

(2002) 12 AHC CK 0096

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 28883 of 2002

Suresh Chandra Srivastava

APPELLANT

Vs

Allahabad District Co-operative Bank Ltd., Allahabad and
Another

RESPONDENT

Date of Decision : 19-12-2002

Acts Referred:

Co-operative Societies Employees Service Regulations, 1975 — Regulation 24
Uttar Pradesh Industrial Disputes Act, 1947 — Section 6B

Citation : (2002) 12 AHC CK 0096

Hon'ble Judges : Janardan Sahai, J

Final Decision : Dismissed

Judgement

Janardan Sahai, J.—The dispute in this writ petition is about the age of superannuation of the petitioner, a Class III employee of the Allahabad District Cooperative Bank Ltd., Allahabad. The petitioner has challenged the order dated 1572002 Annexure1 to the writ petition by which he is being superannuated on completing 58 years of age. A Mandamus has been sought commanding the respondents to continue him in service till he attains the age of 60 years.

2. The petitioner was appointed on 1111968 in the Allahabad District Cooperative Bank Ltd., Allahabad hereinafter referred to as the "Bank?". Before the petitioner entered service there was a settlement dated 2221966 between the U.P. Bank Employees Union and the Bank in which apart from other items of settlement about service conditions including pay scale, provident fund etc. it was also agreed that the age of superannuation of the Bank's employees would be 60 years. This settlement was admittedly entered into otherwise than in the course of conciliation proceedings although it appears that reference of an industrial dispute about the conditions of service of the employees of several banks was then pending before the Industrial Tribunal. Later on an award known as the Joshi Award was given by the Industrial Tribunal on 2561971. Its copy has been filed as Annexure7 to the writ petition. The age of superannuation for employees provided in this award is 58 years. The award, however, contains a condition in

para 23 that the existing benefits being enjoyed by the employees before the award, would not be curtailed. If, therefore, it is found that the settlement dated 2221966 was applicable to the petitioner and that he was getting any benefits before the Award he would be entitled to continue to get those benefits. These benefits, it was stated in the Award would be personal to such employees. Later, the Cooperative Society Employees Service Regulations, 1975 were framed. Regulation 24 provides that the age of superannuation of an employee would be 58 years but if there was a contract between the Cooperative Society and the employee at the time of his appointment providing a different age of superannuation, the contract would prevail. the petitioner claims that the settlement dated 2221966 was such a contract within the meaning of Regulation 24. It is the effect of this settlement, therefore, which is the crucial point for determination in this writ petition.

3. It is not disputed that if the settlement dated 2221966 were entered during the course of conciliation proceedings it would be binding upon the employer as well as upon all the workmen of the Bank even upon the workmen who were not parties to it. But it was not entered in the course of conciliation proceedings a fact about which there is no dispute. It was signed by the office bearers of the union with the Bank Management. It is stated in the supplementary counter affidavit a fact not denied in the supplementary rejoinder affidavit that after the settlement was entered into it was circulated for obtaining the signatures of the employees of the bank. The petitioner was neither a signatory to the settlement nor indeed was he then in the service of the bank. He joined the services of the Bank in 1968. The stand in the supplementary rejoinder affidavit is that when the appointment of the petitioner was made in the year 1968 a proceeding book of the bank was filled up which apart from pay scale contained an entry that the petitioner would superannuate at the age of 60 years. No specific description of the alleged proceedings book has been given nor any prayer for summoning any proceedings book was made. No such case about the entry in the proceedings book was taken in the writ petition nor is there any other material show that there was such an entry and I am not inclined to place much reliance upon this averment coming at the stage of the supplementary rejoinder affidavit to which the respondents had no opportunity to reply. It has however been also stated that the benefit of the other terms of the settlement which covered subjects like pay scale, allowances etc. was given to the petitioners which was proof of the fact that the settlement was acted upon qua the petitioner as well and was, therefore, extended to him in its application. The effect of extending some benefits of an agreement to the workmen who were not parties thereto is no doubt an aspect which requires consideration but before advertng to this question it is necessary to refer to the provisions of law relating to settlements and their effect. Section 6B of the U.P. Industrial Disputes Act for short referred to as U.P. Act reads as under?

?6B Settlement outside conciliation proceedings.(1) A settlement arrived at by agreement between the employer and workmen otherwise than in the course of

conciliation proceeding shall except as provided in subsection (4), be binding on the parties to the agreement:

Provided that if the period for which a settlement shall remain in force has not been laid down in such settlement itself, it shall remain in force for one year from the date of its registration.

(2) As soon as settlement referred to in the subsection (1) has been arrived at, the parties to the settlement or any one of them may apply to the conciliation officer of the area concerned in the prescribed manner for registration of the settlement.

(3) On receipt of application for registration under subsection (2) the Conciliation Officer or an authority notified by the State Government in this behalf, either; (I) register the settlement in the prescribed manner, or (institution in question) refuse registration if it considers it to be inexpedient to do so on public grounds affecting social justice, or if the settlement has been brought about as a result of collusion, fraud or misrepresentation.

(4) Where a settlement under subsection (1) has been refused registration, it shall not be binding under this Act.?

4. The binding effect of settlements arbitration awards and award of labour Court and industrial tribunal is a subject covered under Section 18 of the Industrial Disputes Act, 1947. That provision is quoted below :

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

(1) A settlement arrived at by agreement between the employer and workmen otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

(2) Subject to the provisions of subsection (3), an arbitration award which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.

(3) A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under subsection (3A) of Section (10A) or an award of Labour Court, Tribunal or National Tribunal, which has become enforceable shall be binding on

(a) all parties to the industrial dispute;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were summoned without proper cause;

(c) Where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assignees in respect of the establishment to which the dispute relates;

(d) Where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all person who subsequently become employed in that establishment or part.?

5. The plain language of Section 18(1) of the Industrial Dispute Act, 1947 and Section 6B (1) of the U.P. Industrial Dispute Act suggests that a settlement entered into otherwise than in the course of conciliation proceedings is binding only upon the parties, which entered into the agreement. The bank and the union of the employees were party to the settlement. By virtue of Section 18(1) of the Industrial Disputes Act and Section 6B (1) of the U.P. Act the employer and all the workmen who were members of the union when the agreement was entered into and were thus represented by the office bearers of the union, would be bound. But would the employer who has entered into a settlement with some of the workmen be bound by the settlement qua the workmen who were not parties to it and in fact have come into employment after the settlement. Section 18(3) provides a clue. A settlement entered into during the course of conciliation proceedings, an arbitration award in a case where notification under subSection 3A of Section 10A of the Act has been issued and the award of the labour Court and Tribunal or National Tribunal shall be binding not only upon the parties to the "industrial dispute? but also on all parties summoned to appear as parties in the proceedings, the employer, his heirs, successors and assigns and upon all the workmen of the establishment as well as upon workmen subsequently employed. Section 18(3) thus provides an extended operation of the settlement during the course of conciliation proceedings beyond the parties who entered into it while Section 18 (1) which relates to settlements entered into otherwise than in the course of conciliation has an operation limited to the contracting parties. In *Jhagrakhan Calleries v. Sri G.C. Agarwal*, 1975 (3) SCC 613, the Supreme Court held ?In extending the operation of such a settlement beyond the parties thereto subsection (3) of the section departs form the ordinary law of contract and gives effect to the principle of collective bargaining.?

6. The reason why settlements in the course of conciliation proceedings have been given a wider field of operation is to be found in the role which the Conciliation Officer is required to play in the conciliation proceedings in getting a fair settlement arrived at between the employer and the workmen. The purpose of a settlement is to bring about industrial peace and it is possible to secure it effectively if the majority of the workmen accept it. The Conciliation Officer while exercising his duties under Section 12 of the Industrial Disputes Act, 1947 or under Section 4 of the U.P. Industrial Disputes Act is, therefore, expected to ascertain the views of the majority of the workmen and to assist the parties to arrive at a fair settlement. In *Royal Calcutta Golf Club Mazdur Union v. State of West Bengal*, 1957 (1) LLJ 218, the Calcutta High Court referring to the role of the conciliation officer observed that the conciliation officer must go from one camp to the other and find out the greatest common measure of agreement. In

1968 Labour and Industrial Cases 1134 Kerala, T.K. Padmanabha Menon v. P.V. Kora, it was held that adequate consideration must be given to the demands and view points of the majority of the workmen. In 1991 Labour and Industrial Cases 1393 (1403) Secretary Plantation Employees Union v. State Staff Union, it was held by the Kerala High Court that it is the duty of the conciliation officer while certifying a previously entered settlement and converting it into a conciliation settlement, to ascertain that the Union is a majority union and commands support of the majority. What therefore, follow as is that when a settlement is countersigned by the conciliation officer it in effect carries with it a certificate that the settlement is a fair one and a presumption that the views of the majority of the workmen have been ascertained and in the prevailing circumstances is a sound solution to bring about industrial peace. While the settlement envisaged in Section 18(1) is purely contractual between the parties which entered into it either individually or by representation through the union and its operation like a contract is, therefore, confined to the contracting parties, the settlement envisaged in Section 18(3) has an extended operation beyond the contracting parties on the principles of collective bargaining. The theoretical basis for this statutory extended operation upon workmen who are not parties to the settlement is contained in the role of the conciliation officer under Section 12 of the Industrial Disputes Act to ascertain the views of different groups of workmen and to assist them in arriving at a fair settlement.

7. In *Herbertson Ltd. v. The Workmen*, AIR. 1977 SC 322, a settlement arrived at by the recognised union of the majority of workmen was held to be binding upon the minority if it is just and fair. In that case the settlement was arrived at during the pendency of an appeal in the Supreme Court against an award of the Tribunal and the Supreme Court remitted the question to the Tribunal to determine whether the settlement was just, fair and binding and if it was arrived at by a minority of the workmen. The Tribunal held a part of the settlement i.e. about D.A. affecting workmen at or just above the subsistence level as not fair, just and reasonable but the rest of the settlement as just, fair and reasonable. It was held by the Apex Court after the finding was returned by the Tribunal that it is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad, and that the settlement has to be accepted or rejected as a whole. The Supreme Court gave weight to the fact that the majority of the workmen stood by the settlement and that was regarded a strong factor difficult to ignore. In that case the settlement no doubt was arrived at otherwise than in the course of conciliation proceedings but as the facts of the case would show the two material duties which the conciliation officer is to perform, namely, to ascertain the views of the majority of the workmen and to see that the settlement is a fair one were substantially fulfilled. The question whether the agreement would bind even workmen who were not in employment on the date the settlement was arrived at was not involved in that case which is the very question in this petition. But more importantly the settlement in *Herbertson* was made the substituted award after the process of which reference

has been made above was undergone while the settlement involved for consideration in the present writ petition is not more than a plain settlement otherwise than in the course of conciliation proceedings and is not registered under Section 6B of the U.P. Industrial Disputes Act and is no more than an ordinary contract and would, therefore, have an operation limited to the contracting parties. The settlement in this petition unlike that in Herbertson has not been made the substituted award. Rather in the Joshi Award a different age of superannuation is provided as 58 years.

8. In *Tata Engineering Chemicals Limited v. The Workmen*, 1978 (3) SCC 42, the question whether a settlement not entered into during the course of conciliation proceedings was binding on persons other than parties to the agreement arose directly. In that case a minority union the "Sangh" raised certain demands including one for variable dearness allowance linked to Ahmedabad cost of living index. The conciliation proceedings failed and the failure report was submitted. On the same date a settlement outside the course of conciliation proceedings was arrived at between the majority union the "Employees Union" and the Management. The State Government, however, referred the dispute respecting the demands of the minority union for adjudication to the Industrial Tribunal, which gave its award. The Supreme Court interpreted Section 18 (1) of the Industrial Disputes Act, 1947 and held vide paragraphs 13 and 16 of its judgment that such a settlement is binding only on the parties to the agreement and not even upon a minority union.

9. Seemingly there is a conflict of views between the decisions of Herbertson (*supra*) and Tata Chemicals (*supra*). In the Herbertson case the appeal against the award was pending before the apex Court and the settlement was entered into by the majority union during such pendency and the apex Court after obtaining the finding of the Tribunal to which it remitted the issue about the settlement being fair and just held that the settlement was as a whole package deal, fair and just and was acceptable to the majority and substituted the settlement for the Award. The distinguishing feature in the course adopted in Herbertson was that there was a finding that the settlement by the majority union was a fair one. In Tata Chemicals the settlement by the majority union was entered into otherwise than in the course of conciliation proceedings before the Award was given on the reference made on the demand of the minority union and there was no determination by the Tribunal that the settlement was just and fair. The Herbertson case was thus decided on its own facts and is not applicable to the facts of this petition whereas the Tata Chemicals case applies to it. The settlement dated 22266 is, therefore, binding upon the parties and act upon the workmen who were not represented.

10. We may now consider the question raised by Sri R.N. Singh that a settlement entered into otherwise than in the course of conciliation proceedings would bind the employer even though it may not bind the unrepresented workmen. Section 18 (1) of the Industrial Disputes Act, 1947 makes such settlement binding upon

the parties to the agreement. It is submitted by Sri R.N. Singh, learned counsel for the petitioner that the employer being a party to the settlement, the settlement would be binding against the employer even qua the workmen who were not parties to it. It is difficult to accept this contention. The purpose of a settlement is to bring about industrial peace and to ensure that at least during the period the settlement is in operation none of the parties would create unrest by raising demands, which had been settled. In case the view is taken as the counsel for the petitioner contends, that the agreement though not binding on the workmen was binding on the employer, there would be consequences so drastic that it would be difficult to support such view. That would mean that despite the settlement the workmen were free to agitate their demands either by raising an industrial dispute or by other means. Section 19 of the Industrial Disputes Act provides that a settlement shall be binding for such period as is agreed upon and in absence of agreement about the period it would operate for a period of six months and even thereafter it would continue to be binding upon the parties until the expiry of two months" from the date notice is given by either party terminating the settlement. (sic) there is a period of operation of settlement under Section 6B of the U.P. Act.

11. Section 23(1) of the Industrial Disputes Act imposes a bar upon the employer to declare a lock out and upon the workmen from going on strike during the period the settlement or award is in operation. There are similar provisions in Section 65 of the U.P. Act. If the view is taken that the agreement though binding upon the employer is not binding upon the workmen it would leave the workmen free to agitate for their demands and thereby to disturb the industrial peace. The submission of the petitioners" counsel cannot be accepted also in view of the plain language of Section 18(1) of the Industrial Disputes Act and Section 6B (1) of the U.P. Industrial Disputes Act whereunder the settlement is binding upon the parties to the agreement. There is no privity of contract between the employer and those who are not parties to the settlement and as such those not parties cannot enforce the settlement. The decision in *Lalji Srivastava v. Allahabad District Cooperative Bank*, 1994 (1) UPLBEC 297, relied upon by the petitioner is not applicable to the case as the petitioner in that case was not only in employment when the settlement was entered into but as the facts narrated in the judgment would bear, had also appended his signature as a token of consent to the settlement. In the case *R. Mathur v. Allahabad Bank*, 1989 (59) FLR 153, it was held even in respect of a settlement entered into by the union otherwise than in the course of conciliation proceedings that the terms of the settlement become a part of the contract of employment of each individual workman represented by the union, even if the settlement is not in accordance with the prescribed form under Rule 58 of the Industrial Disputes Central Rules. The proposition cannot be doubted but it does not advance the case of the petitioner as the petitioner was not in employment when the settlement was entered into by the union and as such could not be said to have been represented by it. So also is the decision in *Shankar Swarup v. Allahabad District*

Cooperative Bank, 1978 ALJ 940, is of no avail to the petitioner. In that case it was held that a settlement even though not registered under Section 6B of the U.P. Industrial Disputes Act but having been acted upon was binding. The distinguishing feature of that case is that the petitioner there was signatory to the agreement. The petitioner has placed reliance upon Padam Kumar Rastogi v. Ghaziabad Zila Sahkari Bank Ltd., Civil Misc. Writ Petition No. 20297 of 1005. In that case the petitioner was in the service of the Meerut District Cooperative Bank Ltd. Meerut on the date the settlement dated 651965 was entered into which provided the age of superannuation as 60 years. Later Ghaziabad was formed as an independent district by division of the district of Meerut and the Ghaziabad District Cooperative Bank was formed in 1983. The assets, liability and staff of the District Cooperative Bank Meerut was also divided. The petitioner was transferred to the Ghaziabad District Cooperative Bank on the same terms and conditions, as were applicable to him in the Meerut District Cooperative Bank. As a fact it was bound that the Joshi Award was never acted upon by the Meerut Cooperative Bank but it had implemented the settlement. On these facts it was held that the petitioner in that case was entitled to superannuate at the age of 60 years. The question whether the petitioner in that case was party to the settlement was not in issue. The case was decided on the foundation that the settlement was applicable to the petitioner in that case. There was no issue that the petitioner in that case was not a party to the settlement or was appointed after the settlement. This case is, therefore, distinguishable. A settlement in order to be treated as valid and effective settlement has to be a settlement binding upon both the parties, otherwise it would fail to serve the very purpose of securing industrial peace. The settlement dated 2221966 for the reasons already stated did not extend to the petitioner who came into the bank's service after it was entered into. There was, therefore, no contract within the meaning of Regulation 24 between the Bank and the petitioner providing for a different age of superannuation and the petitioner was, therefore, to be superannuated at the age of 58 years under Regulation 24 itself.

12. This taken us to the next submission of the petitioner's counsel that the settlement having been acted upon in respect of the petitioner would be binding upon the employer in relation to the petitioner also. In the supplementary affidavit it is stated that the settlement was acted upon and the pay scales, dearness allowance, house rent allowance, bonus were given to the petitioner as were provided under the settlement. On this basis it is submitted that the petitioner would be entitled to all the benefits under the settlement as the settlement would either be applicable as a whole or not at all. It has been held in Jhagrakhan Collieries v. G.C. Agarwal Presiding Officer, 1975 (3) SCC 613, that the only agreement which is binding upon the parties is the agreement in writing in accordance with the provisions of Section 2P and Section 12(3) of the Industrial Disputes Act and no settlement can be culled out on the foundation that certain terms of the settlement have been accepted. It was held that an implied agreement by acquiescence or conduct such as acceptance of a benefit

under an agreement to which the worker acquiescing or accepting the benefit was not a party being outside the purview of the Act is not binding on such a worker either under subsection (1) or subsection (3) of Section 18. In *P. Virudhachalam and others v. Management of Lotus Mills and another*, 1998(1) LBESR 313 (SC) : 1998 (1) UPLBEC 68 the Apex Court held that only a written settlement would become settlement by Section 2P read with Section 12(3) the Act whether entered during or outside the course of conciliation proceedings.

13. The Joshi Award protected existing benefits which the petitioner was enjoying before the Award irrespective of the fact that the benefits arose out of the settlement or not. Thus benefits like pay scale, allowances, bonus etc. which the petitioner may have been enjoying were protected. That protection was available to the petitioner by virtue of the Joshi Award and was based on the fact that those were benefits which were being actually enjoyed by the workmen as a fact and not because these benefits originated from the settlement. Once it is found that there was no settlement between the bank and the petitioner the benefit of the age of superannuation of 60 years provided thereunder would not be available to the petitioner. There is no material to establish that the petitioner was enjoying any existing benefit of 60 years age of superannuation when the Joshi Award was enforced.

14. It was then submitted by the petitioner's counsel that there can not be two sets of employees in the same establishment having different conditions of service and different ages of superannuation as the Allahabad District Cooperative Bank is State within the meaning of Article 12 and discrimination between two sets of employees would violate the rule of equality. This argument is also fallacious. Regulation 24 of the Employees Service Regulations upon which the petitioner relies itself provides that the age of superannuation of the employees would be 58 years unless the contract with the employer provides a different age of superannuation. The petitioner has failed to prove such a contract and he is governed by the normal rule of superannuation at 58 years. There is no challenge to the validity of Regulation 24 in this petition. That apart, employees in service of a society before the Employees Service Regulations under a contract of service entered at the time of their appointment would constitute a separate class. A provision to protect the age of superannuation of such employees would not infringe the rule of equality.

15. Learned counsel for the respondents has thrown a challenge to the maintainability of the writ petition on the ground that no writ petition lies against a cooperative society. The question has been decided in several cases and also in the context of the employees of the Allahabad District Cooperative Bank itself and it has been held that such a writ petition is maintainable vide *Lal Ji Srivastava v. District Cooperative Bank* (supra) The law on the question has been considered in *Jagveer Singh v. The Chairman, Cooperative Textile Mills Ltd.*, 1999(2) LBESR 405 (All) ; 1999 (2) UPLBEC 1251 and all the cases on the point have been elaborately considered. In *Narendra Singh v. State of U.P.*, 1999 (2)

UPLBEC 995, a Division Bench of this Court relied upon the decision of the Apex Court in U.P. State Cooperative Development Bank Ltd. v. Chandrabhan Dubey, 1999 (1) SCC 741, and held that a writ petition is maintainable against a Cooperative Society. For the reasons given in these decisions this petition although against a cooperative society is maintainable. However, the petition fails on merits and is dismissed.