The Management of the Director, Central Institute of Freshwater Aquaculture (CIFA) Vs The Union of India (UOI) and Another
 The Secretary, CIFA Shramik Sangha Vs The Director, Central Institute of Freshwater Aquaculture

Writ Petition (C) No. 9593 and 11980 of 2007

Court: Orissa High Court

Date of Decision: Oct. 9, 2009

Acts Referred:
Industrial Disputes Act, 1947 â€" Section 10(1), 10(2), 10A, 12, 2

Hon'ble Judges: B.K. Patel, J

Bench: Single Bench

Advocate: Somnath Mishra, G. Tripathy, S.K. Swain, B.C. Bastia, Satyabrata Mohanty, S.K. Jena and D.R. Parida, for the Appellant; N.N. Mohapatra, O.P. 1, S. Mohanty, L. Ray, S.K. Jena, D.R. Parida and A. Mohanty, O.P. 2 and in W.P.(C) NP. 9593 of 2007 and S.B. Jena, R.C. Ray, S. Behera and A. Mishra, for the Respondent

Judgement

B.K. Patel, J.
Legality of the award dated 26.04.2007 passed by the Presiding Officer, Central Government Industrial Tribunal-Cum-

Labour Court, Bhubaneswar (for short "the Tribunal") in I.D. Case No.30 of 2005 has been assailed by the Management of Central Institute of

Fresh Water Aquaculture, Bhubaneswar (for short "CIFA") in W.P.(C) No.9593 of 2007 and by the ten disputant workmen through their Union-

CIFA Shramik Sanghain W.P.(C) No.11980 of 2007.

On consent, the matter was taken up for final disposal at the stage of admission.

2. The award was passed in response to following reference received from the Central Government in the Ministry of Labour under letter No.

42012/3/2005, copy of which is at.Annexure-7 to W.P.(C) No. 9593 of 2007:-

Whether the action of the Management of Central Institute of Fresh Water Aquaculture in terminating the services of 10 workmen (list enclosed) is

legal and justified ? If not, to what relief the workmen are entitled to ?

3. As narrated by the learned Tribunal :

The shortly stated admitted facts of both parties is that during the year 20Q.1 about more than, 100 casual labourers including the 10 disputant

workman were tetminated. Of. these terminated persons 99 workers raised an Inelustrial Disputes before the Asst. Labour Commissioner

(Central) through their Union (other than the present Union). In consequence a Tripartite Agreement was reached under which it was agreed that

the Management would provide jobs to 60% of these workers through contractors. Some workers other than the disputants were accordingly

provided with jobs through contractors. Being deprived of such job these 10 disputants raised Anr. Industrial Dispute claiming their termination as

bad. When the Central Government of India did not feel it fit to refer their case for adjudication, these workmen agitated Anr. dispute through the

present Union which ultimately culminated in the present reference.

4. Stand of the workmen before the learned "Tribunal was that as each of the disputant workmen had worked for more than 240 days

continuously in the year preceding their disengagement in June, 2001, refusal of employment to them without notice or retrenchment benefit was

violative of provisions u/s 25-F of the lndustrial Dispute Act, 1947 (for short "the I.D. Act") for which they are entitled to be reinstated with full

back wages. The Management took the stand that disputant workmen and Ors. had been engaged on need basis in different time bound projects,

on completion of which they were disengaged. After their disengagement, 99 workmen including the present disputants through their Union-

Kalinga Shramik Sangha raised an industrial dispute in course of which a tripartite settlement, copy of which is at Annexure-1 to W.P.(C)

No.9593 of 2007, was arrived at in terms of which 60% of them were given employment through contractors. In view of such settlement in course

of conciliation, the disputants are estopped from raising the present dispute. It was also averred in the written statement that since the engagement

of the disputants was on need basis to attend to menial jobs in different projects, termination of their engagement upon closure of projects could

not be regarded as retrenchment so as to attract the provisions of Section 25-F of the I.D. Act.

In order to substantiate their respective stands, disputants examined two witnesses whereas Management examined one witness. Documents

marked Exts. 1 to 5 and Ext. "A" respectively were also relied upon by the parties. Upon consideration of materials on record, learned Tribunal

came to the finding that as each of the workmen had worked for 240 days continuously in a year by the time of termination of their services, refusal

of employment to them without any retrenchment benefit was violative of provisions u/s 25-F of the I.D. Act and is illegal. However, instead of

directing reinstatement, as the Management had already awarded the contract of the work performed by the disputant workmen to an outside

Labour Supply Agency, the Management was directed to pay compensation of Rs.50,000/- to each of the disputant workmen.

5. In the present writ applications stand of the management is that in view of tripartite settlement at Annexure-1 to W.P.(C) No. 9593 of 2007,

reference made by the Central Government under Annexure-7 to W.P.(C) No. 9593 of 2007 as well as proceeding in I.D. Case No.30 of 2005

are liable to be quashed being without jurisdiction. The stand of the workmen is that the learned Tribunal, having held that the workmen were

illegally retrenched in violation of provisions of Section 25-F of the I.D. Act, ought to have directed theirjeinstatement with full back wages instead

of only directing payment of compensation of Rs.50,000/-.

6. Sri S. Mishra, learned Counsel appearing for the Management would submit that though the establishment of CIFA has regular and permanent

staff, in order to carry out time bound project works and schemes, temporary and casual daily labours were engaged on need basis. On closure of

projects and schemes, services of such labours were not required and they were disengaged. In the process, around 99 casual daily wagers were

disengaged on 01.07.2001. On behalf of 99 such casual daily wagers including the disputants, their Union, namely, Kalinga Sharamik Sangha

raised dispute. In course of conciliation held during the pendency of the dispute, tripartite settlement under Annexure-1 to W.P.(C) No.9593 of

2007, was arrived at. Without challenging such tripartite settlement, the present Union, namely, CIFA Shramik Sangha raised Anr. dispute in which

conciliation having failed, failure report was submitted to the .Central Government By letter dated 04.06.2004, copy of which is at Annexure-4 to

W.P.(C) No. 9593 of 2007, the Central Government intimated that the dispute was not considered fit for adjudication on the ground that the

workmen who raised the dispute through CIFA Shramik Sangha were party to tripartite agreement signed by Kalinga Shramik Sangha and the

Management on 26.09.2001. Without challenging the order of the Central Government refusing reference of the dispute, the workmen again raised

the present dispute through CIFA Shramik Sangha. Conciliation having failed, on receipt of report from the Assistant Labour Commissioner

(Central), reference which culminated in the impugned award was made by the Central Government without considering the fact that self-same

dispute had been considered to be unfit for adjudication earlier. In the background of such submissions, it was contended by Sri Mishra that the

Kalinga Shramik Sangha having espoused the cause of disputants workmen earlier in the same dispute in which tripartite settlement was arrived at

in course of conciliation, the said settlement was binding on the disputants. It was further argued that earlier attempt of CIFA Shramik Sangha to

raise Industrial Dispute for adjudication having been rejected by the Central Government in its letter under Annexure-4 to W.P.(C) No.9593 of

2007, the workmen should have assailed the said qrder of the Central Government. It was contended that though the Management brought such

facts to the notice of learned Tribunal, the learned Tribunal illegally passed the impugned order without adjudicating the issue of maintainability of

the reference in view of settlement arrived at between the parties earlier and in view of earlier refusal to refer the dispute for adjudication of the

Central Government.

7. Shri Mohanty, learned Counsel appearing for the workmen would urge that in view of the finding that the disputants were retrenched without

compliance of provisions u/s 25-F of the I.D. Act, learned Tribunal should have held that the workmen were entitled to be reinstated with full back

wages. It was also contented by him that tripartite settlement at Annexure-1 to W.P.(C) No. 9593 of 2007 was a sham settlement brought about

by the Management contrary to legal provisions. It was also vaguely contended that the disputant workmen did not enter into the so-called

settlement. In this context, in the written note of submissions, it has been averred that:

Ten poor workers are belongs to CI.F.A. Shramika Sangha and they have never entered into the so called agreement which was not executed in

proper procedure and the Govt, u/s 10(2)(a) of the I.D. Act, 1947."" (sic)

8. Without entering into the merits of the impugned award in directing payment of compensation instead of reinstatement and full back wages, it is

observed that the contention with regard to legal implication of tripartite settlement raised by the Management raises the issue of maintainability of

present industrial dispute. The disputed workmen never disputed the tripartite settlement. P.W.2, the Secretary of CIFA Shramik Sangha

examined on behalf of the workmen categorically admitted that the disputant workmen were also parties to the conciliation proceeding in course of

which tripartite agreement was arrived at and that earlier attempt made by the disputant workmen to raise the dispute was turned down by the

Central Government. In the concluding paragraph of his deposition P.W.2 testified :

It is a fact that at the time of tripartite settlement of 26.9.2001 these 10 disputants were also the subject matter of the dispute. It is a fact that, after

the above settlement of 2001 an Industrial Dispute was raised before the A.LC.(C) by our Union in respect of these 10 disputants and the said

matter though ended in a failure report the Government did not like to act upon the same. It is a fact that, against the said order of the Government

to further legal steps were taken lt is also a fact that, thereafter again an Industrial Dispute was raised before the A.L.C. (C) and is a outcome

thereof the Government has made the present reference, xxx Therefore, there is no scope for the workmen to disassociate themselves from or to

assail in any manner the tripartite agreement.

9. ""Settlement"" as defined u/s 2(p) of the I.D. Act 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 thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorized in this behalf by the

appropriate Government and the conciliation officer. Section 12 of the I.D. Act provides for duties of conciliation of officer to bring abut settlement

of industrial dispute in course of conciliation proceeding.

10. In the present case, tripartite settlement was arrived at in the course of conciliation proceeding. Sanctity of such settlement has been statutorily

recognized under Sub-section (3) of Section 18 of the I.D. Act which reads :

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 in the proceedings 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 clause (b) is composed of workmen, ail persons who were 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 the establishment or part.

11. Settlement has to be honoured by the parties bound by it during the period of its operation as prescribed under Sub-section (1) and (2) of

Section 10 of the I.D. Act which read :

Period of operation of settlements and awards.

(1) A settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date

on which the memorandum of the settlement is signed by the parties to the dispute.

(2) Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six

months from the date on which the memorandum of settlement is signed by the parties to the dispute, and shall continue to be binding on the parties

after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the

settlement is given by one of the parties to the other party or parties to the settlement.

12. It may be seen that settlements under the I.D. Act are divided into two categories, namely, (i) those arrived at outside the conciliation

proceedings and (ii) those arrived at in the course of conciliation proceedings. A settlement which belongs to the first category has limited

application in that it merely binds the parties to the agreement but the settlement belonging to the second category has extended application since it

is binding on all parties to the industrial dispute, to all Ors. who were summoned to appear in the conciliation proceedings and to all persons

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

Ors. who joined the establishment thereafter. Therefore, a settlement arrived at in the course of conciliation proceedings with a recognized majority

union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that

extent it departs from the ordinary law of contract. The object obviously is to uphold the sanctity of settlements reached with the active assistance

of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement. There is an underlying

assumption that asettlement reached with the help of the Conciliation Officer must be fair and reasonable and can, therefore, safely be made

binding not only on the workmen belonging to the union signing the settlement but also on Ors. . That is why a settlement arrived at in the course of

conciliation proceedings is put on par with an award made by an adjudicatory authority. In this connection decisions of the Hon"ble Supreme

Court in Barauni Refinery Pragatisheel Shramik Parishad Vs. Indian Oil Corporation Ltd., , Balmer Lawrie Workers" Union, Bombay and

Another Vs. Balmer Lawrie and Co. Ltd. and Others, and The Workmen of the Motor Industries Co. Ltd. Vs. The Management of the Motor

Industries Co. Ltd. Bangalore, may be referred to.

13. Notwithstanding the sanctity attached by the Legislature to settlement arrived at in the course of conciliation proceeding, the learned Tribunal

passed the impugned order by making an one sentence observation that tripartite settlement ""in no way can take away the right of the workmen as

given u/s 25-F of the I.D. Act when admittedly they were not paid any retrenchment benefits at the time of their termination even though by then

each had worked for 240 days continuously during the proceeding 12 months"". It was incumbent upon the learned Tribunal to consider also the

contention and adjudicate the issue relating to the import and effect of the tripartite settlement before adjudicating other factual controversies. In

such circumstances, the matter is required to be remitted for framing and adjudication of the issue relating to maintainability of the present industrial

dispute in view of the tripartite settlement.

14. Therefore, the impugned award is quashed. Learned Tribunal is directed to pass an award afresh upon consideration of the issue of

maintainability after affording the parties opportunity of being heard on the basis of materials available on record. The parties are directed to

appear before the learned Tribunal on 04.11.2009 upon which the learned Tribunal shall fix a date for hearing and make endeavour to dispose of

the case within a period of three months there from.

Both the writ applications are, accordingly, disposed of.