
(2007) 04 AHC CK 0237
In the Allahabad High Court

Triveni Engineering and Industries Limited	APPELLANT
Vs	
State of Uttar Pradesh and Devendra Kumar	RESPONDENT

Date of Decision : 02-04-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (2007) 5 ADJ 775 : (2007) 4 AWC 3791 : (2007) 113 FLR 1049 :
(2007) 3 UPLBEC 2165

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

Tarun Agarwala, J.—By means of this petition, the petitioner has challenged the validity and legality of the award, passed by the Labour Court directing the petitioner to keep the workman in a surplus pool w.e.f. 1.1.1993 and to take work from him and also pay him back wages.

2. The brief facts leading to the filing of the present writ petition is that the State Government referred a dispute to the Labour Court for adjudication. The terms of the reference order was-

Whether the employers was justified in not giving work to the workman inspite of keeping him in the surplus pool as per the settlement dated 13.12.1984, if not, to what relief is the workman was entitled to?

3. Before the Labour Court, the workman filed his written statement contending that a settlement was arrived at between the Union and the Management on 13.12.1984 which was duly registered u/s 6-B of the U.P. Industrial Disputes Act. In this settlement, the management was required to keep the workman in a surplus pool and would be absorbed as a substitute against absenteeism on an unskilled job during the crushing season. It was alleged that inspite of the settlement, there was a requirement of work and the petitioner was not given any work and that new persons were employed and that some of the workers

mentioned in the settlement were taken in the service. The petitioner also filed their written statement and contended that the petitioner is a Company incorporated under the Companies Act and is engaged in the manufacture of sugar by vacuum pan process and that the service conditions of the employees in the Company are governed by the Standing Orders duly notified u/s 3(b) of the U.P. Industrial Disputes Act. The petitioner's contended that the Labour Union was not competent to espouse the cause of the workman nor had any locus standi to refer the dispute. It was further contended that there was no master and servant relationship between the petitioner and the workman at any stage and consequently no industrial dispute could be raised or referred under the U.P. Industrial Disputes Act. Further, the settlement was for a period of one year which had now lapsed and, therefore could not be enforced at this stage. Even otherwise, there was a delay of more than 9 years in making a reference, and on this ground, the reference could not be answered in the affirmative in favour of the workman. It was further contended that assuming that the settlement could still be enforced, at best, it only created a right of employment for the workmen and did not entitle him for reinstatement or back wages.

4. The Labour Court, after considering the evidence on record found that the Union was competent to espouse the cause of the workman and was competent to get the matter referred for adjudication before the Labour Court. The Labour Court, further found that the settlement could still be enforced and could be questioned in an Industrial Dispute u/s 4-K of the U.P. Industrial Disputes Act. The Labour Court found that there was no delay on the part of the workman in getting the matter referred for adjudication, inasmuch as, the workman was making an effort to get an employment under the settlement of 1984 and after failing in his attempt that he got the matter referred for adjudication of the dispute. The Labour Court found that the employers had adopted an unfair labour practice and also found that even though the workman was gainfully employed, the workman was liable to be reinstated with back wages to be given in a graded manner, namely, that the workman was entitled to be paid 25% of the wages from 1.1.1993 to 31.12.1997, 50% wages from 1.1.1998 to 31.1.2000 and 100% wages from 1.1.2001 onwards.

5. The petitioner, being aggrieved by the aforesaid award has filed the present writ petition.

6. Heard Sri Diptiman Singh, the learned Counsel for the petitioner and Ms. Sumati Rani Gupta, the learned Counsel for respondent No. 3.

7. The learned Counsel for the petitioner submitted that the Union was not competent to espouse the cause of the workman and therefore, no reference could have been referred u/s 4-K of the U.P. Industrial Disputes Act. In my opinion, the submission of the learned Counsel for the petitioner is bereft of merit. The Labour Court has gone into detail and came to the conclusion that the Union was in existence and that the workman was a member of this Union and that the Union was competent to espouse the cause of the workman, even

though, the competence of the Union was pending adjudication in a Second Appeal before the High Court. In my view, the findings given by the Labour Court, being findings of fact cannot be interfered with in the writ jurisdiction.

8. The learned Counsel for the petitioner submitted that the life of the settlement u/s 6-B(1) of the U.P. Industrial Disputes Act is one year and that, after the expiry of one year, the settlement comes to an end and cannot be enforced thereafter. Consequently, the award could not be passed on the basis of the settlement of 1984 which had come to an end after the expiry of one year. In support of his submission, the learned Counsel for the petitioner has placed reliance upon a decision of this Court in *Raza Textiles Labour Union, Rampur and Anr. v. R. Mohan and Ors.* 1964 (8) FLR 306 in which it was held that the settlement was required to be registered for a period of one year during which the settlement was to remain in force. Further reliance was made upon a judgement of this Court in *Triveni Prasad Shukla v. Presiding Officer, Labour Court, Allahabad and Anr.* 1985 (51) FLR 323, in which it was held that the Labour Court committed a manifest error of law in giving effect to a settlement which had exceeded one year.

9. On the other hand, the learned Counsel for the respondent submitted that even after the expiry of the period of one year, the settlement did not lapse and remained binding on the parties as a contract of employment. In support of her submission, the learned Counsel, placed reliance upon a decision of the Supreme Court in *South Indian Bank Ltd. Vs. A.R. Chacko*, and the decision of the Supreme Court in *Indian Link Chain Manufacturers Ltd. v. Their Workman* 1971 (23) FLR 321 , as well as another decision of the Supreme Court in *The Patiala Central Cooperative Bank Ltd. Vs. Patiala Central Cooperative Bank Employees" Union and Another*,

10. In order to appreciate the submissions of the learned Counsel for the parties, it is necessary to consider the provisions of Section 6-B(1) of the Act which reads as under:

6-B. Settlement outside conciliation proceedings.-(1) A settlement arrived at by the agreement between the employer and workmen otherwise than in the course of conciliation proceeding shall except as provided in sub-section(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.

11. From a perusal of the aforesaid provision, it is clear that a settlement arrived at between an employer and a workman, which is duly registered, is binding on the parties to the agreement. The proviso stipulates that the settlement would remain in force for one year from the date of its registration. When a settlement is registered under the provisions of the Act, it has the effect of imposing a statutory contract governing the relation of the employer and the employee.

After the expiry of the period of one year, as contemplated u/s 6-B(1) of the Act, the settlement does not come to an end nor the lapsing of the settlement has the effect of wiping out the liabilities flowing under the said settlement. The settlement is not terminated after the expiry of one year. The employer is under an obligation to give benefit under the settlement to the employee until a fresh settlement is arrived at or the earlier settlement is revoked.

12. The settlement is binding on the parties and would remain in force for one year. This means that the settlement cannot be terminated by a unilateral act of one party before the expiry of the period of one year but could be done after the expiry of the period of one year. Further, even after the expiry of the period of one year, the settlement does not lapse nor does it terminates automatically but continues to remain binding on the parties till such time as the settlement is revoked, superseded or modified. The reason is that the settlement does not lose its effect after the period of operation and continues to have its effect as a contract between the parties. There is another aspect of the matter. Section 14-A of the Act provides prosecution against a person who commits a breach of the settlement during the period when the settlement was in force. After the expiry of the period, the settlement continues to remain binding as it creates a contract between a parties. This is precisely what the Supreme Court held in the case of *South Indian Bank Ltd. v. A.R. Chacko* namely,-

Even if an award has ceased to be in operation or in force and has ceased to be binding on the parties under the provisions of S.19(6) it will continue to have its effect as a contract between the parties that has been made by industrial adjudication in place of the old contract till this new contract is displaced by a fresh contract.

13. In my view, the decision of this Court in *Triveni Prasad Shukla (supra)*, holding that the Labour Court had committed an error in giving effect to a settlement exceeding one year is against the dictum of the judgment of the Supreme Court and is therefore, per incurium.

14. In view of the aforesaid, the submission of the learned Counsel for the petitioner that the settlement came to an end after the expiry of one year is patently erroneous. The settlement continued to remain binding on the parties till such time the said settlement was modified or superseded by another settlement or was revoked. In the present case, the settlement has neither been revoked nor modified nor superseded and therefore, the settlement continues to remain binding between the parties.

15. For the reasons stated aforesaid, namely, that the settlement remained binding, the reference was rightly made and it was not open to the petitioner to contend that there had been a delay in making the reference. So long as an industrial dispute existed or was apprehended, a reference could be made by the State Government u/s 4-K of the Act. In the present case, the Labour Court has given a finding that the Union as well as the workman had raised the issue of

employment of the workers from the surplus pool through various letters and therefore, came to the conclusion that the workman was pursuing his remedy and that the delay in making the reference was clearly explained by the workman and that the workman was not sitting over the matter. Consequently, the judgment cited by the learned Counsel for the petitioner, namely, *The Nedungadi Bank Ltd. Vs. K.P. Madhavankutty and Others*, Assistant Executive Engineer, Karnataka v. Shivalinga, (2002) 1 LLJ 457SC and *Haryana State Coop. Land Development Bank Vs. Neelam*, are not applicable to the facts and the circumstances of the case.

16. This takes us to the next submission of the learned Counsel for the petitioner, namely, that the settlement did not give any right of employment to the workman and that the settlement only spoke of a creation of a surplus pool.

17. The learned Counsel for the petitioner submitted that no dispute could have been referred under the industrial dispute as he was not a workman nor his services were terminated, discharged or retrenched. The learned Counsel for the petitioner submitted that the settlement clearly indicated that the workman had never worked with the petitioner in the services of the petitioner at any point of time and that merely on the request of the Union, his name was kept in the surplus pool, which by itself did not justify in raising the industrial dispute under the provisions of the U.P. Industrial Dispute Act. The learned Counsel for the petitioner submitted that u/s 2(1) of the Act an "industrial dispute" has been defined as a dispute or difference between an employer and a workman and that since the services of the petitioner was never terminated, discharged or retrenched, no industrial dispute could be referred. In my opinion, the submission of the learned Counsel for the petitioner is misplaced and also bereft of merit. The relevant portions of the settlement reads as under:

In the following cases the management has agreed to create a "Surplus Pool" of the workman concerned. Their surplus pool list will be prepared on the basis of their actual working days and senior hands will be given the top priority in employment. Firstly they will be absorbed as "Substitutes" against "Absentees" on unskilled jobs out of this "Surplus Pool" and in case of unskilled vacancies they will be employed against these vacancies, during the crushing season.

That Shri Devendra Singh S/o Sh. M.S. Kakran has never been on the rolls of the company and he is not entitled to any relief, but on the special request of the union, the management has agree to put him as unskilled mazdoor in the surplus Pool along with other workers mentioned in para 8 and 14-D above on the same terms and conditions. But this will not make any precedent for other such persons.

18. From the aforesaid, the management agreed to put the workman in the surplus pool who would be absorbed as a substitute against absenteeism on an unskilled job during the crushing season.

19. Once the management agreed to keep the workman in the surplus pool to be

absorbed as a substitute against absenteeism on an unskilled job, he was automatically categorised and classified as a workman. Clause B(vi) of the standing orders covering the condition of employment of workman in Vaccum Pan Sugar Factories in U.P. defines a substitute as-

(vi) A "substitute" is one who is employed in place of a permanent or seasonal workman who is temporarily absent on leave or otherwise.

20. In view of the aforesaid, the contention of the petitioner that respondent No. 3 was not a workman and therefore, no industrial dispute could be raised is misconceived. Further, the contention that no industrial dispute could be raised u/s 2(7) of the Act because the services of the workman was neither terminated, discharged or retrenched is again erroneous, inasmuch as, the industrial dispute, if any, can be raised not only in connection with the employment but also in connection with the non-employment of any person. In the present case, the reference order is loud and clear, namely, the non-employment of the workman in terms of the settlement. The reference made was in consonance of the provisions of Section 2(1) of the U.P. Industrial Disputes Act.

21. The learned Counsel for the petitioner submitted that the settlement in any case did not give any right to the workman for reinstatement or for back wages and submitted that the Labour Court committed a manifest error in granting reinstatement and back wages.

22. No doubt the agreement indicates that the management had agreed to create a surplus pool and from this surplus pool, the workers were to be absorbed as a substitute during the crushing season. It has come on record that the management never implemented this settlement since the Union did not comply their part of the agreement and did not withdraw the dispute pending before the Labour Court. Consequently, the surplus pool was not created. Assuming that the stand of the management is correct, nonetheless, the workman's name should have been kept in the surplus pool for the simple reason that no case was pending against the workman before any Labour Court or Tribunal. Consequently, the management ought to have kept the name of the workman in the surplus pool and should have offered him a job as and when there was an absenteeism on an unskilled job during the crushing season.

23. The contention of the learned Counsel for the petitioner that the settlement did not give any right of employment to the workman is correct but the non implementation of the settlement amounts to an unfair labour practice adopted on the part of the management. On the other hand, the settlement created a legitimate expectation for the workman to get an employment in the Company in the near future and such legitimate expectation became an industrial dispute when other workers were given employment. In this regard, the Labour Court has given a categorical finding that several persons mentioned in the settlement were given employment by the Management which fact has not been disputed. The management however, disputes employment being given to new persons.

However, one thing is clear that it could not be said that no worker in all these years had gone on leave and that there was no absenteeism of any workman in the Company on an unskilled job. Consequently, vacancies in the form of absenteeism must have occurred every now and then in the past years during the crushing season and if the surplus pool had been created, the petitioner would have been offered an employment as a substitute in the Company. By not creating the surplus pool and by not offering any employment to the workman under the settlement, the management had adopted an unfair labour practice. Consequently, the Labour Court could have only give a direction to the management to employ or give work to the workman as per the settlement. The Labour Court presumed that if the settlement had been implemented the workman would have earned wages. In my view, this presumption of receiving the wages is purely based on surmises and conjectures coupled with the fact that the Labour Court had also given a finding that the workman was gainfully employed during the interim period. Consequently, this Court is of the opinion that the award of the Labour Court to the extent of directing the management to reinstate the workman and to pay back wages was totally erroneous.

24. In view of the aforesaid, the writ petition stands partly allowed and the award is modified to the extent that the petitioner will place the workman in the surplus pool and take work from him as a substitute on an unskilled job whenever there is an absenteeism in the ensuing crushing season. The workman is also entitled for a payment of cost of Rs. 10,000/- which shall be paid by the petitioners to the workman within six weeks from today.