

(2009) 08 MAD CK 0185

In the Madras High Court

Case No : W.A. No. 3944 of 2004 and W.A.M.P. No's. 189, 190 and 192 to 197 of 2007

The Management of W.S. Industries (India) Ltd.

APPELLANT

Vs

K. Ramakrishnan and Others

RESPONDENT

Date of Decision : 06-08-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 18(1), 20, 22, 33(2), 33(A)

Citation : (2010) 1 MLJ 43 : (2009) WritLR 1045

Hon'ble Judges : Prabha Sridevan, J;C.T. Selvam, J

Bench : Division Bench

Advocate : N. Manoharan, for the Appellant; R. Vaigai, SC for V. Ajay Khose, for RR1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

Prabha Sridevan, J.—The appellant is the Management. The appellant dismissed its employees, the respondents 1 to 5, when proceedings were pending before the Industrial Tribunal. The question is whether on the facts and in law, the appellant should have obtained approval u/s 33(2)(b) of the Industrial Disputes Act.

2. On 03-10-1988, the W.S. Insulators National Workers" Union of which the respondents are members submitted a charter of demands for revision of wages. On 09-08-1989, on the joint application made by this Union and the Management, the Government referred the matter for adjudication, which was taken on file as I.D. No. 84 of 1989. According to the respondents, their Union is the only registered Union consisting of 1078 members out of the 1157 workmen in total. When I.D. No. 84 of 1989 was pending, the Management entered into a settlement u/s 18(1) of the Industrial Disputes Act on 11-10-1990 with another Union named W.S. Industries Employees and Staff Progressive Union. On 15-11-1990, the appellant dismissed RR1 to 5 from service for misconduct not connected to the dispute in I.D. No. 84 of 1989. They were neither given one

month notice nor did the Management seek approval u/s 33(2)(b) of the Industrial Disputes Act. Therefore, they filed Complaint Nos. 14 to 19 of 1990 u/s 33(A) of the Industrial Disputes Act. One of the complainants was taken back pending the complaint.

3. On 28-05-1992, a common award was passed in complaint Nos. 14 to 17 holding that the complaints were maintainable. The Tribunal set aside the enquiries since they were not fair and proper and ordered reinstatement of the respondents with continuity of service and backwages. On 28-10-1992, the Management filed I.A. Nos. 7 to 12 of 1992 for review of the award, on the ground that they were not given opportunity to let in evidence. On 28-05-1993, the Management filed an application for passing an award in terms of the settlement dated 11-10-1990. The Tribunal found that the settlement was fair and passed an award in terms of the settlement on the same day. On 03-08-1993, I.A. Nos. 7 to 12 of 1992 were allowed and the parties were allowed to let in evidence. On 06-08-1994, a common award was passed after review holding that the enquiry was fair and proper and declining to grant any relief to the workmen.

4. On 04-05-1995, W.P. No. 3579 of 1995 was filed challenging the award dated 06-08-1994 and W.P. No. 3580 of 1995 was filed challenging the order dated 03-08-1993 allowing the interlocutory applications for review. On 13-07-2001, by consent of both the counsel the matter was remitted to the enquiry officer and subsequently on 30-11-2001, in view of the request made by both the counsel the earlier order was modified and the matter was remitted back to the Industrial Tribunal instead of the enquiry officer. The respondents then filed M.A. No. 38 of 2002 to pass an award without going into the merits, in view of the judgment reported in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, since the appellant had not obtained approval u/s 33(2)(b). This was resisted by the Management on the ground that the judgment was prospective and since it was delivered only on 17-01-2002 it cannot be applied to this case. The miscellaneous application was dismissed by the Tribunal.

5. Against that, the respondents filed W.P. No. 15585 of 2004. The learned Single Judge after considering the facts of the case came to the conclusion that I.D. No. 84 of 1989 came to an end only in the year 1993 and thus at the relevant point of time, despite the settlement the proceedings were pending and following Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, allowed the writ petition. Against that the present writ appeal has been filed.

6. In the writ appeal, a new point is taken by the Management and that is there was no dispute existing on 15-11-1990, since there was a settlement prior to that. So the approval u/s 33(2)(b) was not required. According to both the learned Counsel the words used in Section 33(2)(b) during the pendency of any such proceedings in respect of an industrial dispute and therefore, "so not only must a proceedings be pending but there should be an existing industrial dispute. When the dispute had come to an end with the settlement even Jaipur Zila case will not help them. Section 33(2)(b) reads as follows:

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.-(1) ***

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing order applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman.:

(a)...

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

7. Section 20 which deals with commencement and conclusion of proceedings:

A Conciliation proceeding shall be deemed to have commenced on the date on which a notice of strike or lockout u/s 22 is received by the conciliation officer or on the date of the order referring the dispute to a Board, as the case may be,

A conciliation proceeding shall be deemed to have concluded:

a. where a settlement is arrived at, when a memorandum of the settlement is signed by the parties to the dispute;

b. where no settlement is arrived at, when the report of the conciliation officer is received by the appropriate Government or when the report of the Board is published u/s 17, as the case may be; or

c. when a reference is made to a court, (Substituted by Act 36 of 1956, Section 15, for "or tribunal" (wef 10 March 1957)) [Labour Court, Tribunal or National Tribunal] u/s 10 during the pendency of conciliation proceedings.

(3) Proceedings (Substituted by Act 36 of 1956, Section 15, for "before a tribunal") before an arbitrator u/s 10A before a Labour Court, Tribunal or National Tribunal] shall be deemed to have commenced on the date of the (Substituted by Act 36 of 1956, Section 15, for "reference of a dispute for adjudication" (wef 10 March 1957) [reference of the dispute for arbitration or adjudication, as the case may be] and such proceedings shall be deemed to have concluded (Substituted by Act 18 of 1952 Section 4, for certain words)[on the date on which the award becomes enforceable u/s 17A].

8. Section 17(A) provides that,

(1) An award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication u/s 17:

Provided that:

if the appropriate Government is of opinion, in any case where the award has been given by a Labour Court or Tribunal in relation to an industrial dispute to which it is a party; or

if the Central Government is of opinion, in any case where the award has been given by a National Tribunal,

that it will be inexpedient on public grounds affecting national economy or social justice to give effect to the whole or any part of the award, the appropriate Government, or as the case may be, the Central Government may, by notification in the Official Gazette, declare that the award shall not become enforceable on the expiry of the said period of thirty days.

(2) Where any declaration has been made in relation to an award under the proviso to Sub-section (1), the appropriate Government or the Central Government may, within ninety days from the date of publication of the award u/s 17, make an order rejecting or modifying the award, and shall, on the first available opportunity, lay the award together with a copy of the order before the Legislature of the State, if the order has been made by a State Government, or before Parliament, if the order has been made by the Central government.

(3) Where any award as rejected or modified by an order made under Sub-section (2) is laid before the Legislature of a State or before Parliament, such award shall become enforceable on the expiry of fifteen days from the date on which it is so laid; and where no order under Sub-section (2) is made in pursuance of declaration under the proviso to Sub-section (1), the award shall become unenforceable on the expiry of the period of ninety days referred to in Sub-section (2).

(4) Subject to the provisions of Sub-sections (1) and (3) regarding the enforceability of an award, the award shall come into operation with effect from such date as may be specified therein, but where no date is so specified, it shall come into operation on the date when the award becomes enforceable under Sub-section (1) or Sub-section (3), as the case may be.

9. The Management relies on AIR 1954 SC 160 (Sirsilk Ltd. v. Government of Andhra Pradesh) where after the proceedings before the Tribunal had come to an end and the Tribunal had sent its award to the Government there was a settlement between the parties to the dispute and the Supreme Court held that there is in fact no dispute left to be resolved by the publication of the award. They referred to 1965 (II) LLJ 110 (Amalgamated Coffee Estates Ltd. v. Their workmen) where the Industrial Tribunal came to the conclusion that the settlement was a fair settlement having regard to the basic facts of the dispute between the parties though some of the Unions representing some of the employees were not parties to such settlement and such employees had accepted the payments knowingly and voluntarily. In Garment Cleaning Works

Vs. D.M. Aney and Another, , the Bombay High Court held that in a case where two Unions were represented by the petitioner firm raising similar disputes and another Union got itself impleaded and pending adjudication the first two Union and the Management entered into a settlement and the Tribunal passed an award in terms of the settlement and the third Union terminated the award and obtained a reference to dearness allowance with regard to retrospective effect. The Bombay High Court held that even though the dispute is referred to the Industrial Tribunal, the Tribunal cannot refuse to accept the settlement made by the parties and since the purpose of industrial law is to ensure fair deal and keep industrial peace when the dispute is before the Tribunal, one Union cannot displace another by extravagant promises creating disputes.

10. In 1964 II LLJ 144 (Digwadih Colliery v. Ramji Singh) it was held that unless the nature of the pending dispute was ascertained and considered, it could not be said that the workman was concerned with the pending dispute and the Supreme Court reversed the award of reinstatement granted by the Tribunal.

11. In 1976 LIC 1260 (Khagendra Prasad Patra v. D.T.M., S.T.S. Koraput) the Orissa High Court held that the mere fact that the petitioner workman was a member of the Union which had taken up the pending dispute of another workman will not make him a workman concerned.

12. In 1999 AIR SCW 4626 (National Engineering Industries Ltd. v. State of Rajasthan), the Supreme Court held that when there was a conciliation settlement and all the employees of the appellant and the Members of the Workers' Union had accepted the benefits, a charter of demands was raised by the workers' Union the Conciliation Officer submitted a failure report. The State Government did not make any order for reference. A writ petition was filed directing the State Government to decide the question whether or not to make the reference. In the mean time, the Government had made the reference. The ground taken was that when there is no dispute pending in as much as there was a tripartite settlement and the advantage of the benefits had also been taken by the workers, the State Government had no jurisdiction to make the reference. The Supreme Court allowed the appeal since it is the existence of the industrial dispute which would clothe the appropriate Government with power to make reference and the Industrial Tribunal to adjudicate it. We do not know how this applies to the present case.

13. The main objection of the appellant is that since no dispute existed on the day when the respondents were dismissed, the question of approval u/s 33(2)(b) would not arise. This is the only point that was argued before us and this was not an issue that was raised earlier. For the first time, this question is raised for our answer and it is the only submission made by the learned Counsel for the appellant. The language of Section 18(1) shows that the 18(1) settlement is binding on the parties to the agreement. In this case, the Management entered into an agreement with the workman represented by W.S. Industries Employees and Staff Progressive Union. The settlement itself shows that the charter of

demands was made through the W.S. Industries National Workers' Union and that since there was no settlement in the course of conciliation a joint reference had been made and the same is pending adjudication and that a large section of the workman approached the Management through the W.S. Industries Employees and Staff Progressive Union and assured the Management that their Union are ready to co-operate and it is after communication that the settlement was arrived at. They had also agreed to withdraw their claims from adjudication and agreed to get impleaded before the Tribunal for passing an award as stated earlier. The matter was taken up on 28-05-1993. The finding in the award is that W.S. Industries National Workers' Union the respondent's Union who made the charter of demands. The Industrial Tribunal recorded that permanent workman numbering about 1068 had already accepted the statement. Thereafter, the Industrial Tribunal found that the settlement was fair and passed an award in terms of the settlement. With that the proceeding concluded.

14. The Section refers to the words "any proceedings in respect of a industrial dispute." The words used are not "during the subsistence of a dispute or before the industrial dispute came to an end". The Act declares when the proceedings commence and when they conclude in Section 20.

15. There is no room for any doubt or ambiguity in the language of Section 20. It clearly says when the proceedings commence and when they conclude. The Management must obtain approval u/s 33(2)(b), the following conditions are necessary:

The proceedings should be pending

It should be in reference to an industrial dispute

It should be with regard to the concerned workman and the concerned workman must have been discharged or dismissed for any mis-conduct not connected with the dispute.

16. In this case, the charter of demands was given by the Union of which the respondents were members and the reference was made only on that basis. Therefore, the respondents are definitely "concerned workman". There is also no dispute that the misconduct for which they were dismissed was unconnected with the dispute in I.D. No. 84 of 1989. The words "in respect of an industrial dispute" means that the proceedings that are pending should be in respect of an industrial dispute. Even if it had been settled, the proceedings would still be in respect of an industrial proceedings and they would be pending until they are concluded as per Section 20. And, until the proceedings conclude the embargo of Section 33(2) (b) will apply. This is clear from the Act. May be with the settlement, the dispute as such had come to an end. We are not sure of even that in this case because the settlement was entered into not by the Union which raised by the Charter of demands but what was alleged to be a captive union. Be that as it may, thereafter 1028 workers decided to fall in line with the terms agreed under the 18(1) settlement. Therefore, until the award was passed in terms of the

settlement the proceedings cannot be said to have come to an end. The ending of the dispute is not the relevant criterion but the conclusion of the proceedings is the relevant criterion.

17. In all the decisions referred to by the learned Counsel for the appellant, the Courts have held that when a fair and proper settlement had been arrived at then the dispute must be deemed to have come to an end and extravagant claims cannot be made by a rival union to scuttle the attempts to achieve industrial peace. In none of the above judgments have the Courts held that on the date of the 18(1) Settlement the proceedings conclude. The proceedings conclude only in terms of Section 20. Therefore, the Management was bound to have applied for approval u/s 33(2)(b) before the Tribunal where I.D. No. 84 of 1989 was pending. In fact they had made an application on 28-05-1993 to pass an award in terms of the settlement. The Industrial Tribunal at first held in the Complaints that the enquiry was unfair and therefore, the orders of dismissal were void. In view of the law laid down in Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand and Another, , even if approval had not been obtained that itself would not make the order of discharge or dismissal inoperative and still the workman must have to make the adjudication on the order of discharge. This was subsequently overruled by Jaipur Zila case. In any event on that date there had to be a decision on the correctness of the order of discharge or dismissal and that is how the original orders were passed on the complaints. Thereafter, a review was filed and on review the Industrial Tribunal found that the enquiry was fair and the orders of dismissal were valid. Aggrieved by this order of review, the workmen came before this Court and by consent, they were sent back to the Tribunal by this Court.

18. Then the workmen filed the memo that in view of the decision of the Constitution Bench the orders of dismissal were void or inoperative and proceedings cannot go on. According to the Tribunal, because this Court had directed that evidence should be taken, the memo cannot be accepted. This is clearly incorrect if we read the judgment in Jaipur Zila case, wherein the Supreme Court held that,

14. Where an application is made u/s 33(2)(b) proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has to examine whether the order of dismissal or discharge is bona fide; whether it was by way of victimization or unfair labour practice; whether the conditions contained in the proviso were complied with or not, etc. If the authority refuses to grant approval obviously it follows that the employee continues to be in service as if order of discharge or dismissal never had been passed. The order of dismissal or discharge passed invoking Section 33(2)(b) dismissing or discharging an employee brings an end of relationship of employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end de jure only when

the authority grants approval. If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position there is no need of a separate or specific order for his reinstatement. But on the other hand, if approval is given by the authority and if the employee is aggrieved by such an approval, he is entitled to make a complaint u/s 33A challenging the order granting approval on any of the grounds available to him. Section 33A is available only to an employee and is intended to save his time and trouble inasmuch as he can straightaway make a complaint before the very authority where the industrial dispute is already pending between the parties challenging the order of approval instead of making efforts to raise an industrial dispute, get a reference and thereafter adjudication. In this view, it is not correct to say that even though where the order of discharge or dismissal is inoperative for contravention of the mandatory conditions contained in the proviso or where the approval is refused, a workman should still make a complaint u/s 33A and that the order of dismissal or discharge becomes invalid or void only when it is set aside u/s 33A and that till such time he should suffer misery of unemployment in spite of statutory protection given to him by the proviso to Section 33(2)(b). It is not correct to say that where the order of discharge or dismissal becomes inoperative because of contravention of proviso to Section 33(2)(b), Section 33A would be meaningless and futile. The said Section has a definite purpose to serve, as already stated above, enabling an employee to make a complaint, if aggrieved by the order of the approval granted.

19. The pronouncement of the Supreme Court regarding the construction of Section 33(2)(b) resulted in a declaration of law that this is how law stood right from the beginning and that the law was never otherwise. This is clear from the various decisions of the Supreme Court and we will cite only *Sarwan Kumar and Another Vs. Madan Lal Aggarwal*, as an example where the Supreme Court held that when Section 50 of the Delhi Rent Control Act barred the jurisdiction of a Civil Court to entertain any suit or proceedings relating to eviction of a tenant from the premises covered by the Act, the fact that a decree had been passed and the proceedings now were at the execution stage will not cure the nullity. The Supreme Court held that,

When the court decides that the interpretation given to a particular provision earlier was not legal, it declares the law as it stood right from the beginning as per its decision. In *Gian Devi Vs. Jiwan Kumar*, the interpretation given by the Delhi High Court that commercial tenancies were not heritable was overruled being erroneous. Interpretation given by the Delhi High Court was not legal. The interpretation given by this Court declaring that the commercial tenancies heritable would be the law as it stood from the beginning as per the interpretation put by this Court. It would be deemed that the law was never otherwise. Jurisdiction of the civil court has not been taken away by the interpretation given by this Court. This Court declared that the civil court had no

jurisdiction to pass such a decree. It was not a question of taking away the jurisdiction it was the declaration of law by this Court to that effect. The civil court assumed the jurisdiction on the basis of the interpretation given by the High Court in Gian Devi Anand's case, which was set aside by this Court...

... A decree passed by a Court having no jurisdiction over the subject matter would be a nullity and the judgment-debtor can object to the execution of such a decree being a nullity and non est. Its invalidity can be set up whenever it is sought to be enforced including the stage of execution of the decree or any other collateral proceedings. We are conscious of the fact that it would work a great hardship on the respondent-decree holder who would not be able to reap the benefit of the decree passed in his favour having won at all the stages but the vagaries of law cannot be helped.

Therefore, if we allow the Industrial Tribunal to record evidence on the ground that the parties had consented to go before the Industrial Tribunal, the Industrial Tribunal will be deciding whether order of dismissal is legal or not when the Supreme Court had declared that such orders of dismissal without the approval u/s 33(2)(b) are void and inoperative. This will be totally against the decision in Jaipur Zila case.

20. The learned Single Judge was quite right in allowing the writ petition. We confirm the same and dismiss the writ appeal. No costs. The connected miscellaneous petitions are closed.