(1996) 08 BOM CK 0057

Bombay High Court

Case No: Writ Petition No. 3230 of 1989

Prabhakar Anandrao Dhote and others		APPELLANT
	Vs	
Presiding Officer, Industrial Court and another		RESPONDENT

Date of Decision: Aug. 27, 1996

Acts Referred:

- Bombay Industrial Relations Act, 1946 - Section 32

Citation: (1997) 2 LLJ 1083

Hon'ble Judges: V.S. Sirpurkar, J

Bench: Single Bench

Advocate: B.M. Khan, for the Appellant; R.R. Pilai, for the Respondent

Judgement

1. By the instant writ petition, five petitioners who are working as clerks with the Respondent No. 2 are challenging the award passed by the Industrial Court, Maharashtra, Nagpur Bench. By this award, the Industrial Court recorded the amicable settlement between the management and the employees who were represented through the elected representatives, and converted it into an award. The petitioners prayed that the said award is liable to be modified and should be made binding and applicable to all the 1 workmen of Respondent No. 21 Industry. Few facts should be necessary :

2. The Respondent No. 2 is an industry. It is an admitted position that there is no representative union under the provisions of the Bombay Industrial Relations Act, 1946 (hereinafter called "the BIR Act" for the sake of brevity). There is only panel of elected representatives. A Charter of Demands was presented asking for various benefits including the pay revision, washing allowance, dearness allowance, rent allowance, cycle allowance, etc. The demands not having been met, the Conciliation Officer was approached and ultimately a reference 2 came to he made to the Industrial Court. The

reference specifically related to the demands made in the Charter of Demands. While this reference was pending before the Industrial Court there seems to have been amicable settlement between the management and the elected representatives of employees and in pursuance of that, an application came to be filed. In that application, it was specifically contended by the elected representatives that the said settlement was only in respect of the technical staff or the operatives, as they were called; and not in respect of others. It seems that application was presented on March 30, 1989. However, no orders were passed on this application as the objection to the compromise was itself withdrawn by the present petitioners. The Industrial Court, thereafter, proceeded to pass the award in terms of the compromise.

3. Shri B. M. Khan, learned Counsel appearing on behalf of the petitioners, contended that the present petitioners are the clerks and the award as it is passed in terms of the earlier settlement does not provide anything for them. He, therefore, contended that, in fact, the award should have been in respect of all the staff of the Respondent No. 2 and not only in respect of the operatives, as is the present case. He further contended that the reference was in respect of the whole employees, at least the wording suggests so. However, the award is only in respect of the operatives, i.e., the technical staff, and that is an illegality which has crept in the award.

4. Shri. Pillai, learned Counsel appearing on behalf of Respondent No. 2. pointed out that as a matter of fact, the present petitioners, cannot maintain the petition directly and cannot oppose the award on the ground that it is only in respect of the operatives.

5. It will have, therefore, to be seen as to whether in the present petition the petitioners can challenge the award on the grounds stated earlier. It will be seen that Section 27A of the Act provides that except as provided in Sections 32, 33 and 33A, no employee shall be allowed to appear or act in any proceedings under the Act, except through the representatives of employees. Section 28 provides that where there is no representative Union in respect of any industry, the representatives of the employees could be elected and such elected representatives would have all the powers of the representative union. Section 30 gives the list of the representatives of employees which includes a representative union as also the persons elected by the employees in accordance with the provisions of Section 28. Section 32 provides that there is a power in the Labour Court or the Industrial Court to permit an individual to appear 20 in any proceeding before it. The Proviso to Section 32 is as follows :-

"Provided that subject to the provisions of Section 33A, no such individual shall be permitted to appear in any proceedings not being a proceeding before a Labour Court or the Industrial Court in which the legality or propriety of an order of dismissal, discharge, removal, retrenchment, termination of service or suspension of an employee is under consideration in which a Representative Union has appeared as the representative of employees."

It will thus be clear that when a matter is pending before the Labour It will thus be clear that Industrial Court, as the case may be, under this Act, there is ample power in the Court or Tribunal to permit any individual employee to appear. Admittedly, such permission was not sought for by the present petitioners. The present petitioners merely took an objection before the Industrial Court to the settlement and the consequent award to be passed thereupon. However, latterï¿½s on, they have withdrawn their objection. Thus, the Industrial Court here had no opportunity to examine as to whether the award was or was not in the interest of the workman, since the elected representatives had already agreed that they had made a settlement with the management. This act of the elected representatives was undoubtedly binding on all the workers, and if any worker so wanted, the said worker could have sought for a permission of the Industrial Court to appear and to show to it that the award was not a legal award or the settlement was not for, the benefit of the workers. Such opportunity not having been taken by the petitioners, they cannot be allowed now to file the writ petition challenging the award which is passed in terms of the settlement. After all, the question as to whether the award was or was not in the interest of the workmen, would depend upon the evidence and would also be a question of fact. That evidence has admittedly not been led nor was the Industrial Court given an opportunity to decide that question, because the workers did not appear before it. They could not come directly to the High Court to file a petition and challenge the award like this.

6. That apart, Shri Khan expresses his grievance that the petitioners would be deprived of the benefits and, therefore, they would be in a position to challenge the award. Now, admittedly the benefits under the award have gone only to the operatives and that is a clear cut stand taken by Shri Pillai here before this Court. Even before the Industrial Court, in the application, the same stand was taken by the elected representatives. It cannot, therefore, he said that this award seals the fate of the others who are not covered by the same and they might still be able to press the demands. However, that is not a subject to he decided by this Court. Suffice it to say that the petition at the instance of the petitioners, for the first time, here, challenging the award could not be entertained, particularly when the said workers did not seek the permission u/s 32 of the Act and press their objections to the award before the Industrial Court. On that count, the petition must fail and is dismissed, but without any orders as to the costs.