
Wings Wear (P) Limited Vs Workmen and Another

Civil Writ Petition No. 115 of 1995

Court: Delhi High Court

Date of Decision: July 4, 1996

Acts Referred:

Industrial Disputes (Central) Rules, 1957 " Rule 58, 58(4)#Industrial Disputes Act, 1947 " Section 18, 2(b)

Citation: (1996) ILR Delhi 597

Hon'ble Judges: J.K. Mehra, J

Bench: Single Bench

Advocate: Raj Birbal, M.K. Awasthi, Anand Chandra and D.N. Vohra, for the Appellant;

Judgement

J.K. Mehra, J.

(1) By this decision I will be disposing of two writ petitions being C.W.P. No. 22/95 and C.W.P. No. 115/95, both challenging different findings of the impugned award. On writ has been filed by the Management challenging findings on

the first and second term of reference and the other filed by the workmen challenging the findings on the third term of reference.

(2) This writ petition, i.e., C.P.W. No. 115/95 arose out of the decision of Industrial Tribunal-II, Delhi relating to a dispute referred to the said Tribunal by the appropriate Government for adjudication seeking quashing of the impugned

Award dated 17/11/1994 pertaining to terms of reference Nos. 1 and 2. The petitioner has also challenged the terms of reference covered by the order of reference vide notification No. F. 24(1558)/94-Lab./29734-39 dated 3/06/1994.

The terms of reference in the present case are as under :""(1) Whether the workmen are entitled to increase in wages (a). Rs. 263 P.M. in terms of the settlement dated 5-3-91 and if so, to what relief are they entitled and what directions

are necessary in this respect? (2) Whether the workmen shown in Annexure A are entitled to wages for the lockout period w.e.f. 20-3-94 and if so, what directions are necessary in this respect? (3) Whether the transfer of S/Shri

Raghubir Singh, Birbal Hans Raj, Sunder Vir, Pyare Lal, Dharam Pal, Mam Chand, Kishan Lal, Asha Ram, Sudhir Kumar, Mithai Lal, Sukhu Ram, Ram Garib, Dhan Singh, Attar Singh, Prabhu and Ram Pher is legal and/or justified and if

not to what relief are they entitled and what directions are necessary in this respect?

(3) The first term of reference relates to a settlement which is alleged to have been reached on 5/03/1991 between the management and the workman whereunder increase in wages of Rs. 263 per month was provided for while the

second term of reference pertains to workmen shown in Annexure-A to the order of reference who are alleged to have been locked out w.e.f. 20th March 1994.

(4) The contentions of the petitioner management in short are as under :

(5) The memorandum of understanding dated 5/03/1991 did not amount to a settlement as contemplated u/s 2(b) read with Section 18 of the Industrial Disputes Act read with Rule 58 of the Central Rules and for that reason the said

document cannot be enforced as a settlement. Counsel for the management has relied upon inter alia the following judgments : (i) Workmen of Delhi Cloth and General Mills Ltd. Vs. The Management of Delhi Cloth and General Mills

Ltd., (ii) International Airport Authorities, reported as ILR 1991 Delhi. 481 (iii) The Management, The Co-Operative Store Ltd. Vs. Ved Prakash Bhambri, (iv) Om Prakash Sikka Vs. Presiding Officer, Labour Court and Anr.

reported as 1983 (46) Flr 172.

(6) In the Case of Workmen of M/s. Delhi Cloth and General Mills v. Management of M/s. Delhi Cloth and General Mills Ltd., reported as 1970 Scr (2) 886, the Hon'ble Supreme Court has held : "(2) Rule, 28F(4) of the Industrial

Disputes (Central) Rules 1957 made under S. 38 of the Industrial Disputes Act has full force of law of which judicial notice can be taken. This rule must be fully complied with if the settlement is to have a binding effect on all workmen.

(896A).

(7) This Judgment was followed in Om Prakash Sikka Vs. Pressing Officer, (supra) where this Court has also held that compliance with the Rule 58 (4) was mandatory and same view was also held in another case of The

Management, The Co-Operative Store Ltd. Vs. Ved Prakash Bhambri, where it was reiterated that Rule 58 and Form H of Industrial Dispute (Central) Rules 1957 have to be strictly followed before the statement could be considered as

valid. In this case even though there was no plea still the Court found the Tribunal was right in taking note of the fact that the mandatory requirement of Rule 58 of Industrial Disputes (Central) Rules had not been complied with and that

non-compliance effected the validity of the settlement. In this case also Court had followed the law laid down by the Hon'ble Supreme Court in the case of Dcm (supra) which is to the effect that the plain reading of the Rule and Form

shows that the settlement has to be in compliance with the statutory provision and the Hon'ble Supreme Court in that case had held the settlement to be invalid though it was arrived at in the course of the conciliation proceedings as the

settlement was not entered into with the concurrence of conciliation officer and the provisions of Rule 58(4) had not been complied with. This settlement was held to be invalid.

(8) On his attention being drawn to the case of Workmen of M/s. Hindustan Lever Ltd. and Ors. Vs. Management of M/s. Hindustan Lever Ltd., reported as 1984 Labour and Industrial Cases 276, Mr. Birbal pointed out that the case

of Hindustan Lever was altogether different since the understanding reached by exchange of letters had been consistently followed for the last 25 years and the Management had got some of the references of workers rejected in the light

of such understandings and for that reason the Supreme Court had observed that the plea of estoppel will apply against the management whereas there was no such situation prevailing in the present case. Mr. Raj Birbal also argued in the

alternative that assuming the said memorandum of understanding to be amounting to a settlement the document itself nowhere provided for an increase of a sum of Rs. 263 per month. He has referred to para 5 quoted herein below of the

alleged settlement which provided that even if the base of 1960=100 of the cost of living index number is changed by Delhi Administration even then the management shall not change the base and shall pay @ 85 paise per point increase

in index number when payable. A 5. The Delhi Administration has made the base 1960=100 and in future if the Administration stops the above base, even then the Management will give D.A. on the basis of 1960 = 100 series @ 0.85

paise per point.

(9) It is not disputed before me that there is no change in the base of 1960 being 100 so far. Since the base has remained static the computation is being carried on in terms thereof and there was no question of any increase in wages as

per the settlement as alleged. It has also not been disputed before me by either party that any increase in the cost of living index number over the wages that were being, drawn at the time of the alleged settlement was being compensated

by adequate neutralisation factor of increase in dearness allowance by computing such amount @ 0.85 Paise per point increase in the cost of living index. It appears that by computing the amounts of DA based on the aforesaid agreement

the total amount of such difference in DA comes to Rs. 263 for a month and that I am told has already been and is being paid to the workers. The settlement has been carefully perused and there is no provision made therein for any

payment other than the neutralisation by increase in DA which is to be computed in terms of clause 5 quoted above. In that view of the matter I hold that the workers are entitled to the payments mentioned in the settlement in terms of

clause 5 quoted herein-above which amount incidentally coincides with the amount mentioned in the first term of reference, and is payable by way of DA under the said settlement. No other amount is payable under the said settlement. I

further clarify that even though the said settlement may not qualify to be a settlement under the Industrial Disputes (Central) Rules, the management will continue to be bound to honour this as an agreement as it has already been acted

upon by both the parties and its existence was never disputed. Therefore, both parties are estopped from challenging the same at this late stage. A reference be made, in this connection, to the judgment of Hon^{ble} Supreme Court in the

case of Workmen of Hindustan Levers Ltd. and Ors. v. Management of Hindustan Lever Ltd. reported as 1984 Lab. I.C. 274.

(10) The real controversy has been ranging between the parties and on the second term of reference.

(11) On the second term of reference the nonparties contention of the petitioner is that the appropriate Government by framing the terms of reference in the present form has resorted to adjudication and in fact has tried to prevent an

investigation as to whether it was a case of lock out or strike. This the appropriate Government could not do.

(12) According to Mr. Raj Birbal instead of framing the term of reference to read as to whether the workmen shown in Annexure-A had gone on a strike or whether there was a lock out by the Management, if so, whether the act of the

workmen or the management as the case may be was justified and to what relief, if any, the workmen are entitled." In support he has cited the order of the Hon^{ble} Supreme Court dated 14/01/1991 in Petition for Special Leave to

Appeal (Civil) No. 17068/90 wherein the Hon^{ble} Supreme Court had directed the Delhi Administration under such circumstances to refer the dispute for adjudication and had stated that "... the Delhi Administration should refer for

adjudication as required u/s 10(1)(D) read with Section 12(5) of the Act, the dispute as to whether there was lock-out and in case it was so, it was legal and justified" for adjudication.

(13) According to Mr. Raj Birbal there was clearly a dispute on the question as to whether there is any lock out or whether the workmen had resorted to strike. From the correspondence and the award it does appear that all started as a

strike. I have been taken through the record of the Conciliation Office where plenty of correspondence is available on the labour office record showing that the management right from the very beginning had been alleging that the workmen

had resorted to unjustified strike. Infact he drew my attention to the relevant page where the draft terms of reference were being prepared in the draft failure report dated 31/05/1994 wherein the term of reference originally drafted reads

whether the workmen shown in Annexure-A are entitle to Wages for the non-employment. ...", the words non-employment have been deleted and substituted by the word lockout. Even if the appropriate Government had retained the

expression as it was originally drafted, it was open to the Tribunal to adjudicate as to whether this non-employment had resulted from strike or lock out and whether such strike/lock out was legal and justified. But by such amendment as

has been carried out in the office of the Labour Commissioner which could have been on the advise of somebody, the entire context has been changed and in fact, it has narrowed down the scope of the references drastically. The

administration has proceeded to do what- only the adjudicator could do and that too, after hearing both the parties and recording evidence. Another peculiar fact which has been alleged in this case is the political interference alleged by

the management in favor of the workmen as a consequence where of the 2nd term of reference was framed. The final conciliation proceedings appear to have been held at the residence of the Labour Minister for National Capital

Territory of Delhi. It is, however, not possible for me to conclude either way in this connection. But I agree with Mr. Birbal that the term of reference has been framed in a manner which pre-judges the main issue, i.e., whether there was a

strike or a lock out and whether the same was legal and justified and refers only a narrow question of the entitlement of wages for the lock out period w.e.f. 20/03/1994. In the face of such correspondence available on the record of the

labour office such a term of reference could not have been framed and in doing so the appropriate Government has really done what it was not competent to do i.e., to adjudicate upon the question as to whether there was a strike or a

lock out and whether it was legal and/or justified. This matter stands concluded by a Full Bench judgment of this Court, which is binding on the appropriate Government, in the case of I.T.D.C. reported in 1982(6) Lic 1309 This Full

Bench judgment of this Court has been followed by Full Bench of Himachal Pradesh High Court in the case of Village Papers, reported as 1993 (1) Lj 480. In the case of ITDC, and the real dispute between the parties was whether there

was a lock out or a closure in the establishment and the government referred the dispute by assuming that there was a lockout, the Full Bench of this court held that such order of reference was liable to be interfered with as the Labour

Court could not travel beyond the term of reference and decide the question as to whether there was a lock out. The Full Bench observed that :""It is settled law that the jurisdiction of the Labour Court Industrial Tribunal in industrial

disputes is limited to the points specifically referred for its adjudication and the matter incidental thereto and it is not permissible to go beyond the terms of the reference. An Industrial Adjudicator constituted under the Act is not vested

with any inherent power of jurisdiction. It exercises such jurisdiction and power only upon and under order of reference limited to its term. It cannot travel beyond the term of reference except for ancillary matters. Making of an order of

reference is undoubtedly an administrative function, but even that is amenable to judicial review in the proceedings under Article 226 under certain facts and circumstances. An order of reference is open to judicial review if it is shown that

the appropriate Government has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration. The whole of the correspondence between the

management and the Labour Commissioner, the Union for the workmen and the Labour Commissioner and the notices displayed by the management (the substance of which has been reproduced above) were before the Secretary

(Labour, Delhi Administration when it passed the order of reference dated 27/04/1981. We are of the view that the existence of lock-out itself being the real dispute between the management and its workmen, the term of reference

proceeds on the assumption that there was lock-out with effect from 1/01/1981.

(14) In the present case from the term of reference it is clear that the issue of ""whether it was a lock out or strike"" had not been referred for adjudication even though there were letters on the record of the Labour Commissioner written in

the month of March and May to the effect that workers were not reporting for work. I have no doubt in my mind that the appropriate Government had not referred the real dispute in the absence whereof there could be no award on the

question, ""whether it was a case of strike or a lock out? The appropriate Government clearly failed to exercise its jurisdiction properly. ML. proceeding to frame the second term of reference in the manner it has done.

(15) In response to the argument as to why the Management did not come to this Court immediately on the reference being made to have the omission rectified, Mr. Raj Birbal drew my attention to law laid down in the case of D.P.

Maheshwari Vs. Delhi Administration and Others, and which has been followed by this Court in Taj Services Ltd. Vs. Delhi Administration, reported as 1989 (58) FLR 911 (Delhi). Mr. Vohra has contended that the Management should

have come to this Court at the earliest opportunity and before waiting for the entire proceeding to be over the question as to whether the reference could be challenged at the very outset by claiming a preliminary issue is no longer in doubt

in view of the decision in the same Bench of the Hon"ble Supreme Court, which have delivered the judgment in the case of D. P. Maheshwari (supra) while dealing with the case of Hindustan Levers which is reported in the following year

as 1984 L ab & I.C 276. The subsequent decision of the Hon"ble Supreme Court wherein the said case of Hindustan Levers in paragraph 25 the Hon"ble Supreme Court had observed as under :""In industrial adjudication, issues are of

two types :(i) those referred by the Government for adjudication and set out in the order of reference and (ii) incidental issues which are sometimes the issues of law or issues of mixed law and fact. The Tribunal may as well frame

preliminary issues if the point on which the parties are at variance, as reflected in the preliminary issue, would go to the root of the matter.

(16) The matter has been set at rest in a recent judgment of the Hon"ble Supreme Court in the case of National Council for Cement & Building Materials v. State of Haryana & Ors, Civil Appeal No. 3519196 arising out of SLP (C) No.

27302195 decided on 15/02/1996 wherein the position of law as laid owl in the case of D. P. Maheshwari has been reaffirmed, and restored. Since there was no reference there could also be no pleading and consequently no issue or

finding whether there was a strike or lock out and whether strike or the lock out is illegal and unjustified. The position that wages or any part there of for strike or lock out period can be granted only if there is a finding that the strike or

lock out is illegal and unjustified is also not disputed. A reference may be made to the following judgments which reflect the consistent view of the Hon"ble Supreme Court: (i) India Marine Service Private Ltd. Vs. Their Workmen, (ii)

Northern Dooars Tea Co. Ltd. Vs. Workmen of Demdima Tea Estate, :(iii) Management of Pradip Lamp Works Vs. Pradip Lamp Wokers Karamcharya Sangh and Another, .(iv) The Statesman Ltd. Vs. Their Workmen, reported as

1976 (1) Lj 484 (SC).

(17) Mr. Birbal in the light of the aforesaid cases decided by the Hon"ble .Supreme Court has agreed that in .those cases the Hon"ble Supreme Court awarded only 50 per cent of the wages. He in particular referred to the case of The

Statesman Ltd. where the facts were somewhat similar to the present case that is what started as a strike resulted in a lock out where the management did not allow the workers to resume work even after they expressed their desire to

return to work. Even though here, was nothing wrong in the term of reference in that case the Hon"ble Supreme Court awarded 50 per cent of the wages. Similarly in the case of India Marine Services (.P) Ltd. 50 percent of the. wages

was awarded in the present case. I am informed that in fact worker are (sic) paid their wa August. .Tnr.el995.to? 4th i.e. period short A except for

(18) From the detailed arguments advanced by both parties it is difficult to absolve workmen of entire blame for the non-employment.

(19) I have already held hereinabove that the appropriate Government had failed to exercise its jurisdiction in not referring the real dispute for adjudication and to that extent there clearly appeared to be non-application of mind. I had also

sent for the record of the Appropriate Government and found that in the original record the issue which was sought to be referred the term of reference originally proposed mentioned ""non-employment"" which was deleted and the term

Lock-out"" was written. The term ""non-employment"" would have had much wider scope and would have enabled the Tribunal to exercise jurisdiction to adjudicate upon the question as to whether non-employment was the result of strike

or a lock out and whether such strike or Jock out was legal and/or justified. The appropriate government clearly exceeded its jurisdiction in adjudicating upon the cause of such a non-employment being the result of lock out and thereby

confining the term of reference only to wages for lock out period.

(20) The contentions of the management have been rebutted by Mr. Vohra who alleges that the judgments of Shambhu Nath Goel v. Bank of Baroda reported as 1978 (i) Lj 488 a and Avon. Services" case reported as I as also

Bombay Union of Journalists and Others Vs. The State of Bombay and Another, are not exactly applicable and he states that in any event appropriate government cannot be precluded from expressing its prima facie view. The only

reference made in opposition to other cases cited by Mr. Birbal is that those are not relevant in view of the fact that the management had accepted settlement which had been acted upon. The thrust of his argument has mainly been that the

management was represented before authorities and did not place its case before the said authorities.

(21) Mr. Vohra has gone to the extent of contending that since the management had not properly presented its case before the appropriate Government, it by its own conduct is now estopped from raising the plea that the real dispute has

I not been referred. I am unable to agree with Mr. Vohra as there can be no estoppel against law. He has also pointed out that Labour Inspector had visited the establishment of the management and submitted his report wherefrom,

inspire of the management"s letter, it becomes clear that it was a case of a lock out. Mr. Vohra has contended that High Court is not sitting in appeal over the decision of the appropriate Government. No doubt he is right that this Court is

not sitting in appeal over the decisions of the appropriate Government, but if the appropriate Government has failed to exercise its jurisdiction which was vested in it, or has exercised jurisdiction, which is not vested in it, this Court has

jurisdiction to examine that question and to pass appropriate orders.

(22) Mr. Vohra has next contended that no prejudice has resulted to the management as the Industrial Tribunal had framed an issue and both the parties had led their respective evidence to show whether it was a case of lock out or strike

and after looking into the evidence the Tribunal came to the finding infavour of the workmen and against the management and it held that the management did declare a lock out after the workmen had gone on strike. According to Mr.

Vohra in the light of this itself the judgment of Full Bench in the case of I.T.D.C. reported as 1982 Lic 1309 is not applicable. Another reason why according to Mr. Vohra the judgment of Full Bench cannot be applied is because it had

failed to consider the effect of judgment of Hon"ble Supreme Court in the case of C. P. Sarthy Vs. State of Madras, reported as However, Mr. Vohra has not dealt with subsequent pronouncement of the Hon"ble Supreme Court

referred to hereinabove where in their Lordships have clearly laid down that appropriate Government has no jurisdiction to adjudicate or decide any issue. There the appropriate Government had come to a finding that the person before

them was not covered by the definition of the term ""workman"". According to Hon"ble Supreme Court. this amounted to adjudication which the appropriate Government could not do and they struck down the decision of the appropriate

Government and ordered a reference. Mr. Vohra has not averted to distinguish this authority. His other contention is that the petitioner had ample opportunity to go to the appropriate Government and have a corrigendum issued to get the

term of reference corrected. Mr. Vohra contended that in the Full Bench decision of this Court in the case of I.T.D.C. was tendered on the Court being approached at the stage of a preliminary issue. Such a tiling could not be done in

view of the law laid down by the Hon"ble Supreme Court in the cases of D. P.Maheshwari v. Sbi (supra) and C. A. No. 3519196 arising out of SLP (C) No. 2730295 (supra). Mr. Vohra further contended, which in my opinion is

without justification or merit, that it was for the management to prove that the lockout was Justified. I find that there is no term of reference requiring the determination of this fact. In the absence there fit was for the party claiming the

wages to have proved lack of Wings Wear Workmen Lal Jhanda Union & Anr.justification on the part of the management which would have enabled the Tribunal to Award the wages after examining the merits or the lack of the claim for

wage"s for the period of the alleged lock out.

(23) Assuming everything to be in favor of workmen, still find that the impugned Award for payment of wages during the period of alleged lock out could not be sustained as there is no finding returned by the Tribunal that the lock out

was illegal and unjustified. In the absence of such a finding no wages could be awarded.

(24) In the writ petition filed by the workers the decision of the Tribunal on the third term of reference has been challenged. It is not disputed before me that the job is transferable from one establishment to the other and all that they have

done is to post them to the new factory site. Mr. Vohra contended since there is no work available, this transfer is mala ade and could not be justified while Mr. Birbal has pointed out that the factory is coming up over there and work is

going to be made available. In any event. I have not been able to find anything wrong with the impugned award en this term of reference. The employer has transferred in exercise of its powers under the contract of employment to transfer

in Delhi, these workers from one establishment to the other. Even though the employer is unable to furnish adequate work to his employees, unless and until the term of employment provide for such contingency the employer has to pay

wages and is liable to pay wages so long as the employees are reporting for work and are available for the job. The management in the course of the hearing was directed to make certain adhoc deposits towards payment of wages for the

period subsequent to the award and they have made two deposits. It is directed that cut of the amount deposited the workers be paid their wages and if there is any balance left after payment of the wages the parties may move the Court

for appropriate directions regarding the disposal of such amount. I find no merit in the second writ petiti is hereby dismissed. The writ petition No. 115195 is hereby allowed in terms set out hereinabove .Rule nisi is made absolute in the

above terms and the Award of the Tribunal on the 1st term is modified as above and on the 2nd term of reference is hereby set aside. In the circumstances of the case the parties are left to bear their own costs.

(25) A copy of this judgment be placed on the file of C.W.P.No. 22195.A.T.G.

IN The HIGH. Court Of DELHI C.W.P. No. 22195 Dated of Decision, 4/07/1996 Secretary, Wings Wear Workers Lal Jhanda, Union & other... Petitioner. Through : Mr. D. N. Vohra, Advocate-Versus-M/s. Wings Wheat (P) Limited.. Respondent Through : Mr. Raj Birbal Sr. Advocate, with Mr. M. K. Awtaney & Mr. Anand Chandjee, Advocates. CORAM : The Hon"ble Mr. Justice J. K. Mehra 1. Whether reporters of local papers may be allowed to see the judgment? 2. To be referred to the Reporter or not? J. K. Mehra, J. For orders see C.W.P. No. 115195.