

(2011) 09 MAD CK 0177

In the Madras High Court

Case No : Writ Petition No. 18624 of 2011 and M.P. No. 1 of 2011

Universal Brakes (P) Ltd.

APPELLANT

Vs

The Presiding Officer, Employees Provident Fund Appellate
Tribunal (Ministry of Labour and Employment), The Assistant
Provident Fund Commissioner, Employees Provident Fund
Organisation and V. Sivadasan

RESPONDENT

Date of Decision : 14-09-2011

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2, 7A, 7I
Industrial Disputes Act, 1947 — Section 18(1), 2A(2)

Citation : (2011) 09 MAD CK 0177

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Ravindran, for T.S. Gopalan and Co, for the Appellant; K.
Gunasekaran, ACGSC for R 2, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner is an employer. They have come forward to challenge an order passed by the first Respondent Employees Provident Fund Appellate Tribunal made in ATA No. 405/13/2006 and seeks to set aside the order dated 3.5.2011. When the matter came up on 9.8.2011, this Court directed Mr. K. Gunasekaran, learned Counsel for the PF Department to take notice for second Respondent. Accordingly, he took notice and he has also filed a counter affidavit, dated 12.8.2011.

2. The circumstances leading to filing of the present writ petition are as follows:

It is seen from the records that one Sivadasan, the third Respondent, who was working as a driver in the Petitioner company was discharged by an order dated 7.3.1997 after payment of notice pay and compensation. At that time, the Company had decided to sell a three wheeler of the company, which was an Autorickshaw. After the receipt of the compensation, the said Sivadasan had

raised an industrial dispute before the Assistant Commissioner of Labour u/s 2A(2) of the Industrial Disputes Act. Subsequently, the dispute was taken to the Labour Court, Coimbatore and was taken on file as I.D. No. 320/1997 by the Labour Court. After notice to the Petitioner company, an Award was passed on 3.7.2002, wherein and by which the Labour Court had directed reinstatement of Sivadasan with backwages and other attendant benefits. The Petitioner management filed a writ petition before this Court being W.P. No. 5776 of 2004. This Court had granted an interim stay on condition that the Petitioner deposits 50% of backwages ordered by the Labour Court. The management had also complied with the condition and had deposited the said amount with the labour court on 2.4.2004. The workman had reported duty on 27.12.2003.

3. In the meanwhile, when the matter was pending before this Court, the workman came up for a compromise to settle the matter amicably. Therefore, a settlement was reached between the management and the workman Sivadasan u/s 18(1) of the Industrial Disputes Act. By the said settlement, the workman had agreed to accept his discharge order dated 7.3.1997 and also agreed that he was deemed to be relieved from the date of discharge. In lieu of the said acceptance, the management had agreed to pay Rs. 2,35,000/- as a full and final settlement of accounts including payment of gratuity, bonus, leave salary, arrears of salary, exgratia in the manner indicated therein. The workmen had also agreed that the management can withdraw Rs. 74880/- deposited with the labour court as a condition imposed to maintain the grant of stay. He had also agreed not to press his complaint for claiming minimum wages. He had also agreed to withdraw the computation petition in C.P. No. 911/2003 pending before the labour court, Coimbatore. The management had also agreed that a sum of Rs. 18,015.15 settled along with the discharge order can be retained by the workmen. The settlement, dated 6.5.2004 settling the industrial dispute and the other pending issues between the management and the workman Sivadasan was complied with and the workman had also received the amount of Rs. 2,35,000/- and passed on the receipt. A memo was filed before the labour court for withdrawing the computation petition. The matter was reported before this Court and this Court had dismissed W.P. No. 5776 of 2004 as being settled out of court in terms of memorandum of settlement dated 6.5.2004.

4. It was after the disposal of the writ petition, the second Respondent sent a notice dated 12.10.2004 stating that since the amount of Rs. 2,35,000/- was paid towards gratuity, bonus, leave salary, arrears, exgratia, the management was directed to inform as to the amount of backwages paid to the workmen. The Petitioner management replied that no backwages were paid and the workman had agreed to receive the amount paid in respect of other heads and also withdrew his industrial dispute. In the meanwhile, the workmen had sent a report to the Respondent PF authorities stating that he should get his PF amount for 7 years and also the pension and other benefits. The management sent a further letter dated 22.9.2005 stating that the present attempt by the third Respondent was not valid and he cannot claim any contribution for the period for

which he had neither worked nor agreed to be treated as duty. A further representation was also sent on 17.11.2005, in which the terms and conditions of settlement was also brought to the notice. Notwithstanding the same, the second Respondent had passed an order u/s 7A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 claiming contribution for the period from 7.3.1997 to 26.12.2003 in respect of the third Respondent. It was stated that because of the compromise between the employer and the employee, the terminal benefits cannot be defeated. Since the labour court had granted reinstatement with 50% of backwages and it was also confirmed by the High Court, they should pay the contribution for the said period which had worked out to Rs. 38474.20. It was also informed that they should pay damages and interest on the said amount, failing which an appropriate action will be taken.

5. The Petitioner management filed a review application before the second Respondent and the same was also rejected by the second Respondent on 21.6.2006. It was thereafter, the Petitioner had filed an appeal u/s 7I before the Tribunal, namely the first Respondent. In the list of enclosures, they had enclosed settlement u/s 18(1), the receipt given by the third Respondent, the order of the High Court and various replies sent by them. The Tribunal without reference to any of these materials stated that the High Court had directed a deposit of 50% of backwages and that the Petitioner had complied with the same. Therefore, the workman must be deemed to have been employed during the said period. The Tribunal in the impugned order had observed as follows:

It is true that the agreement reveal that the parties agreed that the payment is not subject to PF deduction, as per the law, the Appellant is bound to deduct the contribution and the settlement cannot defeat the law. In the case of Bengal Ingot Company Limited Vs. The Regional Provident Fund Commissioner and Others, , the Hon"ble High Court of Calcutta held that "even though it is provided in the agreement that no Provident Fund benefit could be extended to employees if under the law the Appellant to pay the Provident Fund dues the agreement of the party cannot over write the provision of the statue.

It is the duty of the Appellant to deposit the contribution of employee and employer and if he fails to discharge his lawful duty, he cannot take the benefits of the same as held by their lordship. In the case of Central Provident Fund Commissioner and Another Vs. S.K. Nasiruddin Beedi Merchant Ltd., .

No inconsistency is noticed.

So saying the appeal was dismissed and challenging the same, the writ petition came to be filed.

6. The contention raised by the management was that the order passed by the Respondent was erroneous and there was no backwages paid to the workman. The amount lying in the deposit was also allowed to be withdrawn by the management. The Award conditions were settled out of court. Since no wages were paid, the question of contribution on the said wages may not arise.

7. In the counter affidavit filed by the second Respondent, dated 12.8.2011, it was stated that what was paid by the settlement between the parties clearly revealed that the amount was paid for arrears of wages. Therefore, it is the wage within the meaning of Section 2(b) of the PF Act and that the Petitioner was liable to pay contribution to the said amount. No where in the affidavit, they have dealt with the fact that this Court dismissed the writ petition as being settled out of court and also that the amount which was originally deposited to the credit of the industrial dispute by an order of the writ petition was allowed to be withdrawn by the management. The workman had also agreed to accept his discharge and had withdrawn the other claims before various courts.

8. Mr. K. Gunasekaran, learned Counsel appearing for the PF Department placed reliance upon a judgment of the Bombay High Court in *Gosalia Shipping Pvt. Ltd., Goa and Another Vs. Regional Provident Fund Commissioner, Goa and Anr*, for contending that even if there is any settlement in respect of wages or basic wages, that will not affect the jurisdiction of the authorities u/s 7A of the PF Act. There is no quarrel with the proposition of law laid down therein. But the question is whether in the present case u/s 7A, the second Respondent had exercised his jurisdiction properly and whether the Tribunal was right in dismissing the appeal filed by the Petitioner

9. This Court vide its judgment in *The Management of Reynolds Pens India Pvt. Ltd. v. The Regional Provident Fund Commissioner-II, Employees Provident Fund Organisation* reported in 2011 (5) CTC 172 had dealt with the scope of the definition of Section 2(b) defining basic wages and the authority u/s 7A and it does not call for any further discussion on the same. But at the same time, in the present case, it is not as if any amount was paid under different heads camouflaging the real intention. But what has happened in the present case was that the labour court had granted reinstatement with backwages and the same was challenged. What was passed by this Court was only an interim order, which was always subject to final order and that the interim order cannot continue beyond the scope of final order in the writ petition.

10. A division bench judgment of this Court in *C. Kamatchi Ammal Vs. Kattabomman Transport Corporation Ltd. and Others*, has held that interlocutory orders made in the course of proceedings will necessarily lapse with the decision of the suit unless the suit is one for permanent injunction and the interim injunction is made permanent as a part of the decretal order made by the court.

11. Therefore, no reliance can be placed on the interim order passed by this Court. On his own volition, the workman had agreed to treat his case as a discharge and had agreed to receive lumpsum amounts under various heads. In none of the heads, there was reference to wages. The workmen also as a quid pro quo had agreed to withdraw all his petitions including claim towards minimum wages and the complaint for prosecution. Therefore, when the matter was compromised between the parties and this Court also recording the settlement and dismissed the writ petition as settled out of court, in the eye of

law, there is no liability to pay wages pursuant to the industrial dispute. The interim order came to be vanished after the disposal of the main writ petition. There was no suggestion that the settlement was a bogus settlement and barred by law. On the contrary, the courts have always encouraged settlement to bring lasting peace between the parties. When actually there was no wage paid to the third Respondent, the second Respondent cannot harp on the contention that what was paid was only wages on the premises that the workman was deemed to be in service. Such argument is not open to the Respondents and that the Tribunal had failed to even refer to the documents filed along with the Appeal. Hence the impugned order passed by the tribunal confirming the order of the second Respondent is liable to be set aside.

12. In the light of the above, the writ petition will stand allowed and the impugned order stands set aside. However, there will be no order as to costs. Consequently connected miscellaneous petition stands closed.