

(2011) 07 MAD CK 0276

In the Madras High Court

Case No : Writ Petition No. 46607 of 2002 and W.P.M.P. No. 67748 of 2002 and W.V.M.P. No. 1258 of 2003

The Management rep. by Managing Director Metropolitan Transport Corporation Ltd.

APPELLANT

Vs

Abdul Latheef and The Presiding Officer Ist Additional Labour Court

RESPONDENT

Date of Decision : 08-07-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 12(3), 18(1), 33(2)

Citation : (2011) 07 MAD CK 0276

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Geetha, for Rajnish Pathiyal, for the Appellant; K.S. Narayanan, for R-1, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—The Petitioner is the State Transport Corporation. They come forward to challenge the order dated 11.4.2002 passed by the second Respondent/Ist Additional Labour Court, Chennai made in C.P. No. 235/96. By the said order, the Labour Court computed a sum of Rs. 82,560/- as due and payable to the first Respondent/worker. Challenging the same, the present writ petition came to be filed.

2. The writ petition was admitted on 31.12.2002. Pending the writ petition, this Court granted an order of interim stay. Subsequently, to vacate the interim order the first Respondent has filed vacate stay petition in W.V.M.P. No. 1258 of 2003 wherein, this Court directed the Petitioner-management to deposit the entire sum of Rs. 82,560/- to the credit of C.P. No. 235 of 1996. On such deposit, the first Respondent was permitted to withdraw Rs. 41,560/- without furnishing security and the Labour court was directed to invest the balance amount in Indian Bank, High Court Extension Counter, Esplanade Branch, Chennai-104 for a

period of three years under reinvestment scheme.

3. It is now stated by the learned Counsel for the Petitioner that the said condition have been complied with.

4. It is seen from the records that in the Award in I.D. No. 5 of 1988 dated 11.2.1992, the first Respondent was directed to be reinstated without back wages, without service continuity and other attendant benefits. Subsequently, since the award was not complied with, the first Respondent filed a claim petition u/s 33(c)(2) of the Industrial Disputes Act 1947 on 10.4.1996 and in the claim petition, the first Respondent claimed a sum of Rs. 82,560/- as salary payable from the period 11.3.1992 to 31.12.1995 and from 1.1.1996 to 31.3.1996. After filing the claim petition, the first Respondent entered into a settlement with the Petitioner-management on 17.4.1996. Pursuant to the said settlement, the first Respondent was reinstated by the Petitioner-management by an order dated 17.4.1996. The first Respondent/workmen have agreed not to claim any salary, seniority, pay fixation, annual increment, review, promotion and gratuity.

5. The Petitioner-Corporation filed a Counter statement dated 11.8.1999 wherein in paragraph No. 5, they have stated that the award in I.D. No. 5/88, the Petitioner entered into a settlement dated 17.4.1996 with the first Respondent u/s 18(1) of the Industrial Disputes Act, 1947. The first Respondent voluntarily signed in the settlement after fully understanding the terms and conditions. Hence any claim made by the first Respondent was not valid. The said settlement was also marked as Ex.R-1 before the Labour court. On behalf of the first Respondent, 21 documents were filed and marked as Exs. P-1 to P-21 and on the side of the Petitioner-Corporation 5 documents were filed and marked as Exs. R-1 to R-5. While the first Respondent examined himself as P.W.1, on the side of the Petitioner-Corporation, one Arumugam was examined as R.W.1.

6. The Labour Court on the basis of these materials came to the conclusion that the settlement was bonafide and genuine and the contention of the first Respondent that he was cheated in signing the settlement cannot be believed. After making such finding in paragraph No. 9, the Labour court in Paragraph No. 10 found that since the first Respondent got employment, the award made in I.D. No. 5/88 cannot be taken away by the settlement and since the management had granted the employment only after 4 years by the said settlement, the first Respondent's right is intact and therefore, the first Respondent is eligible for wages for the said period and for doing so the Labour Court relied upon the judgment of the Calcutta High Court reported in 1991 Labor Industrial Cases 929 (Panithra Chandra Rai v. Calcutta State Transport Corporation). The Labour Court also found that the Petitioner-Corporation did not dispute the amount of wages and granted the amount as prayed for by the workman.

7. The questions arise for consideration in this writ petition is whether the Labour Court was justified in ignoring the settlement signed u/s 18(1) of the Industrial

Disputes Act between the parties in essence and whether such compromise can be acted upon by the parties.

8. Under the provisions of the Industrial Disputes Act, there is no prohibition for the parties to enter into a settlement after the award was passed. Therefore, the only question is whether the award is legally valid or not and in the present case in paragraph No. 9, the Labour court held that the first Respondent signed in the settlement and his contention that it was taken out from him by misrepresentation.

9. Therefore, the question now arise for consideration is whether such settlement can replace the award. When once the award is rendered, the only remedy available to the parties is to approach the appropriate forum and it is also open to them to arrive at negotiable settlement u/s 18(1) or u/s 12(3) read with 18(3) of the I.D. Act. In the present case, a bilateral settlement was arrived at between the parties. There is no prohibition for arriving at the settlement. The Hon''ble Supreme Court in *Herbertons Ltd. v. Its Workmen* reported in AIR 1977 S.C.322 has held that in a negotiated settlement there is always a give and take and such a settlement cannot be discarded. Therefore this Court is of the opinion that the Labour court had erred in awarding that the settlement is not binding and the worker is entitled for the benefit claimed by him, since the award is still in existence.

10. The reliance placed in the decision reported in 1991 Labour Industrial Cases 929 (referred supra) is misconceived. The said case did not deal with a case of settlement between the parties and based upon a letter of consent given by a workman. Hence that judgment will not apply to the case on hand.

11. Under such circumstances, the award is liable to be set aside. Accordingly, the impugned Award made in C.P. No. 235/96 stands set aside and the writ petition stands allowed. By virtue of interim order dated 22.8.2003, the first Respondent was permitted to withdraw a sum of Rs. 41,560/- . At this stage if the first Respondent is directed to refund the amount would create hardship to the first Respondent. Therefore, in view of an healthy industrial relation between the parties, this Court direct the Petitioner not to recover the amounts already paid to the first Respondent/workman. With regard to the balance amount together with interest if any, it is open to the Petitioner to withdraw the same lying in deposit. No costs. Consequently, connected miscellaneous petitions are closed.