

(1999) 09 KL CK 0061

High Court Of Kerala

Case No: O.P. No. 16232 of 1997-G

Bahulayan

APPELLANT

Vs

and Others Vs State of Kerala
and Others

RESPONDENT

Date of Decision: Sept. 24, 1999

Acts Referred:

- Industrial Disputes Act, 1947 - Section 2

Citation: (2001) 3 LLJ 653

Hon'ble Judges: K.S. Radhakrishnan, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K.S. Radhakrishnan, J.

Complaint of the petitioner is that the management unauthorisedly deducting the salary and bonus of the petitioners under the guise of implementing voluntary retirement scheme. Third respondent Travancore Plywood Industries Limited was a sick company. A Company Petition No. 36/1991 was filed at the instance of a creditor for winding up of the company. A direction was issued by this Court on April 8, 1994 for reviving the unit, for which an expert was appointed. He submitted a report suggesting certain remedial measures. A suggestion was made for Voluntary Retirement Scheme. A memorandum of settlement was entered into on January 24, 1996 between the management and the unions agreeing to implement the said scheme. Later a notice Ext. P3 was issued inviting applications from those persons who are willing to avail the benefit of the scheme. Several persons submitted their applications including the petitioners. At that stage, further discussions were held which resulted in Ext. P4 bilateral settlement dated March 31, 1997. It was agreed that the voluntary retirement scheme would be implemented with effect from

March 31, 1997 and the company would commence operations on April 1, 1997. In the said meeting it was agreed by the Unions that the claim for arrears of wages for 18 months from October, 1995 to March 1997 would be settled by paying 60% of the total dues. With regard to the bonus it was agreed that the bonus would be paid at 8 1/3% of the amount of 60% of the wages paid to the employees. In implementation of Ext. P4, a list of 148 employees including the petitioners was published by the company.

2. Petitioners are now assailing the said agreement on various grounds. Counsel for petitioners submitted that Ext. P4 notice cannot be treated as settlement within the definition of Section 2(p) of the Industrial Disputes Act. It was further stated that none of the procedure contemplated under the Industrial Disputes Act were followed so as to effect legal validity for Ext. P4. According to the counsel, Section 10 of the Payment of Bonus Act obliges the management for payment of minimum bonus at the rate of 8.33% of the salary or wages earned by the employee during the accounting year. Any deviation from the same would entail penalty proceedings under the Payment of Bonus Act including prosecution. Counsel relying on a decision of the Supreme Court in [State Bank of India and others Vs. Mangnese Ore \(India\) Ltd. and another](#), contended that the conditions of labour cannot be varied or modified except by a written settlement or by a written memorandum duly signed by the parties incorporating the terms of understanding. According to the Supreme Court the bilateral settlement is an agreement otherwise than in the course of conciliation proceedings and such agreement will be signed (sic) by the parties thereto and a copy will be sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer. According to him none of the petitioners have voluntarily consented for the deductions at the rate of 40% from their salary and bonus.

3. A counter-affidavit has been filed on behalf of respondents 2 and 3. According to them Ext. P4 agreement was reached after negotiation with the management and 8 unions of which petitioners also represented. Agreement was entered into considering the fact that there was no manufacturing activities in the company. All the conditions in Ext. P4 were accepted by the unions representing the entire workers and no dispute of any nature was raised by anyone. It was stated in implementation of Ext. P4, a list of 148 employees including the petitioners was published by the company and all of them issued receipts. Counsel also relied on the decision of a Division Bench of the Bombay High Court in *Automotive and Allied India (P) Ltd. v. Regional Provident Fund Commissioner*, 1999-III-LLJ(Suppl)-165 (Bom-DB). The Division Bench of the Bombay High Court in that case held that as part of the overall settlement it was always open to the parties to give up the claim and there is no rule of law which prescribes that a beneficiary cannot give up or surrender his claim, even though it arises out of statutory provision. The Supreme Court in [Braithwaite and Co. \(India\) Ltd. Vs. The Employees' State Insurance Corporation](#), held it is perfectly legitimate for the employees, while settling their

dispute to come to a settlement that such payment shall not be reckoned for the purposes of various claims.

4. Facts reveal that the company was almost on the verge of liquidation and one of the creditors filed company petition for winding up of the company which resulted in this Court appointing an expert for reviving the unit. It is for revival of the company that Voluntary Retirement Scheme was introduced. Petitioners and various other employees opted for the said scheme with open eyes. Ext P4 would indicate that the Union represented by petitioners was also signatory to the same. Ext. P5 is the receipt given by the persons like petitioners which would indicate that they accepted the payment as full and final settlement of all the dues with the company. I am of the view that as a final settlement it is always open to the employees to give up their statutory claims. There is no dispute by the petitioners that they were not represented by the Union. The sole contention of the counsel for the petitioners is that as far as their claims are statutory, by an agreement the same cannot be taken away. This contention cannot be accepted.

5. I am of the view that the company is justified in contending that it is as part of a scheme for revival of the company that Voluntary Retirement Scheme was introduced. After having agreed to the said scheme and after having agreed to give up all claims petitioner cannot contend that they are entitled to get all statutory benefits. In my view of the matter this Court in this jurisdiction is not justified in sitting in judgment or interfering with the settlement reached between the parties.

6. O.P. lacks merits and the same is dismissed.