and to drag the workman into further litigation. The workman surrendered before the Management and signed the settlement. This fact is also evident from annexure-5 which is the office order issued by the Management reinstating the workman with the condition that he shall not raise any claim whatsoever in respect of back wages....

7. The learned Single Judge further relied upon the condition of the settlement, which contains the following stipulation:

And whereas the Management was considering to challenge the order of the Hon"ble Court dated June 19, 2000 under Reference Case No. 3/95, such request application, as received for consideration, the Management dropped the further process of challenge to higher court.

On the basis of the aforesaid observations, the learned Single Judge held that the Management did not enforce the award within the statutory period and it started bargaining with the workman on the threat of challenging the award in the High Court. The workman, who was not in a bargaining position, had no option but to surrender before the Management in order to get his livelihood. In such a situation he signed the settlement. On the basis of the aforesaid findings, the writ petition has been dismissed.

8. It is relevant to notice that the respondent-workman was reinstated on 6th December, 2000 even when formal order of reinstatement was passed on 15th December, 2000. He was paid 50% back wages in terms of the settlement, amounting to Rs. 3,69,491.57, which he received without any reservation in terms of the settlement. He enjoyed the benefit of reinstatement for a period of almost two years and filed the application u/s 33C(2) of the Act in the Labour Court, seeking the balance 50% back wages. During this interregnum the workman neither objected the settlement in any manner nor claimed back wages from the appellant-employer and accepted the settlement and received the benefits thereunder. It was under these circumstances the appellant did not challenge the award. Even when the application u/s 33C(2) was filed, there was no challenge to the settlement. The only reference to the mutual arrangement is made in paragraph No. 5 of the application, which reads thus:

That even then the management made deliberate delay in implementing the award and the petitioner was brought to such a circumstances that in order to avoid utter starvation, and to ease out the situation the applicant was forced to come to an agreement and had to join the services which he did so that he could earn his livelihood. He was thus allowed to join on 6.12.2000.

9. Curiously, no evidence was led by any of the parties before the Labour Court in proceedings u/s 33C(2) of the Act and all the findings have been returned by the Labour Court only on the basis of the pleadings of the parties. Mr. Manoj Tandon, learned Counsel appearing for the respondent-workman, has stated that it was not open to the workman to challenge the settlement as it amounts to asking for exercise of adjudicatory function, which is otherwise not permissible in proceedings u/s 33C(2). His further claim is that the findings in respect to the validity of the settlement are only incidental and, thus, no interference is warranted.

10. A strange situation has emerged. The applicant in the proceedings u/s 33C(2) did not ask for setting aside the settlement. The Management i.e. appellant relied upon the settlement. But the Labour Court has declared the settlement as invalid and inoperative without the same being questioned in the proceedings before it. As a matter of fact, there was no material or evidence before the Labour Court to have arrived at a conclusion that the settlement was procured by threat, coercion or undue influence on account of unequal bargaining power. Such a finding by the Labour court is only presumptuous and based upon no material or even a specific allegation with circumstances indicated in the application. With respect we may say learned Single Judge has also returned the findings ignoring above aspect.

11. From the observations of the learned Single Judge, quoted hereinabove, it is apparent that the learned Single Judge held the settlement to be inoperative and bad having been procured by coercion only on the ground that the employer-appellant threatened the employee to challenge the award of the Labour Court before the High Court. With a view to draw an inference, reference is made to the stipulation in the settlement, wherein, it has been stated that the Management was considering to challenge the award before the High Court and on receipt of the application from the employee, the Management dropped the further process of challenge. This stipulation is a matter of fact. How can such a stipulation amount to coercion, we have not been able to appreciate. Claiming a right to go to court or even asking the opposite party that the decision of a subordinate forum will be challenged in the High Court in accordance with law does not in any manner either amount to a threat or coercion, as defined under the law of contract. To the contrary on the application of the respondent-employee and on arriving at the settlement the appellant-employer did not challenge the award and implemented the settlement earnestly and passed on all benefits to the employee. However, the employee after enjoying the benefits under the settlement chose to approach the Labour Court and claim certain benefits prohibited by the settlement or in other words abandoned under the settlement. We have found that there was no material much less any legal evidence before the Labour Court on the basis of which the Labour Court could have declared the settlement as void on account of coercion or undue influence.

12. Now the next question arises whether the settlement arrived at was

otherwise binding upon the parties. "Settlement" has been defined u/s 2(p) of the Industrial Disputes Act and read thus:

2. Definitions.- In this Act, unless there is anything repugnant in the subject or context.-

XX XX XX (p) "Settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorized in this behalf by the appropriate Government and the conciliation officer.

13. It has been, accordingly, stated that the settlement arrived at between the parties is not a settlement contemplated u/s 2(p) of the Act and, thus, not binding upon the parties. According to the learned Counsel appearing for the respondent, firstly the settlement was required to be signed in the prescribed manner and secondly a copy of the same was to be sent to the appropriate Government and the conciliation officer. Admittedly, the settlement arrived at in the present case between the appellant and the respondent was not sent to the appropriate Government and the conciliation officer. However, none of the parties has stated that the settlement is not in the prescribed manner. Section 18 of the Industrial Disputes Act deals with the effect of settlement and awards. Sub-section (1) of Section 18 reads thus:

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.

14. This Section clearly provides that a settlement arrived at otherwise than in the course of conciliation proceeding shall be binding on the parties. Section 19 of the Act also provides for period of operation of settlements and awards. Relevant extract dealing with the settlements reads:

19. Period of operation of settlements 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 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.

15. A conjoint reading of these two sections makes the settlement arrived at

between the parties binding upon the parties and it comes into operation on the date of signing, if no other date for its operation is mentioned. Sub-section (2) of Section 19 further provides that if any of the parties has any intention to terminate the settlement, he is required to serve a notice in writing of his intention to terminate the settlement and the settlement remains in operation until the expiry of two months from the date on which the notice in writing of intention to terminate the settlement is given by any of the parties to the settlement. It is admitted case of the parties that no notice for termination of the settlement was ever issued by any of the parties at any time after the settlement was executed on 5th December, 2000. There is nothing in the Act wherefrom it can be inferred that where a copy of the settlement arrived at between the parties is not forwarded to the appropriate government or the conciliation officer, the settlement ceases to be operative rather Sections 18 and 19 make the settlement arrived at between the parties binding and operative unless a notice for termination is issued in accordance with the procedure, indicated in Section 19(2) of the Act. In absence of any penal consequences for non-furnishing of copy of settlement as per Section 2(p), such a condition u/s 2(p) is only directory and not mandatory.

16. Both the sides referred to a Division Bench judgment of Patna High Court, reported in 1971 PLJR 326 (Jamuna Prasad Singh and Ors. v. Presiding Officer, Labour Court, Patna and Anr.). In this case during pendency of a reference case u/s 10 before the Labour Court the Union of workmen and the employer arrived at a settlement agreeing on certain amounts payable to the workman and in the meanwhile, award was also passed. The settlement amounted to modifying the award. This settlement was arrived otherwise than in conciliation proceedings and signed by the parties. A question arose whether the settlement or award will prevail in the event of conflict. In proceedings initiated u/s 33C(2) of the Act, on the strength of the original award this question arose. While considering this question the Patna High Court observed in paragraph No. 10 as under:

10. ...I am of the opinion that after having arrived at the settlement of full satisfaction in lieu of their claim it was not open to them to approach the Labour Court again u/s 33C(2) of the Act. If I were to hold that the settlement arrived at on the 25th July, 1965 is not binding in any regard, I think it will be a travesty of justice to do so....

17. The facts of the above case are similar to the case in hand.

18. In the case of Municipal Corporation of Delhi Vs. Ganesh Razak and Another, , it has been held by the Supreme Court as under:

12. The High Court has referred to some of these decision but missed the true import thereof. The ratio of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit

claimed and is, therefore, clearly outside the scope of a proceeding u/s 33C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power u/s 33C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognized by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power u/s 33C(2) like that of the Executing Court's power to interpret the decree for the purpose of its execution.

19. A similar view was expressed by the Apex Court in the case of State of Uttar Pradesh and Another Vs. Brijpal Singh, .

20. In the present case, though there was an earlier adjudication i.e. the award passed in reference u/s 10 and the Labour Court was entitled to commute the benefits flowing therefrom, however, the award was intervened and interjected by a subsequent settlement. Admittedly, there was no adjudication in respect to the validity or otherwise of the settlement dated 5th December, 2000 in any proceedings. The settlement was set up by the appellant as a defence against the claim raised by the respondent-workman in proceeding u/s 33C(2). The Labour Court virtually declared the settlement as invalid by assuming the role of adjudicator in exercise of its jurisdiction u/s 33C(2) of the Act whereunder it can only interpret or enforce an existing right, not disputed by the parties. The workman admitted the existence and execution of the settlement and even did not challenge the same but the Labour Court set aside the same as if it was called upon to adjudicate the validity of the settlement. Such a course cannot be said to be incidental.

21. We are, therefore, of the opinion that the Labour Court while exercising jurisdiction u/s 33C(2) was not entitled to declare the settlement as invalid and should have left the parties to obtain a decision on the validity of the settlement from competent forum. The writ court also appears to have been persuaded by the observations of the Labour Court both on the question of nature of the proceedings and the findings regarding the validity of the settlement. We are unable to persuade ourselves to fall in line with the findings of the Labour Court as also the learned Single Judge. We are of the considered view that there was no occasion for the Labour Court to have adjudicated upon the validity of the settlement and declared the same as inoperative that too without there being any challenge to it by the workman and material for such adjudication. The learned Single Judge also committed the same error. Apart from above, the workman having entered into settlement, derived benefits of reinstatement and back wages and prevented the Management from challenging the award, was not entitled to challenge the same after two years when he had not disputed the settlement in any manner particularly by resorting to the manner and within the period prescribed u/s 19(2) of the Industrial Disputes Act. In view of the above circumstances we are constrained to allow this appeal and set aside the

impugned judgment dated 4th April, 2006 passed by the writ court as also the order dated 22nd June, 2005 passed by the Labour Court and consequently, dismissed the application filed by the respondent-workman u/s 33C(2) of the Act. However, in the circumstances there shall be no order as to costs.