

In the High Court of Judicature at Madras

Reserved on : 02.07.2015
Dated : 09.07.2015

Coram:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI
and
The Hon'ble Mr.Justice M.VENUGOPAL

W.A.Nos.489 & 490 of 2015
and M.P.Nos.1, 1 & 2 of 2015

M/s.Hindustan Unilever Ltd., (Tea Factory),
Kirumambakkam,
Pondicherry-605 102
rep. by its Authorised Signatory.

.. Appellant in both the appeals/ Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Pondicherry.

2.HLL Tea Workers Welfare Union,
rep. by its Secretary,
Reg No.1483/RTU/2007
Puducherry.

.. Respondents in both the appeals/
Respondents

Common Prayer: Writ Appeal filed under Clause 15 of the Letters Patent Act, against the common order dated 06.02.2015 and made in W.P.Nos.29416 & 29417 of 2014 respectively by the learned Judge of this Court.

Writ petitions filed under Art 226 of the Constitution of India to issue a writ of certiorari to call for the records connected with I.A.Nos.63 of 2012 and 53 of 2014 in I.D.(T)No. 04 of 2012 on the file of 1st Respondent i.e. The Presiding Officer Labour Court Pondicherry and to quash the order dt. 23.09.2014.

For Appellant : Mr.Sanjay Mohan
for M/s.S.Ramasubramanian Associates
in both the appeals.

For Respondent-2: Mr.P.R.Thiruneelakandan
in both the appeals
R1 Court

C O M M O N J U D G M E N T

M.VENUGOPAL, J.

The Appellant/Management has filed the intra Court Writ Appeals before this Court as against the common order dated 06.02.2015 passed by the Learned Single Judge in W.P.Nos.29416 & 29417 of 2014.

2.The Learned Single Judge while passing the impugned order on 06.02.2015 in W.P.Nos.29416 & 29417 of 2014 in paragraphs 35 to 37 had observed the following:

"35.It is evident that the Petitioner Management accepted to increase the wage revision as per the agreement dated 04.03.2013. The petitioner Management has also agreed to pay the average annual increase of Rs.3,800/- per month for the agreement period to the workers, who had signed the settlement deed dated 04.03.2013.

36.It is settled position that while fixing fair wages, the Tribunal can take into consideration of a comparable unit of the cross section of the industry and fix fair wages on the basis of industry-cum-region.

37.Though the Management agreed for enhancement of wages to Rs.3,800/- per month, as per agreement dated 04.03.2013, the respondent Union workers claimed only Rs.2,806/- per month, as increment, pending disposal of the Industrial Dispute before the Labour Court. Since claim made by the respondent Union worker is much less than what was agreed by the Management, as per the agreement dated 04.03.2013, the Labour Court has rightly come to the conclusion that the respondent Union workers are entitled for average wage increment of Rs.2,806/- per month from the date of agreement i.e., 04.03.2013 till the disposal of the main petition in I.D.(T) No.4 of 2014."

and resultantly, dismissed the Writ Petitions without costs.

3.Assailing the correctness of the orders passed on 06.02.2015 in W.P.Nos.29416 & 29417 of 2014 by the Learned Single Judge, the Learned counsel for the Appellant/Management urges before this Court that the impugned common order of the Learned Single Judge is opposed to law and facts of the case.

4.According to the Learned counsel for the Appellant/Management when a vast majority of workmen with their eyes wide open as signed a settlement or had accepted a settlement by virtue of their letters and also received arrears for the past based on revision in wages with retrospective effect, based upon the settlement an award could be passed by the First Respondent/Labour Court in terms of the settlement and as such, reference could be closed consequently.

5.The prime plea taken on behalf of the Appellant is that the Learned Single Judge while passing the common order in the Writ Petitions had failed to appreciate that the settlement in question was already acted upon and the benefits flowing from the settlement were already paid to the workmen who had accepted the same. As such, the observations of the Learned Single Judge in para 30 of the common order passed in the Writ Petitions inter-alia to the effect that the execution of settlement can be decided only after full fledged trial etc., are an erroneous one and liable to be set aside in the eye of law.

6.The Learned counsel for the Appellant forcefully contends that an interim order in I.A.No.63 of 2012 in I.D.(T) No.4 of 2012 dated 23.09.2014 passed by the First Respondent defeats the very purpose of the settlement and in fact, the First Respondent/Labour Court had not realised the essential fact that the settlement in question was accepted by a vast majority of workmen and it solved the main dispute itself. Viewed in that perspective, the First Respondent/Labour Court had wrongly decided to grant interim relief by virtue of the orders passed in I.A.No.63 of 2012.

7.The Learned counsel for the Appellant takes a stand that the Settlement envisaged a final decision as regards the issue were referred and as such, the impugned order in I.A.No.63 of 2012 passed by the First Respondent/Labour Court, Puducherry is to be set aside and after a final award is passed in terms of ingredients of settlement, then the settlement would have to be accepted in entirety. In short, the argument projected on the side of the Appellant is that the impugned order in I.A.No.63 of 2012 passed by the First Respondent/Labour Court, Puducherry is completely without jurisdiction when the settlement in question settled the very main dispute itself fully and finally and was to be in force till 03.03.2017.

8.It is not in dispute that the Second Respondent/Registered Trade Union raised the industrial dispute in I.D.(T) No.4 of 2012 in respect of Charter of Demands for Wage Revision and Other Allowances for the period covering from 07.05.2011 under 40 heads like basic wages, annual increment, fixed dearness allowance, variable dearness allowance, house rent allowance, education allowance etc., the Appellant/Tea Factory is having 121 permanent workers there are three registered trade unions in the company's factory.

9.Admittedly, the Second Respondent/Union filed I.A.No.63 of 2012 in I.D.(T)No.4 of 2012 on the file of the First Respondent under Section 10(4) of the Industrial Dispute Act praying for passing of an order by the First Respondent/Labour Court directing the Appellant/Respondent/Management to pay the admitted wage increase of Rs.2806/- to this Union workers that retrospective effect from 07.05.2011 and to pay the arrears as an interim relief within a stipulated time.

10.The important point raised on behalf of the Appellant is that in the I.A.No.63 of 2012 in I.D.(T)No.4 of 2012 on the file of the First Respondent, the Second Respondent/Union in para 20 had averred that before the Labour Officer (Conciliation) the Appellant/Management by its letter dated 29.08.2009 had agreed to increase the wage to a sum of Rs.2806/- which inclusive of all wage component as initial pay out etc. Further, it was averred that the Appellant/Respondent had agreed to increase the said amount as initial payout in existing wage and the said amount announced by the Appellant may be provided as interim relief of wage increase, pending disposal of the dispute.

11.The Appellant in its counter in I.A.No.63 of 2012 in I.D.(T) No.4 of 2012 on the file of the First Respondent/Labour Court, Puducherry had among other things stated that it had entered into a Section 18(1) Settlement under the Industrial Dispute Act, 1947, that a Registered and Recognized Trade Union by name National Employees Trade Union is reportedly representing 35 workers as per the declaration dated 02.07.2013. Moreover, it was also mentioned that apart from the said National Employees Trade Union as many as 53 individual workers ratified the said settlement and agreed to be bound by terms and conditions of the said Settlement. Added further, the Settlement under Section 18(1) of the Industrial Dispute Act, 1947, dated 04.03.2013 is valid till 03.03.2017. In fact, the Appellant/Respondent had implemented the said settlement to all its signatories and beneficiaries and paying its revised salary to all the workers covered under the settlement. In reality, the average annual increment for all the four years to the workers is to the extent of Rs.3,800/- per month.

12.At this stage, the Learned counsel for the Appellant/Respondent submits that the total strength of the Appellant's plant is 121 and that 10 office bearers of the National Employees Trade Union had signed the 18(1) Settlement on behalf of the Union and 97 workmen had submitted their individual letters accepting the settlement signed by the Management and the Union in relation to the subject matter of the Industrial Dispute that is pending before the Labour Court. To put it succinctly, it is represented on behalf of the Appellant/Respondent that the said settlement was accepted by majority of the workmen namely, 107 out of 121.

13.It is to be noted that when once a reference is made by the Government under Section 10(1)(c) of the Industrial Dispute Act, 1947, it is the duty of Labour Court to answer the reference and not to dismiss the same in default or for non prosecution. Also that it is not competent for the Tribunal to come to a conclusion that the reference is not maintainable only because a settlement was arrived at with another union, more so, when the said settlement was arrived at under Section 18(1) and not under section 18(3) of the Act. As per the ingredients of Section 18 of the Industrial Dispute Act, 1947, a minority union is also entitled to raise a dispute as per decision of Workmen of Andrew Yule and Company Ltd., V. Eighth Industrial Tribunal reported in 1999 (1) LLN 722 & 725 (Cal).

14.It is to be borne in mind that if a settlement is arrived at between the employer and the union representing the majority of workmen, it shall not be binding on the union which represents the minority of the workmen which was not a party to that settlement as per decision of Hon Supreme Court in Tata Chemicals V. Workmen 1978 Labour and Industrial case page 637 and at Special page 642. Further, when an union claims that a substantial number of workmen were members of the union and they are party to the Settlement, it has to establish the fact before the Tribunal by adducing relevant facts as per decision of the Hon'ble Supreme Court reported in Herbertsons Ltd., V. Workmen of Herbertsons Ltd., [1977 Lab IC page 162 SC].

15.It comes to be known that an industrial dispute in I.D.(T) No.7 of 2014 is filed by the Second Respondent/Union and another Union viz., HLL Tea Workers Employees Union and the same is pending before the First Respondent/Labour Court and as such, whether Section 18(1) Settlement dated 04.03.2013 is fair and binding on the Second Respondent are all subject in issue in I.D. (T) No.7 of 2014. That apart, whether Section 18(1) Settlement dated 04.03.2013 is fair and further, it binds the Second Respondent/Union are all purely question of facts. In this

connection, it is to be pointed out that in respect of the Section 18(1) Settlement dated 04.03.2013, neither the Second Respondent/Union nor its member is a party or signatory to the same. Also that the 'Revision of Wage' is a collective Industrial Dispute under Section 2(k) of the Industrial Dispute Act, 1947. It is to be remembered that the First Respondent/Labour Court, Puducherry in I.A.No.63 of 2012 in I.D.(T) No.4 of 2012 on 23.09.2014 in para 12 had passed the following order:

"12.In the result, it is ordered that the petitioner's union workers are entitled for a sum of Rs.2,806/- per month, as an increment from the date of 04.03.2013 till the disposal of the main petition and the said amount would be paid to the workers within three months, from the date of order of this Court failing which the said amount would be paid by the respondent management with 6 per cent of interest there on."

16.Apart from the above, one cannot ignore a vital fact that a Settlement under Industrial Dispute Act is a sacred one and binds the parties unless procured by fraud as per decision of Uttar Pradesh State Sugar Corporation Unit Munnerva V. Ram Nain Singh reported in 1999 LLR 41 [Allahabad High Court]. After all, the object of settlement is to ensure industrial peace. At this juncture, this Court worth recalls the decision Capt S.C. Athikari V. Air India reported in 2001 (1) LLN 1119 wherein it is held that the High Court will not examine the validity of settlement since the forum is under the Provisions of Industrial Dispute Act. The aim of settlement is to discourage any party from scuttling as per decision British India Corporation Ltd., V. State of Uttar Pradesh reported in 2007 LLN 1066 (Allahabad High Court).

17.It cannot be gainsaid that a settlement cannot be weighed in any golden scales and its fairness has to be answered on the basis of principles different from the process of adjudication as per decision of Hon'ble Supreme Court in Transmission Corporation A.P. Ltd. and others V. P.Ramachandra Rao and another reported in 2006 (9) SCC at page 623.

18.One cannot brush aside an important fact that a settlement has to be accepted or rejected as a whole. It is not possible to scan the settlement in bits and pieces and hold some parts good and accept and other parts bad, unless it cannot be demonstrated that the objectionable portion is such that it completely outweighs all the advantages gained, the Court will be slow to hold a settlement as unfair and unjust as per decision Gandhidham Nagar Palika Adipur (Ketch) V. R.C.Irani reported in 1993 (1) LLJ page 432 (Gujarat High Court).

19.It is the case of the Respondents that the Appellant in the written letter dated 29.08.2011 submitted before the Conciliation Officer had offered only Rs.2806/- and the said increase amount was ordered in I.A.No.63 of 2012 by the First Respondent/Labour Court as interim wage increase to the workers pending industrial dispute. It is also the stand of the Respondent that the workers who are not accepting Section 18(1) Settlement under Industrial Dispute Act, 1947 are denied wage increment and they are getting old wage which is not sufficient to meet the present cost of living.

20.The Learned counsel for the Appellant projects an argument that the judgment of the Hon'ble Supreme Court in Grindlays bank case reported in 2005 (12) SCC page 738 suggests that it is possible for the employees irrespective of its union membership to issue a letter to accept the terms of any settlement and this had exactly happened in the present case.

21.Conservely, the Learned counsel for the Respondent refers to the decision Green Channel travel Services Pvt. Ltd. and another V. Cadill Pharmaceutical Workers Union and others reported in 2013 (2) LJJ 238 (Gujarat) wherein the dispute was raised by the majority of the union and the same was pending before the Tribunal and that management had entered into Section 18(1) Settlement with minority trade union. The Tribunal after considering the rate of inflation and cost of living and increment enjoyed by the similarly placed employees, granted adhoc wage increase to the workers and the said view of the Tribunal was approved.

22.In this connection, this Court significantly points out that in the decision of Miraj Taluka Girani Kamgar Sangh V. Marathe Textile Mills reported in 2000 (1) LLJ at page 1602 [Bombay High Court], wherein it is observed as follows:

"We are constrained to observe that both the Labour Court as well as the Industrial Court failed to note the express provisions of the Act which empower the Labour Court to grant interim relief. Under Section 119-D of the said Act express provision has been made conferring power to grant interim relief and the same reads as under:

"119-D-In any proceedings before it under this Act, the Industrial Court, a Labour Court or a Wage Board may pass such interim orders as it may consider just and proper"."

23.Further, it cannot be forgotten that the object of the Industrial Dispute Act is to promote amity and good relations between the employer and the workmen. Also that the aim and purpose of the Industrial Dispute Act is to maintain industrial peace and harmony as opined by this Court.

24.On a careful consideration of the respective contentions and also taking note of the fact that the Appellant/Management had agreed for increase of wages to an extent of Rs.3800/- per month in terms of settlement dated 04.03.2013 and the Second Respondent/Union Workers had claimed only a sum of Rs.2806/- per month, pending disposal of the I.D.(T) No.4 of 2012 on the file of the First Respondent/Labour Court, Puducherry, this Court comes to an inevitable and inescapable conclusion that the First Respondent is quite competent in Law to award/grant interim relief. Viewed in that perspective, the conclusion arrived at by the Learned Single Judge while allowing the Writ Petitions by holding that the First Respondent/Labour Court had rightly come to the conclusion that the Second Respondent/Union Workers are entitled for an average increment of Rs.2806/- per month from the date of Settlement till the disposal of the main I.D.(T)No.4 of 2012 and the same is free from any material irregularities or legal infirmities in the eye of law. Consequently, the Writ Appeals fails.

25.In the result, the Writ Appeals are dismissed. However, there shall be no orders as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

DP

To

1.The Presiding Officer,
Labour Court,
Pondicherry.

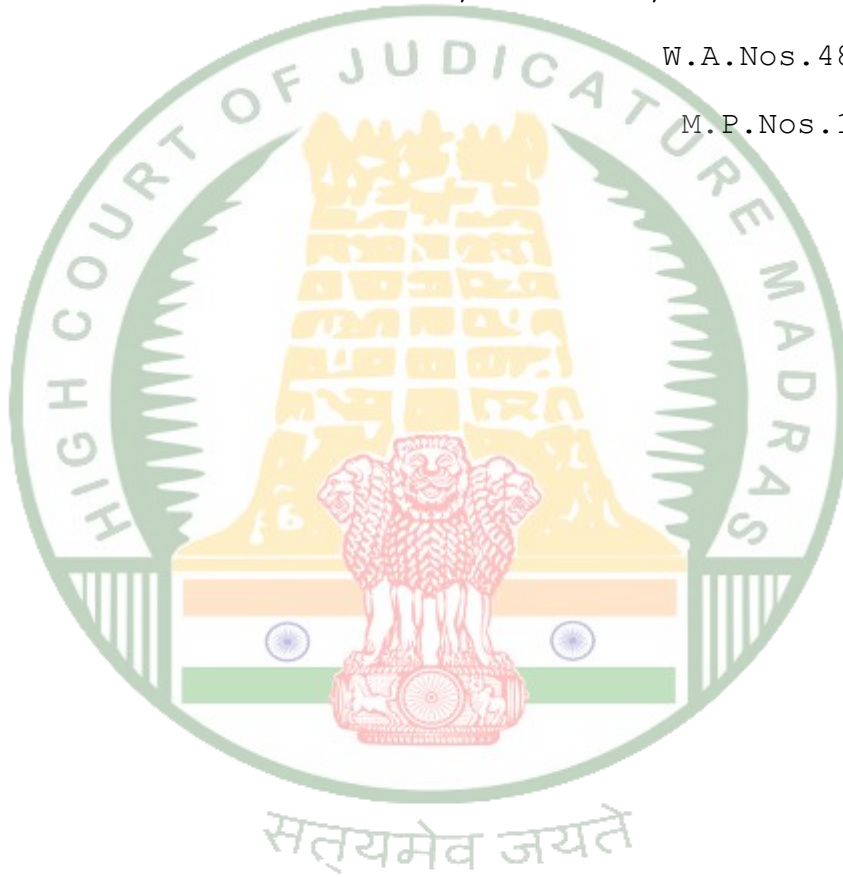
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2.HLL Tea Workers Welfare Union,
rep. by its Secretary,
Reg No.1483/RTU/2007
Puducherry.

1 cc to Mr.S. Ramasubramaniam & ASsociates, Sr. 34450
1 cc to Mr.P.R.Thiruneelakandan, Advocate, sr. 34522

W.A.Nos.489 & 490 of 2015
and
M.P.Nos.1, 1 & 2 of 2015

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