(2002) 04 MAD CK 0191

Madras High Court

Case No: Writ Petition No. 13909 of 1994

Sundaramoorthy M. and Others		APPELLANT
	Vs	
Commissioner of Labour and Another		RESPONDENT

Date of Decision: April 5, 2002

Acts Referred:

- Industrial Disputes Act, 1947 - Section 12(3), 12(4), 2A

Citation: (2002) 3 LLJ 499

Hon'ble Judges: A.K. Rajan, J

Bench: Single Bench

Advocate: T. Fenn Walter, for the Appellant; Ravindran, for T.S. Gopalan, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

A.K. Rajan, J.
This writ petition is for issue of writ of certorified mandamus calling for the records relating to the Order No. A2/79970/93, dated February 28, 1994, passed by the Commissioner of Labour in 2-A Dispute cases and quash the same and also to direct the first respondent to submit a failure report as required by Section 12(4) of the Industrial Disputes Act.

2. The petitioners were working in the second respondent-company Jonas Woodhead and Sons (India) Ltd. During October, 1992, the management was spreading a rumour that the industry was to be closed; and that if anyone wanted to go out, they may get compensation and go out of the employment. The management forced all the workers to submit their resignation letters and paid certain amounts stating that was towards full and final settlement. Hence, industrial disputes were raised challenging such retrenchment. Before the Labour Officer, the

management took a stand that the management and the union had entered into a settlement u/s 12(3) of the Industrial Disputes Act, on October 19, 1992 based on the decision taken by the General Body of the union whereby the workers agreed to resign and the management agreed to accept the resignation and pay certain amounts in full and final settlement. Accordingly the claims of the workmen had been settled and hence, they have no locus standi to claim reinstatement by raising industrial dispute. The Labour Officer refused to initiate conciliation and to submit a failure report as per Section 12(4) of the Industrial Disputes Act inspite of several issues that were raised. Instead, the various issues raised before the Labour Officer were adjudicated on merits by the Labour Officer and the Labour Officer sent letters, dated March 2, 1993 and March 3, 1993, taking that the disputes cannot be entertained, since the issue in dispute is covered by Section 12(3) settlement. Subsequently, the President of the union sent reconsideration petition to the Commissioner of Labour explaining the facts of the case and arising disputes numbering 34.

3. The Commissioner of Labour by order dated February 28, 1994 dismissed the consideration petition. In that order, the Commissioner of Labour had delved into the merits of the case and adjudicated upon the disputes of the case. Therefore, the orders of the Labour Officer as confirmed by the Commissioner of Labour is liable to be set aside.

4. The second respondent in his counter has stated that the workmen of the second respondent were members of Jonas Employees Union which was recognised by the second respondent. The wages and other service conditions of the workmen were governed by long term settlements made with the said union from time to time and one such long term settlement was made on September 13, 1989. The said settlement was to remain in operation till August 31, 1992. Despite that settlement, during middle of 1991, there were frequent labour unrest causing serious disruption. Therefore, the management declared lockout on June 7, 1991. By a settlement dated September 23, 1991 the lockout was lifted from September 30, 1991. There was rivalry to the union leadership in February, 1992 and it reflected in the day-to-day operation of the second respondent. Some of the workmen indulged in serious misconduct and therefore, disciplinary proceedings were initiated. Second respondent served orders of dismissal on 12 workmen on May 6 and May 7, 1992. The workmen indulged in violence and resorted to a stay in strike. By letter dated August 10, 1992 the Deputy Commissioner of Labour advised the workmen to resume work. The leadership of the union was insisting on the issue of 12 dismissed workmen being discussed and did not allow the workmen to resume work. Uncertainty was prevailing for more than five months. Though the workmen were willing to resume work, the leadership of the union did not allow them to resume work. Therefore, the workmen disillusioned by the leadership wanted to leave the service receiving some compensation. The other office-bearers of the union and the management held discussions regarding payment of compensation and on October

8 and 9, 1992, the parties agreed to pay the quantum of compensation payable to the workmen for leaving the services voluntarily. The office-bearers informed that they would convene the general body, apprise them of the understanding and after getting the mandate from the general body, they would sign a settlement. The general body of the union was convened on October 10, 1992. The workmen authorised the office-bearers to sign the settlement. Some of the workmen gave letters of resignation even on October 10, 1992. On the basis of the authorisation given to the office-bearers they brought the Conciliation Officer on October 19, 1992. A settlement was made u/s 12(3) of the Industrial Disputes Act. By this settlement, 96 workers would leave the services and they would be paid the compensation as indicated against their names in the annexure to the settlement. Pursuant to this agreement, workmen gave letters of resignation which were accepted by the second respondent and the amounts were paid as agreed. None of the petitioners retracted from that stand and withdrew resignation, nor refunded the amount received. At that stage, the President of the union wrote a letter making unfounded allegations against the management on October 15, 1992. It was replied stating that no workman was forced and if any workman who left the service wants to resile from the same, he can do so by refunding whatever amount he had received. The office-bearers also gave a letter, dated October 19, 1992, explaining the circumstances in which they were obliged to approach the management directly and settle the issues. On October 19, 1992, the President of the Union addressed another letter stating that the workmen were coerced to leave the services. That was replied by the management.

5. After submitting resignation and collecting the amounts as per the settlement, the workers filed petitions u/s 2-A of the Industrial Disputes Act alleging that the services were terminated by taking signatures in blank papers. The second respondent submitted reply explaining the circumstances in which the petitioners ceased to be in employment; and they left the services after resignation and receiving the amounts as per the settlement. The dispute raised u/s 2-A is not maintainable. The Conciliation Officer informed the petitioners that they had already resigned the job and settled the dues and therefore, the disputes raised by them are not maintainable. The President of the union complained to the first respondent that the officers of the Labour Department colluded with the management in signing the settlement dated October 19, 1992. The first respondent investigated into the complaint and by the letter, dated February 28, 1994, informed the President that the complaint was unfounded.

6. The present writ petition has been filed challenging the communication of the first respondent dated February 28, 1994. It was only a reply to the allegations/complaints made by the President of Jonas Employees Union against the officers of the Labour Department. This reply has nothing to do with the dispute raised by the petitioners before the Conciliation Officers. The prayer in the writ petition is only to set aside the order of the first respondent. Therefore, the writ

petition is only against a reply, a letter, hence liable to be dismissed on that ground alone.

7. The counsel for the petitioners submitted arguments against the orders passed by the Conciliation Officer, dated May 19, 1993 and September 23, 1993. Inasmuch as those orders are not the impugned orders and hence it is not necessary to go into any other aspect for the purpose of disposing of this writ petition yet the arguments advanced by the counsel for petitioners and the respondents are considered.

8. The counsel for the petitioner submitted that the Conciliation Officer has got a right only to file a settlement report, in case a settlement has been arrived at before the Conciliation Officer or in case no agreement is arrived at, he can send only failure report under the Act. But in fact, the Conciliation Officer has adjudicated the issue for which he has no power under the Act to do so. In support of this contention, he relied upon the judgment of the Supreme Court in Ram Avtar Sharma and Others Vs. State of Haryana and Another, wherein the Supreme Court has held in Para 6 at page 191 of LLJ:

"..... .If the administrative determination is based on the irrelevant, extraneous or grounds not germane to the exercise of power, it is liable to be questioned in exercise of the power of judicial review. In State of Bombay Vs. K.P. Krishnan and Others, , it was held that a writ of mandamus would lie against the Government if the order passed by it u/s 10(1) is based or induced by reasons which as given by the Government are extraneous, irrelevant and not germane to the determination. In such a situation, the Court would be justified in issuing a writ of mandamus even in respect of an administrative order. May be, the Court may not issue a writ of mandamus, directing the Government to make a reference but the Court can after examining the reasons given by the appropriate Government for refusing to make a reference come to a conclusion that they are irrelevant, extraneous or not germane to the determination and then can direct the Government to reconsider the matter. This legal position appears to be beyond the pale of controversy."

The counsel further submitted that the dispute is whether there was Section 12(3) settlement at all. He cited a decision reported in Devdas S. Amin Vs. State of Maharashtra and Others, the Bombay High Court held as follows, in Para 14 at pp. 503 and 504:

".....The Government has only to consider whether there is a prima facie case on merits and it is not permissible to adjudicate on the merits of the claim raised by the employee. Instead, the Government or the Deputy Commissioner of Labour should be very slow in declining to make the reference because such an action would shut the doors for an employee to get his dispute adjudicated by the Labour Court....."

He also cited an unreported judgment of this Court in W.P. No. 10373 and 11763 of 1991, in that case, it was contended that a settlement dated October 11, 1982, was

not binding on the workers and the Government decided the dispute on merits of case and held that the settlement was binding on the workers in these circumstances, the Government was directed to refer the matter for adjudication to the competent Tribunal by this Court. Further, he relied upon another decision reported in Philips Workers'' Union v. Philps India Ltd., 2001 I LLJ 209 (Bom), wherein it was held at pp. 211 & 212;

"7. ..... It would not be appropriate for the Conciliation Officer even before admitting the dispute in conciliation, to launch upon an elaborate or detailed investigation into the merits of the dispute or of the correctness of the rival submissions of the parties on the merits of the case before him. In fact, the position of law is well settled that even at a subsequent stage, the appropriate Government, while deciding whether or not to refer a dispute for adjudication by the Tribunal, cannot conduct a detailed investigation into the merits of the case. The consideration of the merits of the dispute takes place under Sub-section (2) of Section 12. Once that dispute is admitted in conciliation Sub-section (2) of Section 12 empowers the Conciliation Officer to investigate the dispute and all matters affecting the merit in order to bring about an amicable resolution. Consequently, it will be erroneous for the Conciliation Officer to even decline to admit a demand in conciliation though an industrial dispute exists or is apprehended upon a view formed by the Conciliation Officer on the merits of the dispute. Conciliation is an important first stage provided by the law, attended as it is by a degree of flexibility and informality. The provisions for conciliation must be given full effect in order to enable the Conciliation Officer to persuade the management and the workmen to set out their differences. The discretion conferred on the Conciliation Officer in Sub-section (1) of Section 12 in the case of undertakings which are not public utilities has to be exercised so as to effectuate the public purpose underlying the conferment of power."

The learned counsel relied upon a decision in Vasudevan v. Government of Tamil Nadu, 1988 (2) LLN 581, where a workman sought a reference, the management contended that the workman resigned from service and offered to re-employ him; but the workman contended that he did not resign; this Court in that case held that the Government declining to refer the dispute for adjudication was illegal; this Court further held that in such types of cases, "reference is the rule" and rejection is an exception. Finally the Court directed the Government to refer the dispute for adjudication. Relying upon these decisions, the counsel for the writ-petitioners submits that the authorities have no right to decide the issue on merits; when it was found that the matter was not settled amicably, the Conciliation Officer should have submitted the "Failure Report". Inasmuch as the Deputy Commissioner of Labour did not file the failure report, the order is liable to be set aside.

9. Learned counsel for the respondent argued that during the period May 1992 there was industrial unrest and therefore, the workers wanted to settle the matter.

On October 19, 1992, all the workers entered into a settlement u/s 12(3). All the writ-petitioners collected their money that was offered by the management, on the terms of the settlement. Thereafter, the union approached the Conciliation Officer and he refused to accept the conciliation on the ground that Section 12(3) settlement was worked out in full and accounts were settled. Since the dispute was raised subsequent to that, the Conciliation Officer had stated that there was no pending dispute. The counsel for the respondents cited a decision of this Court in the case of Workmen of V.M. Bus Service Vs. Labour Officer and Another, , wherein it was held that after enquiry, if the Conciliation Officer feels that there is no industrial dispute, he need not conciliate the matter. In the case of Association of Engineering Workers Vs. Permanent Magnets Ltd. and Others, , it was held that when the workers have resigned the job and , accounts were settled, thereafter if they raise the industrial dispute, it need not be taken for conciliation. He further submitted that the settlement u/s 12(3) has legal effect u/s 18. Once there is such a settlement, no dispute can be raised, in view of Section 18(3). Under such circumstances, the refusal to entertain the dispute is legal and valid. In support of his argument, the counsel relied upon the decision in Shaw Wallace and Co. Ltd. Vs. State of Tamil Nadu and Others, , where this Court has held after considering the Sections 2-A, 10(1), 11-A and 12(5) as follows, in Para 32, at p. 195:
"On a final analysis the following principles emerge:

(1) The Government would normally refer the dispute for adjudication;

(2) The Government may refuse to make reference, if

(a) the claim is very stale;

(b) the claim is opposed to the provisions of the Act;

(c) the claim is inconsistent with any agreement between the parties;

(d) to (f) ....."

The counsel for the respondent referred to another decision of the Division Bench of this Court in the case of The Management of Binny Ltd. (B and C Mills) Vs. The Govt. of Tamil Nadu and Others, , wherein it was held at p. 205:

"50. In the view, we have taken on the proper interpretation of Sections 10, 10(5), 18 and 19 of the Act, it follows that the settlements between the management and their respective workers will operate as a bar to the reference. Consequently, the reference in so far as it relates to the petitioners in Group I cases is not valid and the Government was not competent to make the reference..."

The counsel also referred to another decision in Barauni Refinery Pragatisheel Shramik Parishad Vs. Indian Oil Corporation Ltd., where the Supreme Court held that Section 12(3) settlement was treated on par with the award of the Labour Court. Further, he referred to a decision in Mukesh Khanna Vs. Chandigarh Administration,

Chandigarh and another, , wherein the Punjab and Haryana High Court held at p. 1434:

"7. .....The provisions of the Industrial Disputes Act are meant to help the needy. These are not to be invoked to help a person who is greedy..."

He further cited a decision in Mercury Manufacturing Co. Ltd. Vs. Joint Commissioner of Labour and Others, , where this Court has held:

"..... .Therefore, while playing a responsible role of a Conciliation Officer, the first respondent''s duty is not to perpetuate or create a dispute by encouraging persons like that of the respondents 2 to 85 to pursue their disputes to its logical end knowing fully well that the said attempt of the workmen would not enure to their benefit but would only result in woeful consequences. The object of the enactment namely the Industrial Disputes Act is not to encourage frivolous and endless litigations but to promote industrial harmony and cordial relationship between the management and the workmen. The ambit and scope of the role of a conciliation Officer has got a definite purpose and intent. He cannot act in a mechanical way and open up a dispute the moment some petitions are presented before him..."

10. In view of the decision referred to above, the consistent view of the Supreme Court as well as various other High Courts including this Court is that if the dispute that is raised is inconsistent with any agreement between the parties, then the Conciliation Officer can decide that fact, viz., that the dispute is against the agreement between the parties ; it need not file a failure report. Arriving at a conclusion that there was agreement between the parties does not tantamount to adjudication of the dispute. All that the Conciliation Officer says is that there is no dispute pending between the parties and therefore, there was nothing for him to conciliate and to arrive at a settlement or to file a failure report. The Conciliation Officer has come to the conclusion that there was a valid settlement between the parties. Therefore, the Conciliation Officer was not duty-bound to file a failure report.

11. The counsel for the petitioner argued that the alleged Section 12(3) settlement has not been signed by the president and therefore, it is not per valid. As per Section 25 of the Industrial Disputes Act, 1947, either the president or the secretary can sign such agreement and in the present agreement, general secretary S. Mariadoss, vice-president T. Natarajan and treasurer J. Mahimadoss and joint secretary P. Vasudevan have signed on. behalf of the labour union. Therefore, the settlement is legal and valid, merely because the president has not signed the settlement does not become invalid. Further, in the general body meeting of the labour union, held on. October 10, 1992, the following resolutions were made:

"Resolution No. 1. - All the employees were working in the factory for long time and for various reasons, the employees are not: willing to continue to work in the factory and they approached the management to settle their provident fund, gratuity and

various amounts for 1990-91 and 1991-92 and to get substantial amounts as ex gratia and settled the amounts to all the employees, this resolution was unanimously passed by the general body.

Resolution No. 2. - It was unanimously resolved that all the employees would agree to accept the negotiations and settlement arrived at between the office-bearers of the association and the management.

Resolution No. 3.- The General Body granted permission to sign Section 12(3) agreement as per the resolution."

The general body was attended by 58 persons and their signatures were obtained. Therefore, the Section 12(3) settlement signed by all the office-bearers of the union except the president is valid.

12. The counsel for the petitioners submitted that the management threatened the employees and got the resignations and hence the resignations were not Voluntary. The Conciliation Officer has stated in his order that all the 45 persons who raised the disputes have independently submitted their resignation letters and that they were accepted by the management and the workers have been paid compensation, gratuity, ex gratia and bonus by way of cheques and the cheques have been encashed. If really the management had obtained resignation letters by threatening, they would not have encashed the cheques. The very fact that all the employees had encashed the cheques, it appears that they have resigned, in accordance with the resolution passed by the general body. Therefore, the allegation that such letters were obtained by threatening, has no basis and since the resignation letters were given, the management did not insist on one month''s notice and there is nothing wrong in that. It is not necessary that resignation letters are accepted only after the expiry of one month. In the resignation letters, workers have stated that due to some personal reasons and due to the ill-health and family circumstances, they resigned and therefore, they requested that the amounts be paid. Therefore, there is no basis for the allegation that the resignation letters were obtained by threat.

13. The counsel for the respondent argued that the Conciliation Officer''s duty is not at all mechanical to submit the failure report, he has got a right to determine whether there is any pending dispute. If the Conciliation Officer has come to the conclusion that there was no dispute at all, then there is no necessity to conciliate the matter or to file the failure report.

14. In the case, State of West Bengal and Another Vs. West Bengal Government Pensioners Associations and Others, , where on identical facts, the Gujarat High Court, after referring to various judgments of the High Courts and Supreme Court, has concluded as follows:

"..... A fair and objective overview of the facts of this case leads to the prima facie conclusion that the parties to the dispute had settled the issues on mutually agreed and accepted terms and acted accordingly. After resignation and acceptance of the stipulated amounts under the settlement, neither the service nor any dispute survived and the allegations and claims of non-payment of all the dues or the allegation of violation of the mandatory provisions regarding retrenchment and closure were, ex facie, perverse and frivolous. In such circumstances, the observation in the impugned order that mere changes of union cannot vitiate a settlement clearly indicates that the dispute was reasonably found to be perverse and frivolous.

As seen earlier, in the case of National Engineering Industries Ltd. Vs. State of Rajasthan and Others, , before the Full Bench of the Supreme Court, wholesale reference of the disputes raised in the charter of demands was held to be bad and without application of mind where some of the disputes were already the subject-matter of tripartite settlement. On the same basis, if in the peculiar facts of this case, the authority has, after application of mind to the relevant and material facts, found the demand and dispute to be unreasonable, illegal and opposed to the provisions and policy of the Act, the same cannot be faulted. The workmen concerned, the reference of whose individual disputes for reinstatement was refused, have not challenged that decision. And the Government or the Conciliation Officer were not, in the facts of this case, obliged to refer, or admit for conciliation the dispute after finding, on prima facie consideration of the relevant facts and circumstances, that the demands and dispute were frivolous and opposed to the revisions of the Act....."

15. The contention of the petitioner that the president of the union has not signed the agreement vitiates the agreement itself and it is not valid at all cannot be accepted in view of the fact that under the Act, the secretary is entitled to sign an agreement. Admittedly, in this agreement, the secretary, the vice-president and number of other persons have signed. Pursuant to that agreement, all the workers have received monies by way of cheques and the cheques had been encashed. They have not even refunded before the writ petition is filed. Therefore, it has to be concluded that the workers accepted the settlement and the settlement had worked out. Therefore, there is no present dispute between the parties. When an application is made before the Conciliation Officer and if the Conciliation Officer has come to the conclusion that there is no dispute between the parties to be resolved, then as per the decision of the Division Bench of this Court, it has to be stated that there is no present dispute at all. Even in the judgment referred to by the petitioner''s counsel, the Supreme Court has held that the authorities have to determine prima facie, whether any industrial dispute exists between the parties. So, the authorities have power to decide prima facie whether any industrial dispute exists between the parties. When the authorities come to the conclusion that no industrial dispute exists between the parties, there is nothing wrong or illegal, in the

authorities saying that there is no dispute between the parties and thereby refusing to conciliate or to file a failure report. The petitioner has no right for writ of mandamus to compel the authorities to submit the failure report.

16. Therefore, the writ petition is dismissed. No costs.