

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.295 of 2011

Ayodhya Prasad, aged about 53 years, S/o late Dhansai,
Village Dugga, PO + PS Bhatgaon Colliery, Distt. Korla
(CG)

---- Petitioner

Versus

1. South Eastern Coalfields Limited, Through its Chairman-cum-Managing Director, Seepat Road, Bilaspur (CG)
2. Chief General Manager, SECL Bhatgaon Area, PO Bhatgaon Colliery, Distt. Surguja (CG)

---- Respondents

For Petitioner: Mr. Gary Mukhopadhyay, Advocate.

For Respondents: Dr. N.K. Shukla, Senior Advocate with
Mr. Shailendra Shukla, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

16/11/2015

1. The petitioner was appointed on 26-6-1978 in Bhatgaon Colliery by respondent No.2 SECL, a Government Company. In the Assembly elections held in the State of Chhattisgarh, the petitioner sought leave from his employer SECL to contest the election subject to condition that if the petitioner would be successful in the election, he would submit resignation from the post in employment and if the petitioner remains unsuccessful, he would join his duty

back in the SECL.

2. The respondent SECL on due consideration, accepted the conditional application filed by the petitioner and on 3-11-2008 issued no objection certificate (NOC). In the election held, the petitioner remained unsuccessful and he sought leave from respondent No.2 to join his duty as mentioned in the NOC. The Directors of the respondent SECL considered the case of the petitioner in its meeting dated 1-3-2009 and approved reinstatement / rejoining of the petitioner and similarly situated persons after signing the settlement in Form H in accordance with the provisions of the Industrial Disputes Act, 1947 (for short 'the ID Act, 1947'), on 25-5-2009 between the petitioner and the respondent SECL. The petitioner was allowed to join duties with effect from 4-6-2009 in terms of the settlement. Thereafter, a written communication dated 10-6-2009 (Annexure P-1) was served upon the petitioner by the Chief General Manager, SECL, Bhatgaon Area, stating that as per the direction given by the Chief General Manager (P&A), SECL, Bilaspur, his joining made earlier is hereby cancelled and his services are dispensed thereby.
3. Feeling dissatisfied and aggrieved against the order of the Chief General Manager, SECL, Bhatgaon Area, which is based on the oral order of the Chief General Manager

(P&A), SECL, Bilaspur, this writ petition has been filed questioning the order Annexure P-1 and the order dated 23-6-2009 (Annexure P-8) by which the petitioner was refused to be reinstated and also the order Annexure P-9 by which the Chief General Manager, SECL, Bhatgaon Area, was informed that the petitioner will not be reinstated. It has been stated inter alia in the petition that the settlement dated 25-5-2009 signed by the petitioner and the Management SECL is binding upon the respondent SECL by virtue of Section 18 of the ID Act, 1947 and as such, the respondent cannot back-out and violate the terms and conditions of the settlement. The action of the respondent SECL in terminating the services of the petitioner on the oral instructions of the Chief General Manager (P&A), SECL, Bilaspur is per se arbitrary, illegal and without authority of law. In addition to that it is opposed to the principles of natural justice.

4. Return has been filed by the respondent SECL stating inter alia that the settlement arrived at between the parties on 25-5-2009 is not in accordance with the ID Act, 1947 and as such, no reference was made by the appropriate Government, though the order dated 27-5-2009 was passed on the basis of settlement dated 25-5-2009, but thereafter, finding the settlement not in accordance with

law, it has been revoked and as such, the writ petition deserves to be dismissed.

5. Short rejoinder has been filed stating inter alia that no such ground has been mentioned in the order which has been communicated in Annexures P-1, P-8 and P-9. Altogether a new ground has been raised in order to deny the just claim of the petitioner which is the outcome of an afterthought as such, the petitioner's writ petition be allowed and the petitioner be directed to be reinstated along with full back-wages.
6. Mr. Gary Mukhopadhyay, learned counsel for the petitioner, would submit that the respondent SECL after due consideration allowed the conditional application of the petitioner and issued NOC on 3-11-2008, and finding his service being secured in the event of losing election, the petitioner decided to contest the election. On being unsuccessful, the petitioner was allowed to join by order dated 27-5-2009 consequent to the settlement dated 25-5-2009 and the order dated 27-5-2009 has not been revoked till this date, it is binding upon the respondent. The petitioner cannot be terminated by oral order of the Chief General Manager (P&A), SECL, Bilaspur which is per se arbitrary, illegal and without authority of law. Therefore, the writ petition deserves to be allowed.

7. Dr. N.K. Shukla, learned Senior Advocate appearing for the respondent SECL, would submit that though the settlement was arrived at between the parties on 25-5-2009 and the petitioner was allowed to join on the post on which he was working prior to contesting the election, yet subsequently, finding the settlement dated 25-5-2009 was not in accordance with the provisions of the ID Act, 1947, it was revoked and, therefore, the petitioner's services have rightly been terminated, as such, the writ petition deserves to be dismissed.
8. I have heard learned counsel for the parties and considered the rival submissions made therein and also gone through the records available with utmost circumspection.
9. It is not in dispute that the petitioner was duly appointed employee of SECL, a Government Company, being Category-II (SLU). It is also not in dispute that he sought leave of SECL to contest the elections subject to condition, it was accepted and no objection certificate was given to contest the elections. It is also not in dispute that the settlement dated 25-5-2009 was arrived into between the petitioner and the SECL in accordance with the provisions of the ID Act, 1947, read with Rule 58 of the Industrial Disputes Rules. The memorandum of settlement was

reduced into writing on 25-5-2009 pursuant to which the petitioner was reinstated by order dated 27-5-2009 by the Chief General Manager, SECL, Bhatgaon Area, and thereafter, the petitioner joined and was working on the said post. The petitioner was terminated only by the oral order of the Chief General Manager (P&A), SECL, Bilaspur which was communicated by memo dated 10-6-2009 to the petitioner.

10. At this stage, it would be proper to notice Sections 17, 18, 19 and 20 of the ID Act, 1947. Section 18(3) of the ID Act, 1947, states as under:-

“18. Persons on whom settlements and awards are binding.- (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) XXX XXX XXX

(3) A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under sub-Section (3A) of section 10A 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, all 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 that establishment or part.”

11. In the matter of **Workmen of the Motor Industries Co.**

Ltd. v. Management of Motor Industries Co. Ltd. and

another¹, Their Lordships of the Supreme Court has held that settlement as defined by Section 2(p) of Industrial Dispute Act and one under Section 12(3) are binding on workmen under Section 18(3) of the Act until it is validly terminated.

12. In the matter of **P. Virudhachkalam and others v. The**

Management of Lotus Mills and another², Their

Lordships of the Supreme Court after considering Section 12(3) of the Act, held that settlement arrived at during the conciliation proceeding has the effect as an award of Labour Court by observing pertinently as under:-

“The aforesaid relevant provisions of the Act, therefore, leave no room for doubt that once a written settlement is arrived at during the conciliation proceedings such settlement under Section 12(3) has a binding effect not only on the signatories to the settlement but

1 AIR 1969 SC 1280

2 AIR 1998 SC 554

also on all parties to the industrial dispute which would cover the entire body of workmen, not only existing workmen but also future workmen. Such a settlement during conciliation proceedings has the same legal effect as an award of Labour Court, or Tribunal or National Tribunal or an Arbitration Award. They all stand on par. It is easy to visualize that settlement contemplated by Section 12(3) necessarily means a written settlement which would be based on a written agreement where signatories to such settlement sign the agreement. Therefore, settlement under Section 12(3) during conciliation proceedings and all other settlements contemplated by Section 2(p) outside conciliation proceedings must be based on written agreements. Written agreements would become settlements contemplated by Sections 2(p) read with Section 12(3) of the Act when arrived at during conciliation proceedings. Thus, written agreements would become settlements after relevant procedural provisions for arriving at such settlements are followed. Thus, all settlement necessarily are based on written agreements between the parties. It is impossible to accept the submission of learned Counsel for the appellants that settlements between the parties are different from agreements between the parties. It is trite to observe that all settlements must be based on written agreements and such written agreements get embedded in settlements. But all agreements may not necessarily be settlements till the aforesaid procedure giving them status of such settlement gets followed. In other words, under the scheme of the Act, all settlements are necessarily to be treated as binding agreements between the parties but all agreements may not be settlements so as to have binding effect as provided under Section 18(1) or (3) if the necessary procedure for giving them such status is not followed in given cases. On the aforesaid scheme of the Act, therefore, it must be held that the settlement arrived at during

conciliation proceedings on 5.5.1980 between respondent No.1-Management on the one hand and the four out of 5 unions of workmen on the other, had a binding effect under Section 18(3) of the Act not only on the members of signatory unions but also on the remaining workmen who were represented by the fifth union which, though having taken part in conciliation proceedings, refused to sign the settlement. It is axiomatic that if such settlement arrived at during the conciliation proceedings is binding to even future workmen as laid down by Section 18(3)(d), it would ipso facto bind all the existing workmen who are all parties to the industrial dispute and who may not be members of unions that are signatories to such settlement under Section 12(3) of the Act.”

13. In the matter of **Barauni Refinery Pragatisheel Shramik**

Parishad v. Indian Oil Corporation Ltd.³, Their Lordships

of the Supreme Court had an occasion to consider the binding effect of such a settlement arrived at during conciliation proceedings in light of the Section 18 of the Act and held as under:-

“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 a settlement reached with the help of the conciliation Officer must be fair and reasonable and can,

3 AIR 1990 SC 1801

therefore, safely be made binding not only on the workmen belonging to the Union signing the settlement but also on others. 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.”

14. Settlement within the meaning of Section 2(p) of the ID Act, 1947, is binding on both the parties unless the same is altered, modified or substituted by another settlement.

(See Mohan Mahto v. Central Coal Field Ltd. and others⁴.)

15. Judged by the principles of law laid down by Their Lordships of the Supreme Court in the above-stated cases, it would appear that the settlement arrived at between the parties is binding upon the petitioner as well as the respondent SECL by virtue of Section 18 (3) of the ID Act, 1947.

16. Terms of settlement dated 25-5-2009 arrived at between the parties clearly provide that the petitioner would be allowed to join his duties within 15 days from the date of posting order pursuant to which he has been allowed to join by order dated 27-5-2009 on 4-6-2009 and as such, the memorandum of settlement has already been acted upon. The terms and conditions of the settlement stood fully complied with. The respondent SECL has neither challenged the settlement in accordance with law nor

4 (2007) 8 SCC 549

made any grievance against the memorandum of settlement duly arrived in. Though the respondent SECL has taken stand that the settlement is not in accordance with law, but no such ground appears to have been taken in its communication dated 10-6-2009 issued to the petitioner nor in the order rejecting his appeal vide Annexures P-8 & P-9, as such, such a ground raised is the result of an afterthought and cannot be permitted to be raised, as the settlement is binding between the parties.

17. Thus, in view of the aforesaid discussion, the Court is of the considered opinion that the settlement dated 25-5-2009 arrived at between the parties and termination of the petitioner's services by oral instructions of the Chief General Manager (P&A), SECL, Bilaspur vide communication Annexure P-1 are arbitrary and bad in law.

18. As a fall out and consequence of the aforesaid discussion, the order Annexure P-1 dated 10-6-2009 as well as Annexure P-8 dated 23-6-2009 and the order Annexure P-9 dated 11-6-2009 are hereby quashed. The petitioner be reinstated in service forthwith.

19. The petitioner has prayed for reinstatement along with all consequential benefits. The impugned order was passed on 10-6-2009. The petitioner has neither averred in the writ petition nor brought any material on record to hold that

during this period i.e. from 10-6-2009 to 16-11-2015, he was not gainfully employed anywhere. The normal rule is, a workman whose service has been illegally terminated would be entitled to full back-wages except to the extent he was gainfully employed during the enforced idleness. (See **M/s. Hindustan Tin Works Pvt. Ltd. v. the Employees of M/s. Hindustan Tin Works Pvt. Ltd. and others**⁵.)

Thereafter, in the matter of **M/s. Reetu Marbles v. Prabhakant Shukla**⁶, Their Lordships of the Supreme Court have emphasized the need for enquiry / material with regard to gainful employment before directing full back-wages particularly when the award is being modified and awarded only 50 per cent of the back-wages from the date of termination of service till reinstatement. Following the law laid down in this regard and facts and circumstances of the case, I deem it appropriate to award only 50 per cent back-wages from the date of termination till the petitioner is reinstated in the service.

20. The writ petition is allowed to the extent indicated herein-above. No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge

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5 AIR 1979 SC 75

6 AIR 2010 SC 397