

(2013) 09 MAD CK 0082

In the Madras High Court

Case No : Writ Petition No. 21549 of 2009 and M.P. No. 1 of 2009

The Management M/s. EID Parry (I) Ltd.

APPELLANT

Vs

The Presiding Officer and D. Umapathy

RESPONDENT

Date of Decision : 11-09-2013

Acts Referred:

Citation : (2014) 140 FLR 270 : (2013) 4 LLJ 441

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : Ravindran for T.S. Gopalan, for the Appellant; V. Selvaraj for Respondent-2, for the Respondent

Judgement

D. Hariparanthaman, J.—The petitioner is a company, namely, EID Parry India Limited. The second respondent was its workman. The

second respondent was initially employed in EID Parry Employees" Co-operative Canteen. The EID Parry Employees" Co-operative Canteen

Workers" Union raised an industrial dispute for absorption of the workers employed in the EID Parry Employees" Co-operative Canteen Limited,

Ranipet, as regular workmen of the EID Parry India Limited, Ranipet.

2. The said dispute was referred for adjudication as I.D. No. 104 of 1975. The First Additional Labour Court, Madras, by the award dated

19.10.1976 in I.D. No. 104 of 1975, held that the demand of the canteen workmen for absorption as regular workmen of the company was

justified and issued a direction for absorption.

3. The petitioner company filed W.P. No. 4755 of 1976 before this Court and this Court upheld the award by its order dated 24.11.1978.

However, a further direction was issued by this court that as far as monetary

payment, etc., are concerned, these workers have to be treated as a separate class and their pay scales, allowances, etc. have to be fixed separately and that they cannot claim parity with the workers of the factory at Ranipet.

4. The canteen employees were earlier governed by a settlement dated 20.04.1978 u/s 12(3) of the Industrial Disputes Act, 1947 (for short "ID Act"). Subsequently, a settlement dated 20.09.1979 u/s 12(3) of the ID Act was entered into between the EID Parry Employees' Co-operative Canteen Workers' Union representing the employees of the Co-operative Canteen of M/s. EID Parry India Limited and the petitioner management. The settlement is relating to the conditions of service of canteen employees. In this settlement, it is stated that 16 canteen workers would be treated as employees of the company with effect from 02.10.1978.

5. The aforesaid settlement was replaced by another settlement dated 17.09.1981 u/s 12(3) of the ID Act and later by another settlement dated 10.01.1986 under the said provision.

6. While the Canteen employees are governed by the aforesaid settlements, the factory workmen are governed by different settlements such as settlements dated 20.04.1978, 31.07.1982, 14.11.1987, 11.11.1992 and 21.07.1997, which are all signed u/s 12(3) of the ID Act.

7. As stated above, the second respondent was earlier an employee of the co-operative canteen. Later, he became the employee of the company.

Thereafter, the second respondent was brought to factory rolls by the order dated 09.02.1988. On coming into factory rolls, the second

respondent is governed by the aforesaid settlement dated 14.11.1987 that was in operation at that time governing the service of the condition of

the workmen. The said settlement dated 14.11.1987 has classified factory workmen into two categories, as the one who joined prior to

23.04.1982 and the others, who joined after 23.04.1982. The second respondent/workman was classified as the workman who joined after

23.04.1982 and he was given the benefit of the workmen who are classified as the workmen, who have joined after 23.04.1982.

8. Another settlement dated 11.11.1992 was entered into over the factory workmen replacing the earlier settlement dated 14.11.1987. In this settlement also, the same classification is continued.

9. Likewise, another settlement dated 21.07.1997 was entered into between the parties replacing earlier settlement dated 11.11.1992. This settlement also has the same categorization.

10. While so, the second respondent filed Claim Petition in C.P. No. 432 of 2002 claiming the benefits under the settlements dated 14.11.1987,

11.11.1992 and 21.07.1997 as if he is the workman in the factory prior to 23.04.1982, i.e., he wanted the benefits payable under the aforesaid

settlements, that are meant for the workmen, who are categorised as persons who joined prior to 23.04.1982.

11. In the claim statement, he made three Annexures; Annexure A relates to settlement dated 14.11.1987 for treating him as a workman, who has

joined factory rolls prior to 23.04.1982. Annexure B relates to settlement dated 11.11.1992 covering the period from October 1992 to June 1997

and Annexure C relates to settlement dated 21.07.1997 covering the period from July 1997 to August 2002.

12. The writ petitioner herein filed a counter-affidavit before the Labour Court disputing the claim made by the second respondent/workman. The

writ petitioner pleaded that the second respondent herein was only a canteen employee of the company and he was not treated as a factory

workman. He was brought to the factory from canteen on 09.02.1988. Earlier, he was a co-operative canteen employee. Later he became the

canteen employee of the company pursuant to the award and judgment of the Labour Court/High Court referred to above.

13. The Canteen employees of the company are governed by the settlement dated 20.09.1979. The factory employees are governed by different

conditions of service by way of different settlements. The factory employees are classified under two categories, as per settlement dated

20.04.1978, as persons joined after 23.04.1982 and others, who were in service before 23.04.1982. Hence, when the second respondent came

to the factory from the canteen on 09.02.1988, he was given the benefit of the settlement dated 14.11.1987 treating him as a factory workman

who joined after 23.04.1982. Earlier, he was governed by the settlement dated 10.01.1986 as the company canteen employee.

14. The second respondent examined himself as a witness on his side and he marked the settlement dated 20.09.1979 as Ex. P.1. On the side of

the writ petitioner, no witness was examined. However, the writ petitioner produced documents, which are marked as Exs. R.1 to R.16.

15. After hearing both sides, the Labour Court passed the impugned order dated 21.08.2009 allowing the claim made in Annexure "C" alone. This

writ petition is filed to quash the aforesaid order dated 21.08.2009 in C.P. No. 432 of 2002.

16. Heard both sides.

17. The learned counsel for the petitioner submitted that the Labour Court erroneously proceeded that the distinction of categorization of the

workers, who have joined before 23.04.1982 and after 23.04.1982 was removed in the settlement dated 21.07.1997. In view of such conclusion,

the claim made in Annexure C was allowed by the Labour Court. The learned counsel for the petitioner has taken me through the settlement dated

21.07.1997 that was marked as Ex. R.12 that only in respect of Variable Dearness Allowance (VDA), the distinction was abolished, i.e., both the

persons who have joined after 23.04.1982, and others, who were in service, will be given same rate of VDA, i.e., both are paid Rs. 1,433 per

point over and above 1919 points taking cost of living index base in the year 1960.

18. Further, in the said settlement, it is stated that the workmen who have joined the regular rolls of the company prior to 23.04.1982 will be paid

Personal VDA at the rate of Rs. 0.382 per point over and above 1919 points. The personal VDA is not payable to the persons who joined after

23.04.1982.

19. The settlement dated 21.07.1997 maintains a difference relating allowances for the persons joined after 23.04.1982 and the others who were

in service prior to 23.04.1982. Hence, according to the learned counsel for the petitioner, the Labour Court committed error in holding that the

categorization was abolished in the settlement dated 21.07.1997 and therefore, the second respondent is not entitled to the benefits that are

payable to the employees who were in service prior to 23.04.1982.

20. On the other hand, learned counsel for the second respondent/workman contended that the second respondent became employee of the

company on 02.10.1978 as per settlement dated 20.09.1979. Thus, he joined service prior to 23.04.1982, as per the classification. Hence, there

is no error in the order of the Labour Court. According to him, the second respondent is entitled to the claim as made in the Claim Petition

Annexure A and Annexure B, since he is a company workman from 02.10.1978. He is satisfied with the claim ordered by the Labour Court

granting benefit in respect of Annexure C.

21. I have considered the submissions made by both sides.

22. The settlement dated 20.09.1979 was entered into between the EID Parry Employees' Co-operative Canteen Workers Union and the writ

petitioner u/s 12(3) of the ID Act. The settlement is relating to the employees of the EID Parry Co-operative Canteen. As stated above, the

employees succeeded by securing an award of the Labour Court for absorption in the company. The same was also upheld by the High Court.

While upholding the award, this Court made it clear that the canteen workers, on coming to rolls as company workers, cannot claim parity of

status with the factory workmen. The passage in the recital of the settlement is extracted hereunder:

AND WHEREAS the Company filed Writ Petition No. 4755 of 1976 in the High Court of Madras and the Hon"ble High Court, by its judgment

dated 24.11.1978 upheld the said Award of the Labour Court dated 19.10.1976 with a further direction that as far as the monetary payments,

etc., are concerned, these workers have to be treated as a separate class and their pay scales, allowances, etc., have to be fixed separately and

that they cannot claim parity of status with the workers of the factory at Ranipet.

23. It is true that paragraph 2 of the settlement dated 20.09.1979 states that the canteen employees are brought to the rolls of the company.

Clause (2) of the settlement dated 20.09.1979 is relevant and the same is extracted hereunder:

2. The 16 Regular roll employees working in the Canteen will be absorbed on the rolls of the Company with effect from 2nd October, 1979,

(Mahatma Gandhi's Birthday), but will be entitled to the benefits show in paragraph (1) above with effect from 1st July 1979. It is specifically

agreed that they will continue to work in the Co-operative Canteen as the Canteen employees.

24. The canteen workmen were earlier governed by the settlement dated 20.04.1978. Thereafter, they were governed by this settlement dated

20.09.1979. It is also not disputed that the canteen workmen were governed by the settlement dated 17.09.1981 replacing the settlement dated

20.09.1979, that is marked as Ex. R.7 and another settlement dated 10.01.1986, marked as Ex. R.9.

25. While, the canteen employees were governed by the above settlements, factory workmen were governed by different settlements. These

settlements are also marked before the Labour Court. The settlement dated 14.11.1987 is marked as Ex. R.14. Clause 1.2. of the settlement is

relevant for the purpose of this case and the same is extracted hereunder:

1.2. The terms of this Settlement shall also cover new entrants (the term new entrant means a workman who has joined the regular rolls of the

Company on or after 23.04.1982) except where specifically stated otherwise.

26. The learned counsel for the second respondent argues that in view of Clause (2) of the settlement dated 20.09.1979, the second respondent

cannot be termed as the person joined after 23.04.1982 and he should be given the benefits that are given to workmen who joined before

23.04.1982.

27. In my view, the same is not correct. In fact, the Labour Court did not agree with such a view. Hence, the Labour Court rejected the claim of

the workman in Annexure A and Annexure B. However, the Labour Court proceeded erroneously that the distinction between the workmen who

were in service prior to 23.04.1982 and others was abolished in the subsequent settlement dated 21.07.1997 and that was marked as Ex. R.12. I

have perused the settlement dated 21.07.1997. The conclusion of the Labour Court is not correct. In fact, the distinction is maintained.

28. The Clause relating to Personal Variable Dearness Allowance is extracted hereunder:

4.3. Personal Variable Dearness Allowance:

4.3.1. It is agreed that for the workmen who have joined the regular rolls of the Company prior to 23.04.82 and who are on the rolls as on the

date of signing of this settlement will be paid personal variable Dearness Allowance at the rate of Rs. 0.382 per point increase or decrease in the

Chennai City Cost of living index (Base 1960=100) for every point beyond 1919 points in addition to para 4.2.2 and 4.2.3.....

29. This clause makes it clear that the personal variable dearness allowance is

payable only to the workmen, who were in service prior to

23.04.1982.

30. Likewise, clause 7 deals with Adhoc Allowance and the said clause also makes a distinction between the persons who joined after

23.04.1982 and the others, who were in service prior to 23.04.1982. It is relevant to extract clause 7 of the settlement dated 21.07.1997 which

reads hereunder:

7.0. Adhoc Allowance:

7.1. Such of those workmen who are presently in receipt of Adhoc Allowance, shall continue to receive the same without any

modification/revision.

7.2. The Adhoc Allowance payable as above shall not be taken into account for the purpose of Bonus, P.F., Gratuity, E.S.I. or for any other

benefits.

7.3. All the terms and conditions regarding grant of monthly adhoc allowance shall remain unchanged.

31. Therefore, the conclusion of the Labour Court is not correct and the order of the Labour Court is liable to be set aside.

32. At this juncture, it is relevant that the canteen workmen, who were later absorbed in the factory, like the second respondent, filed similar claim

petitions before the Labour Court. The second respondent resigned from service. It is not disputed that the others, who also resigned like the

second respondent herein and obtained similar orders from the Labour Court, were settled the benefits by way of lump sum amount, including the

amount as ordered by the Labour Court as ex gratia. Therefore, I am of the view that the second respondent alone cannot be deprived of the

amount treating the same as ex gratia amount. Accordingly, he is entitled to be paid the ex gratia amount as given to the other workmen. The

learned counsel for the petitioner has no serious objection for the same.

33. Accordingly, while setting aside the order of the Labour Court, the second respondent is permitted to withdraw the amount deposited by the

petitioner and lying in C.P. No. 432 of 2002 on the file of the Additional Labour Court, Vellore, along with interest accrued thereon treating the

same as ex gratia. With the above directions, this writ petition is disposed of. No

costs. Consequently, connected miscellaneous petition is closed.