

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 230 OF 2000**

1. Workmen, represented by ACGL Workers' Union, a registered trade union with its Registered office at Honda, Sattari Taluka Goa 403 501, herein represented by Shri Suresh Shivram Kolvekar, General Secretary,
2. Shri Sunilkumar N. Vengurlekar, resident of Bailipeth, Bicholim Goa.
3. Shri Vishnu Appa Gawas, resident of Malidwada, Keri, Sattari Goa.
4. Shri Omprakash Anant Barve, Resident of Khotode, Sattari Goa.
5. Shri Purushottam Jaggu Naik, resident of Gavane, Bhironde, Sattari Goa.
6. Shri Anthonio Luciano Monteiro, Resident of Sanquelim, Opp. Canara Bank, Goa.
7. Shri Dadu Shahadeo Parsekar, resident of Sawantwada, Pernem, Goa.
8. Shri Marshall Fernandes, resident of Canacona, Agonda,
9. Shri Arvind Anant Prabhudesai, Resident of Advoi, Sattari Goa.
10. Shri Ganapat alias Gopal Gawas, resident of Dharne, Sattari,

11. Shri Ramachandra Vaman Naik,
resident of Naveli, Bicholim.
12. Shri Dattatraya Vithal Naik,
resident of Gavane, Sattari Goa.
13. Shri Sitaram Vaman Desai,
resident of Advoi, Sattari Goa.
14. Shri Baboi Arjun Massordekar,
resident of Masorde, Sattari Goa.
15. Shri Bhimrao Mahadev Desai,
resident of Advoi, Sattari Goa.
16. Shri Dyaneswar Laxman Gaonkar,
resident of Sarevarshem, Sattari.
17. Shri Pradeep Pandurang Dhargalkar,
resident of Shelpem, Kandali,
Bardez Goa. ... Petitioners

V e r s u s

1. Messrs Automobile Corporation of
Goa Ltd., Honda, Sattari Goa.
2. The Industrial Tribunal of Goa,
Junta House, Panaji. ... Respondents

Mr. V. Menezes, Advocate for the petitioners.

Mr. A. F. Diniz, Advocate for the respondents.

CORAM : F. M. REIS, J

JUDGMENT RESERVED ON : 15th December, 2014

JUDGMENT PRONOUNCED ON : 13th March, 2015

J U D G M E N T

Heard Mr. V. Menezes, learned counsel appearing for the petitioners and Mr. A. F. Diniz, learned counsel appearing for the respondents.

2. The above petition inter-alia prays for quashing of the award dated 08.09.1998 and consequentially remand the reference back to the Industrial Tribunal for adjudication on merits.

3. The brief facts of the case as stated by the petitioners are that the workers representing the ACGL worker's Union raised a demand with the management of the respondent no.1 that they be paid 20% bonus. The management refused to accede to the said demand and accordingly, the workers went on one day strike. Thereafter on 05.11.1985, the workmen concerned with the dispute in the above petition who were the office bearers of the Union were suspended and a charge-sheet was issued to such workmen alleging various acts of violence committed at the factory gate during the protest. But however, no inquiry on such charge-sheet was completed. Accordingly, without holding any inquiry and without following the principle of natural justice, the services of the petitioners were terminated. Consequently, the Union raised

a demand for reinstatement of the petitioners with all consequential benefits somewhere on 25.08.1986. As the management was not accepting the demands, the same were carried before the Labour Commissioner in conciliation and such demands were pending in conciliation. In the meanwhile, the earlier wage settlement dated 25.05.1984 expired after a period of three years i.e. somewhere on 30.05.1987. The management claimed that a section of the workmen raised a charter of demands for wages. It was stated by the management that amongst the said demands, the said section of the workmen purported to raise demand No.6 asking for reinstatement of the "terminated workmen". It is however the contention of the petitioners that the said section of the workmen were not empowered to raise such demands and negotiate any demand on behalf of the said workmen. The management thereafter claims to have signed a settlement with some of the workmen after negotiation and fixing the wages somewhere on 17.10.1987. The settlement was also signed in terms of Section 2(p) of the Industrial Disputes Act, 1947 and in the said settlement the group of workmen who had signed such settlement stated that since the demand for reinstatement of the terminated workmen is not acceptable, the same was treated as withdrawn. It is further the contention of the petitioners that the said settlement cannot be

treated to be a settlement in terms of law for various reasons. In the meanwhile, thereafter on 30.10.1987, the ACGL worker's Union raised a charter of demands on the company/respondent no.1 wherein it demanded certain general demands as to wages. However, while raising such demands in order to maintain the harmonious industrial relationship, it also reiterated its demands that 16 workers whose names were given in the charter should be reinstated. But however, a failure report was made on 26.11.1987. Thereafter on 23.03.1988 a settlement was signed between a majority of the workmen and the management of the company wherein the Union denied that the earlier settlement dated 17.10.1987 was signed by the majority. The settlement states that it was agreed between the parties that the benefits enjoyed by the signatories to the settlement dated 17.10.1987 would be conferred on the signatories to the new settlement. It is further the contention of the petitioners that what was contemplated as per the settlement was only monetary benefits and the demand of reinstatement of 16 workmen has not been given up. In the meanwhile, on 01.06.1988, the Government of Goa issued an order refusing to refer the dispute of the Union for adjudication before the learned Tribunal. A challenge was made to the said order before this Court and the Government was thereafter directed to refer the dispute with regard to the dismissal

of the workmen to the Industrial Tribunal for adjudication by an order dated 28.06.1991. In Writ Petition No. 278 of 1998 filed before this Court, the management- respondent no.1 challenged the order of reference dated 28.06.1991 by the Government wherein this Court has dismissed the said petition of the management-respondent. It is further the contention of the petitioners that the Industrial Tribunal on 08.09.1998 passed an order wherein it has been held that the reference by the Government was bad in law and hence the reference would not be maintainable. Being aggrieved by the said order, the petitioners filed the above Writ Petition.

4. The respondents have filed their reply disputing all the contentions of the petitioners. It is further their case that the dispute with regard to the claim of the dismissed workmen was given up in view of the settlement signed by the Union. It is further pointed out that the reference itself by the Government was not maintainable and consequentially, the impugned award passed by the learned Tribunal is justified.

5. Mr. V. Menezes, learned counsel appearing for the petitioners in support of his contentions has pointed out that the main issue in the present case is whether the settlement dated 17.10.1987 can be termed to be a settlement in view of the

demand for reinstatement of the petitioners. It is further his contention that the settlement dated 17.10.1987 is not a settlement signed under Section 2(p) of the Industrial Disputes Act, 1947. Whether the settlement dated 28.03.1988 accepting the benefits and the service conditions under the said settlement amounts to a settlement giving up the dispute as regards to the termination of the petitioners would have to be examined in the context whether the alleged settlement dated 17.10.1987 would in any way suggest that the signatories to the said settlement were authorised to sign such settlement on behalf of the petitioners herein. In support of his submissions, the learned counsel has relied upon the judgment of the Apex Court reported in **AIR 1981 SC page 1660** in the case of **Brooke Bond India V/s Workmen**, **AIR 1970 SC 1851** in the case of **Workmen V/s D.C. M.** and **1986 Lab. I.C. 667** in the case of **G. M. Security Mill V/s R. S. Sharma**. He has also relied upon the judgment of the Apex Court reported in **1978 SC 828** in the case of **Tata Chemicals V/s Workmen** and **1975 I LLJ 163** in the case of **Jhagrakhan Collieries V/s G. C. Agarwal**. The learned counsel has thereafter taken me through the judgment and award passed by the learned Tribunal and pointed out that the learned Tribunal has erroneously come to the conclusion that the settlement covered the demand for reinstatement of the petitioners. The

learned counsel has further pointed out that the Tribunal has not examined whether the settlement is fair and justified as against the demand of the petitioners. The learned counsel as such points out that the impugned award be quashed and set aside.

6. On the other hand, Mr. A. F. Diniz, learned counsel appearing for the respondents has supported the impugned award. The learned counsel has pointed out that the learned Tribunal has rightly examined the material on record to come to the conclusion that the demands of the petitioners have been given up by the Union. The learned counsel has minutely taken me through the impugned award and pointed out that there is no jurisdictional error committed by the learned Tribunal which would call for interference by this Court. The learned counsel further pointed out that all the contentions of the petitioners have been duly examined by the learned Tribunal while passing the impugned award. The learned counsel further pointed out that the petition itself is not maintainable as according to him the individual workers were not parties to the dispute before the learned Tribunal. As such, the learned counsel further pointed out that the individual petitioners have no interest in the grievance raised in the above petition and consequently the petition be rejected.

7. The main contention of Mr. Diniz, learned counsel

appearing for the respondents is that the charter of demands which include the grievances raised by the petitioners were referred to in the settlement dated 17.10.1987 but however, I find that the signatories to the said documents were not authorised or competent to consider the grievances of the petitioners so as to arrive at the binding settlement in connection therewith. Another contention of Mr. Diniz, learned counsel is that the subsequent settlement which was signed by the Union dated 28.03.1988 has ratified the earlier settlement. This contention of Mr. Diniz also cannot be accepted. There is nothing to the benefits of the petitioners' workers which could be culled out in the said settlement. The settlement is always have binding power between the Union and the workers and ultimately, it should always be for the benefits of the persons who have their own grievances as against the Management. In the present case, admittedly no benefits were accrued to the petitioners' workers in connection with the said settlement and as such the findings in the award by the learned Tribunal that such settlement would be binding on the petitioners' workers cannot be accepted.

8. As pointed out herein above, when the alleged settlement took place the conciliation proceeding with regard to the dispute raised by the petitioners herein in respect of their

grievances was pending. In such circumstances, the Apex Court in the judgment reported in **1970 SC 1851** in the case of ***Workmen of M/s. Delhi Cloth General Mills, Ltd., V/s The Management of M/s. Delhi Cloth and General Mills Ltd.,*** has observed at paras 15 and 17 thus :

“**15.** The respondent's learned Advocate in reply obliquely suggested in this connection that the Management and the Union were free to arrive at a settlement of their dispute and if they agreed to do so then the agreement could not but be held to be binding. We do not think the Management and the Union can, when a dispute is referred to the Conciliation Officer, claim absolute freedom of contract to arrive at a settlement in all respects binding on all workmen, to which no objection whatsoever can ever be raised by the workmen feeling aggrieved. The question of a valid and binding settlement in such circumstances, is in our opinion, governed by the statute and the rules made thereunder. Reliance was next placed on S.18(1) to support the binding character of the settlement. This sub-section for its proper construction must be read with the other sub-sections and the relevant rules, in the light of the definition of 'settlement' as contained in S. 2(p) of the Industrial Disputes Act. 'Settlement' as

defined therein means 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 the appropriate Government and the Conciliation Officer. In the light of these provisions we do not think that S. 18 (1) vests in the Management and the Union unfettered freedom to settle the dispute as they please and clothes it with a binding effect on all workmen or even on all member workmen of the Union. The settlement has to be in compliance with the statutory provisions.

17. We are not impressed by this submission. On reference having been made by the Government to the Tribunal, if the respondent wanted to show that this reference was invalid because of a lawful settlement, then it was incumbent on the party relying on such a settlement to prove that it was lawful and valid, rendering the reference illegal. This was particularly so when we find that Shibban Lal had in his affidavit expressly asserted that the

settlement relied upon had not been filed before the Conciliation Officer prior to June 18, 1965 when he sent his failure report and also that the two persons entering into the settlement had no authority either from the Union or from the members thereof to enter into a binding agreement. Section 38 of the Industrial Disputes Act empowers the appropriate Government to make rules for the purpose of giving effect to the provisions of the Act. Rules made by the Central Government have to be laid before each House of Parliament while in session for a period of 30 days and the Houses of Parliament are given an opportunity of not only modifying them but even of deciding that the rules should not be made at all. These rules thus appear to us to have full force of law of which judicial notice has to be taken. It was therefore incumbent on the Tribunal to satisfy itself that the settlement relied upon by the respondent in support of the plea of its legality of the reference, which vitally affected its jurisdiction, was in accordance with the provisions of both Industrial Disputes Act and the relevant statutory rules. This was all the more so in view of the pleas contained in Shibban Lal's affidavit produced before the Tribunal to which reference has already been made in

this judgment. Though no reference was specifically made to Rule 58, the facts affirmed were reasonably clear to attract the attention of the Tribunal to the question of legality of the settlement. Bearing in mind the object of the Industrial Disputes Act and the important public purpose which it is designed to serve, the Tribunal, in our view, had an obligation to make a deeper probe into the validity of the settlement and not to accept it casually.”

9. Taking note of the said observations, it is clear that the learned Tribunal while accepting the claim of the respondents that the settlement was arrived at has failed to examine the principle of law as stated therein.

10. In the judgment of the Apex Court reported in **AIR 1981 SC 1660** in the case of **Brooke Bond India Ltd., V/s The Workmen**, it has been observed at paras 5, 6 and 7 thus :

“5. It cannot be disputed that unless the office bearers who signed the agreement were authorised by the executive committee of the Union to enter into a settlement or the constitution of the Union contained a provision that one or more of its members would be competent to settle a

dispute with the management, no agreement between any office bearer of the Union and the management can be called a settlement as defined in Section 2 (p). There is no provision in the constitution of the Rashtriya Union authorising any office bearer of the Union to enter into a settlement with the management. We have referred above to the proceedings of the executive committee. As the Tribunal points out, the resolutions passed by the executive committee do not support the claim that the Negotiation Committee was empowered to enter into a settlement without seeking ratification from the executive committee. The Tribunal held, in our opinion rightly, that the fact that the agreement was signed by the office bearers of the Union does not clinch the matter because the executive committee at no stage had accepted the agreement. In fact no meeting of the executive committee was held before the agreement was signed on March 16, 1978 to consider whether the agreement was acceptable.

6. Section 2 (p) of the Industrial Disputes Act defines "settlement";-

"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 thereto 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;"

In the present case the purported settlement was arrived at not in the course of conciliation proceedings. Section 18 (1) of the Act provides:

"Section 18 . Persons on whom settlements and awards are binding:

(1) A settlement arrived at by agreement between the employer and workmen otherwise than in cause of conciliation proceeding shall be binding on the parties to the agreement :"

7. It is also necessary to refer to Rule 62 (2) (b) of the Industrial Disputes (Bombay) Rules, 1957. Rule 62 (2) (b) is as follows:

"62. Memorandum of Settlement:-

(1)

(2) The settlement shall be signed by:

(a)

(b) in the case of workmen, either by the President or Secretary (or such other officer of a trade union of the workmen as may be authorised by the Executive Committee of the Union in this behalf), or by five representatives of the workmen duly authorised in this behalf at a meeting of the workmen held for the purpose."

Sub-rule (4) of Rule 62 requires the parties to the settlement to send copies thereof jointly to the prescribed authorities. That this was done in the present case is not disputed. It was argued on behalf of the appellant that as the agreement was signed in the manner prescribed by Rule 62 (2) (b) and as the requirements of Rule 62 (4) have been complied with, the agreement must be accepted as a settlement within the meaning of section 2 (p) of the Industrial Disputes Act and as such binding on the Rashtriya Union under section 18 (1) of the Act. But, as pointed out by the Tribunal, Rule 62 only prescribes the form of the memorandum of settlement and by whom it should be signed, and the question whether the procedure prescribed by Rule 62 has been complied with will arise only if there is in existence a valid settlement between the parties concerned. In this case it has been found that the office bearers

who signed the agreement were not competent to enter into a settlement with the company and as such it cannot be said that an agreement was reached between the employer and the workmen represented by the Rashtriya Union. What is binding as a settlement under section 18 (1) of the Industrial Disputes Act is an agreement between the employer and workmen. Here the Tribunal found that there was no agreement between management and the Rashtriya Union. Reliance was placed on behalf of the appellant on the decision of this Court in [Workmen of M/s. Delhi Cloth and General Mills v. Management of M/s. Delhi Cloth and General Mills.](#) (1970) 2 SCR 886: (AIR 1970 SC 1851). In that case among other matters Rule 58 of the Industrial Disputes (Central) Rules, 1957 made under section 38 of the Industrial Disputes Act, 1947 came up for consideration. Rule 58 (2) (b) of the Central Rules which is similar to Rule 62 (2) (b) of the Bombay Rules reads:

"58. Memorandum of settlement:

- | | | |
|------------------------------------|---|---|
| (1) x | x | x |
| (2) the settlement shall be signed | | |
| (a) x | x | x |
| (b) In the case of workmen, by any | | |

officer of a trade union of workmen or by five representatives of workmen duly authorised in this behalf at a meeting of the workmen held for the purpose."

It was held that the rule must be fully complied with if the settlement is to have a binding effect on all workmen. Section 18 (3) of the Industrial Disputes Act makes a settlement which has become enforceable, binding among others, on all parties to the industrial dispute. It is not clear why this decision was considered relevant. Possibly this case was referred to for the observation occurring on page 897 (of SCR): (at p. 1857 of AIR) of the report: "We may observe here that we were not impressed by the appellant's argument that R. 58 rub- rule (2) (b) required that the officer of a trade union of workmen must also be duly authorised. We, however, do not express any considered opinion in view of our conclusion on other points". Reference to this observation may have been intended as a reply to the construction sought to be put on Rule 62 (2) (b) of the Bombay Rules on behalf of the Rashtriya Union that the words "duly authorised" applied not only to the five representatives of workmen" but also to the office bearers mentioned in the rule to enable them to

sign the settlement. On such construction it was contended that the office bearers of the Union who signed the agreement were not specifically authorised to do so. This construction of Rule 62 (2) (b) was rightly rejected by the Tribunal. But neither Rule 58 of the Central Rules nor Rule 62 of the Bombay Rules contains anything to suggest that any officer of a trade union who is entitled to sign a settlement must be deemed to have had the authority to enter into this settlement. The procedure prescribed by either Rule 58 of the Central Rules or Rule 62 of the Bombay Rules presupposes the existence of a valid settlement, and the question in this case is whether there was such a settlement. Another case relied on by the appellant is [The Sirsilk Ltd. and others v. Government of Andhra Pradesh and another.](#) (1964) 2 SCR 448: (AIR 1964 SC 160). The facts of that case are that after the proceedings before the Tribunal had come to an end and the Tribunal had sent its award to government, the parties concerned in the dispute came to a settlement. Section 17 (1) of the Industrial Disputes Act lays down that every award shall within a period of thirty days from the date of its receipt by the appropriate government be published in

such manner as the appropriate government thinks fit. Section 18 (1) makes a settlement arrived at between the employer and workmen otherwise than in the course of conciliation proceedings binding on the parties to the agreement. Under section 18 (3) an award of a Tribunal on publication shall be binding on all parties to the industrial dispute. In *Sirsilk* case difficulty was felt in giving effect to the settlement because the proceedings before the tribunal had ended and the tribunal had sent its award to the government before the settlement was arrived at. This Court held (at pp. 163, 164 of AIR :-

"The only way in our view to resolve the possible conflict which would arise between a settlement which is binding under S. 18 (1) and an award which may become binding under S. 18 (3) on publication is to withhold the publication of the award once the Government has been informed jointly by the parties that a settlement binding under S. 18 (1) has been arrived at..... In such a situation we are of opinion that the government ought not to publish the award under S. 17 (1) and in cases where government is going to publish it, it can be directed not to publish the award in view of the binding settlement arrived at between

the parties under S. 18 (1) with respect to the very matters which were the subject matter of adjudication under the award."

We think this decision was relied on only to emphasize that a settlement reached between the parties concerned in the dispute must prevail if it is reached at any time before the publication of the award. That is undoubtedly so, but the question before us is different-which is, whether in fact a settlement within the meaning of section 2 (p) of the Industrial Disputes Act was reached. Other questions will arise only after it is found that there was such a settlement in existence. *Sirsilk* does not therefore afford any assistance to the appellant. The tribunal in support of the view taken by it relied on a decision of the Delhi High Court. In *Hindustan Housing Factory Ltd. v. Hindustan Housing Factory Employees' Union and others*, 1969 Lab IC 1450 the High Court held (at p. 1457):-

".. the contention on behalf of the petitioner- company that the fact that the Memorandum of settlement was in the prescribed form and was signed by one or more of the office-bearers of the Union is by itself sufficient to make the settlement arrived at between the Management of the

petitioner-company and the signatories binding on the Union and all its members, is untenable...

The language of S. 18 (1) clearly shows that the settlement will be binding only "on the parties to the agreement." The definition of "settlement" in S. 2 (p) of the Act also states that "settlement" means a settlement arrived at "between the employer and the workmen." So, normally in order that a settlement between the employer and the workmen may be binding on them, it has to be arrived at by agreement between the employer and the workmen. Where the workmen are represented by a recognised Union, the settlement may be arrived at between the employer and the Union. If there is a recognised Union of the workmen and the Constitution of the Union provides that any of its office-bearers can enter into a settlement with the Management on behalf of the Union and its members, a settlement may be arrived at between the employer and such office-bearer or bearers. But, where the Constitution does not so provide specifically, the officer-bearer or bearers who wish to enter into a settlement with the employer should have the necessary authorisation by the executive committee of

the Union or by the workmen. A reading of Rule 58 clearly shows that it presupposes the existence of a settlement already arrived at between the employer and the workmen, and it only prescribes the form in which the Memorandum of settlement should be, and by whom it should be signed. It does not deal with the entering into or arriving at a settlement. Therefore, where a settlement is alleged to have been arrived at between an employer and one or more office-bearers of the Union, and the authority of the office-bearers who signed the Memorandum of settlement to enter into the settlement is challenged or disputed, the said authority or authorisation of the office-bearers who signed the Memorandum of settlement has to be established as a fact, and it is not enough if the employer merely points out and relies upon the fact that the Memorandum of settlement was signed by one or more of the office-bearers of the Union."

In our opinion the above extract from the judgment of the Delhi High Court states correctly the law on the point. The appeal is accordingly dismissed; in the circumstances of the case we direct the parties to bear their own costs.

Appeal dismissed.”

11. It is pertinent to note that the said principle as enunciated by the Apex Court has also not been considered by the learned Tribunal while accepting the contention of the petitioners that there was binding settlement which would also bind the petitioners herein.

12. The judgment of the Apex Court relied upon by Mr. Diniz, learned counsel appearing for the respondents reported in **1986 LAB I.C. 667** in the case of **General Manager, Security Paper Mill, Hoshangabad Vs. R. S. Sharma and others** would not be applicable to the facts of the present case. In fact, it is clearly provided therein that the settlement would not binding on the parties who are not signatories to such settlement when settlement has been arrived at otherwise than in course of the conciliation proceedings. The judgment of this Court in the case of **Hill Son Dinshaw Ltd., V/s P. G. Pednekar and others reported in 2002(4) Bom.C.R. 541** is also not applicable to the peculiar facts of the present case. As already pointed out herein above, the settlement relied upon by the respondents does not disclose as to how the dispute raised by the petitioners' employees would inher any benefit to them by such settlement. The

judgment of the Apex Court reported in **(1996) 10 SCC 446** in the case of ***K. C. P. Limited V/s Presiding Officer and others*** would also not applicable to the facts of the present case as the dispute raised by the petitioners are not in respect of any of the terms settled by the Union with regard to the charter of demands in respect of the other workers working with the respondents herein.

13. In view of the above, I pass the following :

O R D E R

- (i) The impugned award dated 08.09.1998 passed by the learned Tribunal is quashed and set aside.
- (ii) The matter is remanded back to the learned Tribunal to decide the reference afresh after hearing the parties in the light of the observations made herein above.
- (iii) All contentions of the parties on merits are left open.
- (iv) Rule is made absolute in the above terms.
- (v) The petition stands disposed of accordingly.

F. M. REIS, J

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