**(2009) 07 CAL CK 0006**

**Calcutta High Court**

**Case No:** A.P.O. No. 198 of 2008 and W.P. No. 734 of 1993

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| Garden Reach Ship Builders and Engineers Limited | | APPELLANT |
| | Vs | |
| State of West Bengal and Others | | RESPONDENT |

**Date of Decision:** July 28, 2009

**Citation:** (2009) 123 FLR 709

**Hon'ble Judges:** Md. Abdul Ghani, J; Kalyan Jyoti Sengupta, J

**Bench:** Division Bench

**Final Decision:** Allowed

**Judgement**

1. The appellant above named being aggrieved by the judgment and order of dismissal of its writ petition by the learned Trial Judge dated 10th July 2008 has brought this appeal. By the judgment and order impugned learned Trial Judge upheld the award of the learned 7th Industrial Tribunal dated 30th of May 1992 which was passed in favour of third respondent, viz. Secretary Garden Reach Ship Builders & Engineers Ltd. Staff Association on the issues referred to by the State as follows:

Whether Card Writers/Record Keepers of the company are entitled to same dearness allowance and other benefits as enjoyed by the Clerks of the company.

2. On the above issue earlier the learned Tribunal had passed an award dated 27th December, 1988 and the same was challenged by writ petition earlier by the appellant above named, and it was set aside by the learned Single Judge of this Court by an Order dated 19th July, 1990 and directed the learned Tribunal to hear the matter de novo observing certain irregularities and lacuna made therein. The appellant being aggrieved by the said portion of the order of remand preferred appeal against the order passed by the learned Single Judge and necessary interim relief for granting stay of de novo hearing was prayed for however, the Division Bench did not grant stay of hearing by interim order

dated 22nd February, 1991 but it was made clear award might be made and published but effect thereof can not be given by any of the parties before us. Pursuant to the above direction the learned Tribunal heard de novo having received further evidence and decided the matter. The respondent No. 3 representing the aforesaid cadre viz. Card Writers/Record Keepers filed the written statement and substance of the same is as follows:

The aforesaid employees numbering about 315 since beginning have been doing the same nature of job as the clerical staff were doing. In spite of that they were not treated at par with the clerks.

3. Originally they were members of Mazdoor and Staff Union and another union namely the Company''s Clerks'' Union. Since their case was not espoused by the said union before the Company, they formed the aforesaid Union namely the Staff Association in the year 1982 and they put forward their demands of bringing themselves at par with the clerk and to give benefit from the date of their respective appointments. The company though having recognized the said Staff Association, did settle all the disputes with workmen inviting the said two unions but excluding the said Staff Association entering into two settlements one bipartite and another tripartite both dated 5th March, 1983. In the tripartite settlement their demand and/or case for parity was placed by the Mazdoor Union, and, with these two settlements some benefit has been given, but these settlements are not meeting their full demands which they have been pressing for a long time. Having found no alternative under pressure and coercion and having regard to their financial stringency all these members of the aforesaid cadre had to accept the benefit as given under the said two settlements dated 5th March, 1983. According to the said Association since they were not invited nor was it signatory terms and conditions purporting to resolve the dispute by the two settlements, so far the said group of staff are concerned, are not binding upon them. Other two unions were made parties, they filed their respective submissions before the learned Tribunal and supported the said two settlements and their operation stating that all the disputes of all the employees concerned have been peacefully resolved by bipartite and tripartite settlements by 5th March, 1983 and nothing remaining outstanding. The company filed counter-statement before the learned Tribunal and specifically agitated that there had and still has been no dispute for resolution as everything has been settled by bipartite and tripartite settlements as above and the same were and are binding upon them as they were represented by their Union namely Mazdoor Union. When there is no dispute the Tribunal had no jurisdiction to proceed with the matter on merit. It is said that each and every member of the aforesaid group of staff has accepted the benefit without any dispute and protest. Actually they were appointed as peon and their nature of the job were not those of the clerk as such they were enjoying different scale of pay and also different rate of dearness allowance namely industrial rate whereas the clerks were given their dearness allowance at the rate paid by Bharat Chamber of Commerce and Industry, namely non-industrial rate. Hence the company wanted dismissal of the aforesaid case.

4. The learned Tribunal as it appears from its judgment, after analyzing evidence came to fact finding that the industrial dispute exists as the aforesaid demands of aforesaid group of staff were not resolved by reason of the fact that their Union which they formed later, though recognized, were not invited. However, on merit it is held that the aforesaid group of workmen were not entitled to be treated as clerk from their respective date of appointment and nor entitled to any benefit as they claimed, however by reading two settlements the learned Tribunal came to conclusion that since they were treated as clerk on and from 1st January, 1982 by the said two settlements they should be given all the benefits irrespective of the provision made in the terms of settlements at par with the clerks namely the same rate of clearness allowance, fitment benefit and other benefits.

5. The learned Trial Judge, on the said award being challenged, upheld it with same reasoning.

6. Mr. Arijit Chowdhury learned Senior Advocate while pressing this appeal contends that in view of the settlements arrived at covering demands of more than 90 per cent of the employees even those of these group of the staffs were also taken care of. Their pay scale has been upgraded at par with clerical staff with effect from 1st February, 1982 since their origin is different from that of the clerk, therefore, their other benefits namely rate of dearness allowance and fitment are provided differently. They are also given different grade of pay scales. Each and every members of the aforesaid staff has accepted the same and after having accepted they are estopped from pressing their fresh demands.

7. He taking us through the findings of the learned Tribunal submits that learned Tribunal on the one hand has accepted the terms of settlements as not being unfair and further that there has been no evidence that the nature of job performed by these groups of staff were similar to that of clerk, on the other hand the learned Tribunal has discarded some of the terms of settlement. This dissection of the terms of settlement where there is no challenge of the said two settlements, is not permissible under the law. Under those circumstances the award granting equal benefit to the said group of staff with the clerk on and from 1st July, 1982 is wholly illegal. According to him the settlements either has to be accepted or rejected as a whole unless of course it is demonstrated that it equally outweighs all other advantages gained. He further contends that the Tribunal, and Court in writ jurisdiction should not be astute to discover flaws and overthrow the settlement of labour disputes. To strengthen his submission he has drawn reference to two judgments of the Supreme Court reported in State of Madras Vs. C.P. Sarathy and Another, .

8. Ms. Debjani Sengupta, learned Advocate, appearing for the respondent No. 6 contends that the learned Tribunal after having received evidence and analyzing all the terms and conditions of the two settlements found that the demand of the aforesaid workmen were not fully addressed by the said settlements. Therefore industrial dispute exists and learned Tribunal is competent to decide the issue. It is an admitted position that the said staff association despite being recognized was not insisted on the meeting for settlement

not to speak of signing of the settlement, as such said two settlements are not binding. The learned Tribunal as well as the learned Trial Judge have found that Card Writers/Record Keeper have been treated in all senses at par with the clerks on and from 1st January, 1982. As such granting of equal benefit with the clerks to these group of staff is normal and natural course of action.

It is trite the appeal Court should not interfere with fact findings and interpretation of the leaned tribunal and the learned Trial Judge ordinarily, unless the same appear to be patently illegal on the face of its.

9. The learned Lawyer for the State supports the argument advanced by Ms. Debjani Sengupta.

10. From the narration of the above contention and rival contention recorded the point for consideration in this appeal is whether the learned Trial Judge was justified in accepting the award of the learned Tribunal or not. We therefore are to examine the award within the parameter of power of judicial review as to whether the same is sustainable or not. The learned Tribunal proceeded to decide the following issues as referred to by the Government:-

Whether Card-writers/Record Keepers of the Company are entitled to same pay dearness allowance and other benefits as enjoyed by the clerks of the company.

11. The learned Tribunal rejected the contention, of the company/appellant that the Tribunal had no jurisdiction to decide the issue as no dispute in view of above settlements. This question of jurisdiction in this case appears to be mixed question of fact and law. The learned Tribunal on analysis of evidence had found there exists dispute. The learned Trial Judge has also examined this aspect and found that industrial dispute exists. As such the reference made by the Government is a valid one. We cannot re-■appreciate the evidence nor can we go into this aspect of the matter in exercise of power of judicial review.

12. We, therefore, reject the contention of Mr. Chowdhury that the learned Tribunal lacked Jurisdiction for the simple reason the contention of the staff association before the learned Tribunal was that the bipartite and tripartite settlements aiming at to resolve the disputes are not binding upon them and as such their grievance of not treating these group of staff at par with the clerks from the date of their appointments have not been redressed, while the company contended that the said two settlements bind these group of staff and their disputes have been resolved by bringing them in the clerical grade of pay scale and also giving them the appropriate benefit. It is common knowledge when there is assertion of certain fact and denial of the same the dispute arises. Rather question is whether the decision of the Tribunal on merit is sustainable upon its own analysis of evidence and records. The Tribunal granted relief to these group of staff by allowing the same benefit as it is made available to the clerks on and from 1st March,

1982 not from their respective dates of appointments. Meaning thereby upon reading of both the settlements the learned Tribunal has by necessary implication declared that these group of staff of the clerks are in equal footing with the clerks and there should not be any discrimination on and from 1st March, 1982. Upon careful reading of both the settlements it appears to us that these group of staff are not treated as clerks in true sense but they have been fitted to the pay scales of the clerical cadre in the company as it will be apparent from clause 5.1.1: (Tripartite Settlement at page 85 of P.B.)

5. Terms of Settlement

5.1.1. Scale of Pay

It is agreed by and between the parties that Card Writers/Record Keepers/Teachers/Draughtsman will be admitted into the appropriate Grade of the Pay Scales of the Clerical Cadre in the Company, which are as follows:-

(a) Grade III - Rs. 400-10-420-16-660

(b) Grade II - Rs. 500-15-572-22-858

(c) Grade I - Rs. 630-25-780-28-1004.

13. The fitment benefit given to these group of staff as it is evident from clause 5.1.3. is different from that of the clerical cadre. In clause 6 of the said settlement these groups of staff have been given the benefit in line with the existing clerical cadre staff of the company excepting sick leave which will be ten days in a year accumulative upto 30 days. The said bipartite settlement is supplement to the tripartite settlement. The learned Tribunal on its own finding came to a conclusion that the terms of settlements are not unfair. We quote the finding of the learned Tribunal below:

On perusal of the settlements I am of the view that the settlements III question cannot said to be unfair.

14. The learned Tribunal has also found that these group of staff have accepted without force or coercion of the company. It also appears from the finding of the learned Tribunal on evidence that there is no clinching nor definite proof that the Card Writers/Record Keepers of the company were doing the same work as the original clerk of the company were doing from the very beginning. There is no finding that on and from 1st January, 1982 these group of staff are doing the same work.

15. After recording as above we fail to understand on what basis the learned Tribunal gave relief to these group of staff treating them as clerks on and from 1st January, 1982. According to us the learned Tribunal has really retained some of the terms of the settlement on one hand and ignored some terms of the settlement conveniently. This apparent dichotomy in the quasi judicial proceeding is not supportable under the law as

the same are error on the face of the record.

16. Mr. Chowdhury has rightly contended that the Tribunal has no jurisdiction to pick some portion of the terms for application and discard other part of the terms of settlement. The Supreme Court in judgment reported in AIR 1977 SC 322 (Herbertsons Ltd. vs. Workmen) in its paragraph 27 ruled as follows:

27. It is not possible to scan the settlement in bits and pieces and hold 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 and we are unable to reject it as a whole as unfair or unjust.

17. Here the learned Tribunal of its own held that terms are not unfair. The learned Tribunal held that these group of staff cannot be treated to be at par with employees prior to 1st January, 1982 nor they can be termed to be a clerical cadre, but thereafter these group of staff have been treated to beat par with the clerks without any iota of evidence. In the terms of settlement as we have already noted apart from fitting these group of staff in the clerical pay scale and giving other benefits at a different rate and manner from that of the clerical staff no attempt has been made to treat them at par with the clerks. Hence the Tribunal had no jurisdiction to ignore the said salient feature of terms of settlement.

18. The learned Trial Judge as rightly contended by Mr. Chowdhury has not really examined this aspect and without examining the records properly upheld the award of the learned Tribunal. The contention of Srimati Sengupta is that the said two settlements are not binding upon the Staff Association as they were not signatories and their grievance are not redressed, is not acceptable to this Court as both the learned Tribunal and the learned Trial Judge have upheld the said terms of settlement binding upon their client and granted relief at par with the clerk. The finding of the learned Tribunal about the fairness of the terms and being binding upon has not been challenged. As we have already found that by the terms of the two settlements upon its clear reading it should not be possible to hold these group of staff are treated at par with the clerks in any sense.

19. We therefore, allow this appeal and set aside the judgment and order of the trial Judge as well as the award.

20. We direct the Company to sit with the staff association to address, their real grievance for bringing them at par with the clerk by holding fresh negotiation and settlement. This shall be done within a period of three months from the date of communication of this order.