

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 3913 OF 2000

The General Labour Union,
Lal Bawta, B-3/4/5, Uma Shankar
Complex, 594, Narayan Peth, Pune.

... Petitioner

v/s

M/s.Hotel Arora Towers,
9, Moledina Road, Camp Area,
Pune.

... Respondent

Mr.Sanjay Kshirsagar along with Ms.T.J. Kapre for the petitioner.

Mr.K.S.Bapat for the respondent.

CORAM: N.M. JAMDAR, J.

DATED : 26 NOVEMBER 2015

ORAL JUDGMENT.:

The Petitioner Union challenges the Award passed by the Industrial Court, Pune, dated 27 August 1999 whereby the demands raised by the Petitioner Union were rejected.

2 Reference (IT) No.12 of 1996 was made for adjudication to the Industrial Court, Pune. The Reference pertained to industrial dispute between the Respondent Establishment and the Petitioner Union over general demands. The demands were regarding wage scales, dearness allowance, classification, educational allowance,

house rent allowance, local traveling allowance, night shift allowance, leave facilities, uniform and service charges. The Tribunal framed issues as to whether the industrial dispute existed and whether the Union had substantiated their demands. The Tribunal, by the impugned order, answered both the points in negative and dismissed the Reference.

3 A settlement was entered into between the Petitioner Union and the Respondent Establishment on 4 May 1994 wherein 21 workmen declined to accept the benefits of the settlement. The Tribunal found that only 20 employees raised the dispute who did not accept the settlement of the year 1994 and the 5 workmen were in service could not be considered because they were not in the employment. The settlement dated 4 May 1994 was accepted by 136 employees out of 162 in the year 1994 and therefore only 20 were left out. The Tribunal considered the fact that the dispute therefore was raised by minuscule number of workmen out of the total number of workmen who had accepted the settlement. Since majority of the workmen had already accepted the settlement and only around 20 who had not accepted raised the dispute, such dispute could not be considered as an industrial dispute for the purpose of general demands. Thereafter, the Industrial Tribunal considered the demands made even assuming the Reference was maintainable and dealt with each of the heads of demand. The Tribunal found that the Union did not produce cogent evidence in support of its demands that the increased wages demanded by the

Petitioner Union was reasonable, just and proper. The Union sought to place on record the settlement arrived at between the other hotel establishments, however, the said settlements were not duly proved in evidence. The Industrial Court, after considering the factual situation and the evidence on record, therefore, came to the conclusion that the industrial dispute does not exist and assumes it exists, nothing was produced by the Petitioner Union in support of their demands.

4 Even in this Court, the Petitioner Union has been unable to show as to how the demands made by the Union can be substantiated, nothing is shown as to why the order passed by the Industrial Tribunal is perverse. Learned counsel for the Union raised a sole contention that merely because the concerned workmen did not accept the settlements of 1994 and 1997, they should not be prejudicially treated. The Industrial Tribunal has observed in the impugned Award that the Respondent is ready to extend the benefits of the settlement and it is open to the concerned workmen to take advantage of the said offer. The petition was adjourned from time to time for settlement as regard granting benefits of the settlements of 1994 and 1997 to the concerned workmen. Learned counsel for the Respondent submitted that the offer was given in the year 1994-1997 which has been referred to in the impugned order passed in the year 1999 and it is not possible for the Respondent to extend the benefits now as the Petitioner Union would claim monetary benefits

retrospectively from the year 1994. He submitted that, however, if the concerned workmen are being paid less as on today in comparison with the other workmen who are similarly situated and who have accepted the settlement, then the Respondent Establishment is ready to remove the said anomaly by granting same pay to all similarly situated workmen. This stand taken by the Respondent is fair and reasonable. However, as rightly contended by the learned counsel for the Respondent that for availing of these statements, the Petitioner Union will have to take a stand that they accept and acknowledge the settlements so far entered into. There was no reason for the concerned employees not to accept the settlement when 162 other workmen had accepted the settlement, however, since the Respondent has taken a fair stand of removing the anomaly the petition can be disposed of by following directions based on statements made by the counsel for the Respondent, on instructions,

(a) The concerned members of the Petitioner Union who are on the roll of the Respondent, agree that they accept and acknowledge the settlements so far entered into between the Respondent No.1 and Hotel Arora Towers Employees Union. The Petitioner Union will issue a formal letter to that effect addressed to the Respondent Establishment within a period of eight weeks from today.

(b) The Respondent No.1 shall prospectively i.e. from 1

December 2015 re-fix the wages of members of the Petitioner Union who are on the roll of the Respondent as of today, on par with the comparable employees who have accepted the settlement. Respondent No.1 shall presume that the members of the Petitioner Union who are on the roll of the Respondent No.1 as of today have complied with the conditions contemplated in the settlements dated 4 May 1994 and 24 June 2000 and shall extend them the benefits prospectively as above.

(c) If within eight weeks no such communication is addressed by the Petitioner Union accepting the earlier settlements as far as the concerned employees are concerned, and who are as on today on the roll of the Respondent, then the petition will stand dismissed without reference to the Court.

(d) With the above modifications, the Award passed by the Industrial Tribunal in References (IT) No.12 of 1996 and 13 of 1996 shall stand confirmed.

5 The writ petition is disposed of in above terms. No costs.

(N. M. JAMDAR, J.)