Hillson and Dinshaw Ltd. Vs P.G. Pednekar and Others

Court: Bombay High Court

Date of Decision: April 2, 2002

Acts Referred: Industrial Disputes (Central) Rules, 1957 â€" Rule 58
Industrial Disputes Act, 1947 â€" Section 18(1), 2, 25G, 25J

Citation: (2002) 4 BomCR 541 : (2002) 95 FLR 20 : (2002) 3 LLJ 77

Hon'ble Judges: V.K. Tahilramani, J; A.P. Shah, J

Bench: Division Bench

Advocate: N.M. Makandar, instructed by P.N. Shastri, for the Appellant; Shobhana Gopal, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

A.P. Shah, J.
These two appeals are directed against the order of the learned single Judge passed in a writ petition under Article 226 by

which the respondent workman was directed to be reinstated with back wages. Appeal No. 1200 is filed by employer whereas Appeal Lodging

No. 519 of 2001, is filed by the Union, as the union has been directed to pay the back wages.

2. Briefly stated, the facts are as follows:

The Government of India had referred to the Industrial Tribunal the following industrial dispute for adjudication:

Whether the action of the management of Hillson and DinshaW Ltd. Mumbai in not reinstating Shri P.G. Pednekar who is senior among the

retrenched employees in the same category is just, proper and legal? If not, to what relief the workman is entitled to?

The respondent workman who was in the employment of the appellant company, was retrenched from employment alongwith other 4 employees

vide notice dated April 27, 1995. The respondent workman was given retrenchment compensation of Rs. 1,14,115 by cheque and there is no

dispute that the workman has accepted and encashed the said cheque. The workman thereafter approached the Transport and Dock Workers

Union, which is the appellant in Appeal Lodging No. 519 of 2001 and the Union served notice dated May 9, 1995 to the employer. The union

also wrote to the Assistant Labour Commissioner. The appellant company and the union thereafter signed a settlement dated December 28, 1995

u/s 18(1) read with Section 2(p) of the Industrial Disputes Act, 1947, hereinafter referred to as the Act. According to this settlement the appellant

company had offered to reinstate 4 out of 5 workmen, as one had expired, including respondent workman with immediate effect with continuity of

service. However, the union had given up the claim of the respondent workman and two others on the ground that they were in gainful employment

and no more interested in the employment with the employer. It was agreed by the union that the aforesaid 3 workmen would be treated as having

lost their lien over the employment with the company and the 4th workman Shri Fernandes who was unemployed would be employed with

immediate effect. On June 7, 1996 the respondent workman approached the Asst. Labour Commissioner making a grievance that he had never

given up his claim for reinstatement and that he had not given up his lien on employment and the dispute should be referred for adjudication.

Accordingly a reference was made to the Central Government Industrial Tribunal. The Tribunal held inter alia that the settlement dated December

28, 1995 is binding on the respondent workman and the reference was answered against the workman.

3. Being aggrieved the respondent workman filed a writ petition which was allowed by the learned Judge by the impugned order. The learned

single Judge held that u/s 18(1) of the Act settlement is intended to be binding only on the signatories or parties to the settlement and as the

respondent workman was not signatory to the settlement it was not binding on him. The union which has signed the settlement was not a

recognised union and even assuming that the union was recognised union it could not have signed such a settlement giving up the right of the

employment of the workman without his consent and without his authority and signature on the settlement. The learned Judge therefore directed the

appellant-company to reinstate the workman and so far as back wages are concerned directed the union to pay the amount of back wages on the

ground that the union alone was responsible for the loss of back wages of the workman. The propriety and legality of the said order is impugned in

these appeals.

4. Mr. N.M. Makandar the learned counsel appearing for the appellant company submitted that as the respondent workman was a member of the

union, the union had every right to sign the settlement on behalf of the workman and such settlement is binding on him. On the other hand, Ms.

Gopal appearing for the respondent workman sought to support the finding of the learned single Judge that the settlement is not binding on the

workman. She contended that there was non-compliance with Rule 58 of the Industrial Disputes (Central) Rules, 1957. She also sought to

challenge the settlement on the ground that it is violative of Section 25-J of the Act. It should be noted that these contentions based on Rule 58 and

Section 25-J were not raised before the Tribunal or before the single Judge. Mr. Singhvi learned counsel for the union contended that the learned

Judge was not right in directing the union to pay the back wages of respondent workman who had not made any claim against the union nor the

dispute referred to the Tribunal pertain to any claim against the union and therefore the impugned order is patently in excess of jurisdiction.

5. Before adverting to the rival submissions, we consider it necessary and proper to refer to relevant provisions of the Act.

Clause (p) of Section 2 of the Act defines ""settlement"" as under:

2(p) ""settlement"" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer

and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties hereto in

such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the

Conciliation Officer"".

An analysis of the above mentioned clause would show that it envisages two categories of settlement (i) a settlement which is arrived at in the

course of conciliation proceeding, i. e. which is arrived at with the assistance and concurrence of the Conciliation Officer who is duty bound to

promote a right settlement and to do everything he can to induce the parties to come to a fair and amicable settlement of the dispute and (ii) a

written agreement between employer and workmen"" arrived at otherwise than in the course of conciliation proceeding.

6. The consequence of the aforesaid two categories of settlement which are quite distinct are set out in Section 18 of the Act which reads as under:

18(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be

binding on the parties to the agreement (2) subject to the provisions of Sub-section (3) an arbitration award which has become enforceable shall

be binding on the parties to the agreement who referred the dispute to arbitration.

(3) A settlement arrived at in the course of conciliation proceeding under this Act or an arbitration award in a case where a notification has been

issued under Sub-section (3-A) of Section 10-A or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable

shall be binding on (a) all parties to the industrial dispute (b) all other parties summoned to appear to the proceeding as parties to the dispute,

unless the Board, Arbitrator, Labour Court, Tribunal or National Tribunal as the case may be records the opinion that they were so summoned

without proper cause; (c) where a party referred to in Clause (a) or Clause (b) is an employer, his heirs, successors or assigns in respect of the

establishment to which the dispute relates; (d) where a party referred to in Clause (a) or (b) is composed of workmen, all persons who are

employed in the establishment or part of the establishment as the case may be to which the dispute relates on the date of the dispute and all

persons who subsequently become employed in that establishment or part.

7. A bare perusal of the above quoted Section would show that whereas a settlement arrived at by agreement between the employer and the

workmen otherwise than in the course of conciliation proceeding is binding only on the parties to the agreement, a settlement arrived in the course

of conciliation proceeding under the Act is binding not only on the parties to the settlement but also on other persons specified in Clauses (b), (c)

and (d) of Sub-section (3) of Section 18 of the Act. Therefore, if the settlement arrived at between the employer and the workmen, otherwise than

in the course of conciliation proceedings, with which we are concerned in this case, it shall be binding on the parties to the settlement. The phrase

parties to the settlement"" includes both employer and an individual employee or the union representing the employees. If the settlement is between

the employer and workman it would be binding on that particular employee and the employer; if it is between a recognised union of the employees

and the employer, it will bind all the members of the union and the employer. That it would be binding on all the members of the union is a

necessary corollary of collective bargaining in the absence of allegation of mala fides or fraud. Merely because an individual employee or some of

the employees do not agree to the terms of the settlement entered into between a recognised union and the employer, he/they cannot be permitted

to contend that it is not binding on him/them. In the present case the union is recognised union under the Code of Discipline in respect of the Dock

Workers working in the appellant company. Therefore, the settlement entered into by the Union with the employer would be binding on its

members.

8. The aims and objects of the provisions of the Industrial Disputes Act include industrial peace which is essential to the industrial development and

economy of the nation. Great emphasis is, therefore, laid on the settlements as they set at rest all the disputes and controversies between the

employer and the employees. In the case of Herbertsons Limited Vs. The Workmen of Herbertsons Limited and Others, , the Supreme Court

considered the effect of the settlement arrived at by the recognised union of majority workers. It was observed by GOSWANI J., speaking for the

Court that when a recognised union negotiates with an employer, the workers as individuals do not come into the picture, it is not necessary that

each individual worker should know the implications of the settlement since a recognised union, which is expected to protect the legitimate interests

of labour enters into a settlement in the best interests of labour. This would be the normal rule. There may be exceptional cases where there may be

allegations of mala fides, fraud or even corruption or other inducements. But in the absence of such allegations a settlement in the course of

collective bargaining is entitled to due weight and consideration. In connection with justness and fairness of the settlement it was observed that this

has to be considered in the light of the conditions that were in force at the time of the reference. When, therefore, negotiations take place which

have to be encouraged, particularly between labour and employer in the interest of industrial peace and well-being, there is always give and take.

The settlement has to be taken as a package deal and when labour has gained in the matter of wages and if there is some reduction in the matter of

dearness allowance so far as the award is concerned, it cannot be said that the settlement as a whole is unfair and unjust. It was further observed

that it is not possible to scan the settlement in bits and pieces and held some parts good and acceptable and others bad. Unless it can be

demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained, the Court will be slow to hold a

settlement as unfair and unjust. The settlement has to be accepted or rejected as a whole.

9. In the case of K.C.P. Limited Vs. Presiding Officer and Others, , the Supreme Court considered the concept of settlement entered into between

the employer and the union representing the employees. In that case the settlement arrived at by the union with the company was not in the course

of conciliation proceedings. The facts were that the issue of dismissal of 29 workmen, by way of punishment was pending for adjudication and

during such pendency, the recognised union entered into a settlement with the management regarding these 29 dismissed workmen as well and it

was agreed that an option would be given to them either to accept reinstatement without back wages or a lump sum amount of Rs. 75,000 with

other monetary benefits may be accepted by the concerned workmen in lieu of reinstatement; 17 workmen accepted the settlement and remaining

12 challenged the said settlement and pressed for adjudication being continued by the Labour Court. The contesting workmen contended before

the Supreme Court that the settlement regarding their interest as entered between the management and recognised union during the pendency of

adjudication of the dispute was illegal and was not binding on them. It was also submitted that they were not parties to the settlement and hence it

did not bind them. The Supreme Court held that the settlement arrived at by direct negotiations between the management and union was valid and

legal and the recognised union had represented 29 dismissed workmen. Speaking for the Bench majMUDAR, J. observed K.C.P. Limited Vs.

Presiding Officer and Others, :

It has to be kept in view that under the scheme of labour legislation like the Act in the present case, collective bargaining and the principle of

industrial democracy permeate, the relations between the management on the one hand and the union which resorts to collective bargaining on

behalf of its members-workmen with the management on the other. Such a collective bargaining which may result in just and fair settlement would

always be beneficial to the management as well as to the body of workmen and society at large as there would be industrial peace and tranquillity

pursuant to such settlement and which would avoid unnecessary social strife and tribulation on the one hand and promote industrial and commercial

development on the other hand. Keeping in view the aforesaid salient features of the Act the settlement which is sought to be impugned has to be

scanned and scrutinized. Settlement of labour disputes by direct negotiations and collective bargaining is always to be preferred for it is the best

guarantee of industrial peace which is the aim of all legislations for settlement of labour disputes. In order to bring about such a settlement more

easily and to make it more workable and effective it may not be always possible or necessary that such a settlement is arrived at in the course of

conciliation proceedings which may be the first step towards resolving the industrial dispute which may be lingering between the employers and

their workmen represented by their unions but even if at that stage such settlement does not take place and the industrial dispute gets referred for

adjudication, even pending such disputes, the parties can arrive at amicable settlement which may be binding the parties to the settlement unlike

settlement arrived at during conciliation proceedings which may be binding not only on the parties to the settlement but even to the entire labour

force working in the concerned organisation even though they may not be members of the union which might have entered into settlement during

conciliation proceedings"".

10. In the case of Balmer Lawrie Workers'' Union, Bombay and Another Vs. Balmer Lawrie and Co. Ltd. and Others, , Clause 17 of the

settlement entered into between the management and the recognised union came to be challenged and as per the said clause the company was to

collect, from each workman, an amount equivalent to 15 per cent of the gross arrears payable to each employee under the settlement as

contribution to the union fund and it was, in turn, to be paid to the union within three days of the payment of arrears. It was inter alia contended by

the petitioner union that the said clause was in breach of the provisions of the Payment of Wages Act and while rejecting the challenge the Supreme

Court observed at p. 325 of LLJ:

It is well known that no deduction could be made from the wages and salary payable to a workman governed by the Payment of Wages Act

unless authorised by the Act. A settlement arrived at on consent of parties can however permit a deduction as it is the outcome of understanding

between the parties even though such deduction may not be authorised or legally permissible under the Payment of Wages Act"".

11. In the instant case it is not disputed that the settlement arrived by the union with the appellant company was not in the course of conciliation

proceedings. Therefore, it would be binding on the parties to the agreement namely the appellant company on the one hand and the union

representing the respondent workman who was its member. In the circumstances, the respondent workman also would be ordinarily bound by the

settlement entered into by his representative union with the company unless it is shown that the said settlement was ex facie unfair, unjust or mala

fide. No such case was even alleged, much less made out by the respondent workman either before the Tribunal or before the learned single

Judge. It is interesting to note that before the learned single Judge the only argument put forward on behalf of the respondent workman was that, he

was not a party to the settlement and his consent was not taken by the union and, therefore, it was not binding on him. Once it is kept in view that

the industrial dispute was raised by the union on behalf of the retrenched, workmen including respondent workman, and it was an industrial dispute

covered by Section 2(k) it cannot be held that the settlement which was entered into u/s 2(p) read with Section 18(1) of the Act is not binding on

the individual workman.

12. In the light of the aforesaid discussion it is not possible to sustain the finding of the learned single Judge that the settlement was not binding on

the respondent workman on the, ground that the workman was not a signatory to the settlement.

13. Ms. Shobha Gopal, however, drew our attention to the proviso to Section 18(1) (Bombay Amendment) which reads as follows:

Provided that where there is a recognised union for any undertaking under any law for the time being in force, then such agreement not being an

agreement in respect of dismissal, discharge, removal, retrenchment, termination of service, or suspension of an employee shall be arrived at

between the employer and the recognised union only and such agreement shall be binding on all persons referred to in Clause (c) and Clause (d) of

Sub-section (3) of this Section"".

Ms. Gopal relying upon the words ""not being an agreement in respect of dismissal, discharge, removal, retrenchment, termination of service, or

suspension of an employee"" contended that union has no right to enter into settlement in respect of these categories. The argument is required to be

stated only to be rejected. In the first place the settlement is not in respect of any of these categories but it pertains to the right to re-employment in

terms of Section 25-G of the Act. Moreover there is nothing in the language of the proviso that the settlement in respect of the above matters will

not bind the members of the union.

14. Ms. Gopal then contended that there was non-compliance with Rule 58 of the Industrial Disputes (Central) Rules, 1957 as the office bearers

of the union were not duly authorised by the union to enter into such settlement. She referred to the judgments of the Supreme Court in Workmen

of Delhi Cloth and General Mills Ltd. Vs. The Management of Delhi Cloth and General Mills Ltd., : C. Mackertich Vs. Steuart and Co., Ltd, and

Brooke Bond India Ltd. Vs. The Workmen, . The above contention was not raised before the trial Court or before the learned single Judge. It is

impermissible to raise such a contention at the belated stage. In fact the Tribunal has recorded a finding that there was compliance with the rules

and the copies of the settlement were sent to the Commissioner of Labour, Conciliation Officer, Secretary of Industries, Energy and Labour

Department of the Central Government.

15. Lastly Ms. Gopal challenged the settlement by taking recourse to Section 25-J of the Act. This contention is equally without any substance and

not tenable. In the present case the reference is in respect of the action of the management in not re-employing the workman and it does not relate

to the retrenchment or layoff and, therefore, Chapter V-B which contains this provision has no application.

16. In the result appeals are allowed. Order of the learned single Judge is set aside. Parties to bear their respective costs.

17. Certified copy expedited.