

RESERVED ON : 20.01.2015
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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06 -02-2015

CORAM

THE Hon'ble Mr.JUSTICE M. DURAISWAMY

W.P.Nos.29416 and 29417 of 2014
and M.P.No.1 of 2014 (2 in Nos.)

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

.... Petitioner in both the writ petitions

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 writ petitions

Writ Petitions filed under Article 226 of the Constitution of India praying this court to issue a Writs of Certiorari to call for the records connected with I.A.Nos.63 of 2012 and 53 of 2014 in I.D.(T) No. 4 of 2012 on the file of the 1st respondent i.e., The Presiding Officer, Labour Court, Pondicherry and to quash the order dated 23.9.2014.

For petitioner : Mr.Sanjay Mohan for
M/s Ramasubramaniam Associates

For 2nd respondent: Mr.P.R. Thiruneelakandan

COMMON ORDER

Challenging the Award passed in I.A.Nos.63 of 2012 and 53 of 2014 in I.D.(T) No. 4 of 2012 on the file of The Presiding Officer, Labour Court, Pondicherry, the Management has filed the above writ petitions.

2. The Management filed a Petition in I.A.No.53 of 2014 under Rule 10 B of Central Industrial Dispute Rules, 1957 praying an order to record the settlement between the Management and the majority of its workers under Sec.18(1) of Industrial Dispute Act and dismiss the claim petition filed by the Worker's Union on the ground that the issues under reference is resolved between majority of workers and the Management which is binding on the minority workers.

3. Petition in I.A.No.63 of 2012 was filed by the Workers Union under Sec.10(4) of the Industrial Dispute Act, praying an interim order, directing the respondent to pay the admitted wage increase of Rs.2,806/-per month to the Union Workers with retrospective effect from 7.5.2011 and pay arrears of the interim relief within a stipulated time, pending disposal of the Industrial Dispute.

4. The Industrial Dispute was referred by the Government of Puducherry for adjudication on the claim of the Workers Union based on the charter of demands dated 10.2.2011, which is relating to wage revision and other service conditions. It is not in dispute that the Hindustan Unilever Limited factory is having 121 permanent workers and there are three registered trade unions in the Company's factory.

5. According to the Management, on 4.3.2013, the Company entered into a long term settlement for a period of four years with the National Employee Trade Union under Section 18(1) of Industrial Dispute Act, wherein, all issues relating to increment of wages and all other incidental privileges were mutually agreed upon between the Petitioners Company and the Union. Further, according to the Management, the 18(1) settlement dated 4.3.2013 was circulated amongst the workers by placing them in the Notice Board. The Company extended the benefits of 18(1) settlement to all those workers, who had given written letters, accepting the said settlement.

6. According to the Management, there was absolutely no force, inducement, threat, coercion or enticement to any worker to accept the settlement and the workers had voluntarily came forward to accept the settlement and enjoy its benefits.

7. Further, according to the Management, on 30.4.2014, out of 121 workers, 107 workers gave their written consent, accepting and ratifying the terms and conditions of 18(1) settlement dated 4.3.2013. Further, the Management had stated that though the terms of 18(1) settlement was specific that it shall be extended only on the date of its acceptance, on specific demands from individual workers for payment of ex-gratia for the intervening period

between the date of 18(1) settlement and the date of acceptance, the Company agreed for the same and paid ex-gratia amount of Rs.84,950/- to each of the individual workers accepting the terms of settlement, subject to the deduction made for their absence.

8. The Management had also stated that all the amounts are credited to the accounts of the individual workers and they have also utilised those benefits. Further, there cannot be two wage structures and what is good and applicable for majority is also applicable for the minority workers.

9. According to the respondent Union, at the time of raising the above said dispute, there were only two trade Unions viz., (i) HLL Tea Workers Welfare Union and (2) Hindustan Unilever Tea Employees Union, in which, the respondent Trade Union viz., HLL Tea Workers Welfare Union was a majority union, representing the majority workers of the factory and it was also a recognised union.

10. After the respondent trade Union submitted a charter of demand before the Management, demanding wage revision, allowances and other issues such as transfer of workman, compensation in case of permanent closure of factory etc., the Management did not want to concede the demands of the trade union unilaterally without any consultation either with the workers or with trade union, prepared 18(1) settlement and compelled the Union to sign the settlement.

11. The respondent Union and the workers had not agreed to sign such a settlement and they took up the said dispute before the Labour Officer for Conciliation. While so, the respondent leaving the aforesaid Trade Union, formed a management's puppet trade union with the help of 8 workers in the name and style of "National Employees Trade Union". The said Trade Union was registered with the Registrar of Trade Union only in the month of March, 2013 when the entire dispute was pending before this Court. Thereafter, the respondent Management signed the said 18(1) settlement with the said Trade Union which represents only 8 workers. Later, the respondent Union members and the other individual workers were threatened to sign the settlement and the workers, who signed the settlement, were alone given wage increase and others were not given. The Management forcibly obtained signature from the individual workers in the stereo type format of undertaking. None of the workers was explained about the features of 18(1) settlement.

12. According to the respondent Union, the action of a party, pending lis, is subject to the outcome of the lis and it cannot give one party additional benefit or defeat the accrued right of the other party to the pending lis.

13. The issue with regard to 18(1) settlement can be decided as the main issue.

14. Insofar as W.P No.29416/2014 is concerned, the respondent Union filed an application in I.A.No.63/2012 in I.D(T) No.4/2012, seeking for an interim relief under Section 10(4) of the Industrial Dispute Act to direct the Management to pay the admitted wage increase of Rs.2,806/-per month to the Union workers with retrospective effect from 7.5.2011 and to pay the arrears of the interim relief within a stipulated time.

15. In the petition, the Union has stated as follows:

(a) The respondent Trade Union, representing majority workers, recognised by the petitioner/Management entered into last wage settlement dated 7.5.2007 for four years period and the same had expired on 6.5.2011. Before expiry of the said wage settlement, the Union, by its letter of demand dated 11.2.2011, raised the demand of wage revision before the Management.

(b) The Management did not consider the wage demand of the Union, on the other hand, with an intent to threaten the workers and to suppress their wage demand, posed a counter demand to increase the machine speed from 29 units to 39 units with the existing workforce and also demanded the workers to accept the proposed erection of auto machines, which was likely to lead retrenchment of existing workers.

(c) Since the Management's offer was very less, the negotiation talk had ended in vain. On 15.6.2011, the Union raised an industrial dispute over the wage revision before the Labour Officer, Puducherry. The Union raised the industrial dispute over the charter of demand for wage revision and other allowances for the period covering from 7.5.2011 under various heads.

(d) The Union produced the said wage settlement and demanded wage increase at least on par with the other Indian Companies on Industry cum Regional basis. However, the Management did not show any interest to negotiate with the Union before the Conciliation officer. The Union subsequently understood the delay tactics of the Management and insisted failure report. Thereafter, the Management, by letter dated 29.8.2011, offered a sum of Rs.2,806/-per month as a final amount of wage increase, inclusive of all wage component. Pursuant to the failure report, the Government of Puducherry referred the said Industrial Dispute before the Labour Court, Puducherry for adjudication. The basic pay plus other allowances for the workers in Grade W-1 has been paid at Rs.2,975/- per month and worker in Grade W-3 has been paid

at Rs.3230/-, which could not even meet the requirement of statutory minimum wages fixed to the Industries in Puducherry Union Territory.

(e) In order to equate the cost of living, wage has to be increased under all heads so as to commensurate the present cost of living. The charter of demands was submitted on 10.2.2011. The workers have been stagnating without any wage revision for more than a year. In these circumstances, the Union sought for direction to pay the admitted wage increase of Rs.2,806/- per month to the Union workers with retrospective effect from 7.5.2011 and pay the arrears of the interim relief within a stipulated time.

16. The brief case of the Management is as follows:

(a) According to the Management, as per 18(1) Settlement, there is an average increase of 11% in productivity than what was agreed to under previous settlement dated 7.5.2007. The Union is suppressing the fact that the enhancement in wage was offered only if productivity linked incentive scheme is acceptable to them. The settlement is open to the Union even as on this date and if the Union is willing to sign the same with all the benefits, privileges, liabilities and responsibilities attached to the settlement, the Management is willing to extend the said settlement with immediate effect.

(b) Further, the Management had stated that the issue with regard to the payment of wage increase of Rs.2,806/- per month can be considered only when evidence is let in and documents are marked and not at an interim stage. According to the Union, the workers working for more than 15 to 20 years in the Company are being paid gross wage of Rs.8,000/- to Rs.10,000/-per month, whereas, other factories in Puducherry, such as, NCR Ltd, Godrej Consumer Products, the workers are being paid more than Rs.30,000/- per month.

17. Before the Labour Court, on the side of the Management, 99 documents were marked as Exs.P.1 to P.99 in I.A.No.53 of 2014. However, no document was marked on the side of the Union either in I.A.No.53 of 2014 or in I.A. No 63 of 2012.

18. The Labour Court, after taking into consideration the case of the Management and Union, dismissed the application in I.A.No.53 of 2014 and allowed the application in I.A.No.63 of 2012. Aggrieved over the same, the Management ha filed the above writ petitions.

19. Heard Mr.Sanjay Mohan, the learned counsel for the petitioner and Mr.P.R. Thiruneelakandan, learned counsel for the respondents.

20. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, it could be seen that there is no dispute that the respondent Union workers are employed in the petitioner Management Company.

21. Mr. Sanjay Mohan, learned counsel appearing for the petitioner/Management submitted that since the respondent Union entered into 18(1) settlement before the Conciliation Officer, if the issue with regard to the said settlement is decided as a preliminary issue and if the Labour Court comes to the conclusion that 18(1) settlement is binding on the parties, then the parties could avoid facing the trial which will save the valuable time of the Court. In support of his contention, the learned counsel relief upon the following judgements:

(i) (1973) 2 SCC 135 (The Workmen of Government Silk Weaving Factory, Mysore), wherein, the Apex Court has held as follows:

The High Court has no doubt expressed the opinion that it would have been better for the Tribunal, when a controversy was being raised by the two groups, to decide as to which group was entitled to represent the workmen. But the High Court took note of the fact that Sannaiah was present before the Tribunal on February 11, 1966, when the settlement was filed before it and the Tribunal was recording evidence relating to the same. Though he was present, Sannaiah neither made a request to the Tribunal to adjourn the proceedings to make his representation regarding the settlement; nor did he choose to participate in the proceedings and cross-examine the witnesses, who were deposing to the nature of the settlement which had been filed before the Tribunal. It was not his case that he was prevented or declined permission by the Tribunal to participate in the proceedings. Even before the High Court, the appellant did not dispute the fact that a substantial majority of workmen had received considerable benefits under the settlement and that they were also enjoying the same. In view of these

circumstances, the High Court declined to interfere with the awards. As already mentioned by us, we do not propose to go into the question regarding the scope of Section 36 of the Act or Rule 59 of the Mysore Rules in these appeals. Whatever technical objections the appellant may have to the manner in which the settlement has been arrived at, it is clear, as found by the Tribunal and accepted by the High Court, that the settlement is beneficial to a substantial body of workmen of this factory. There is also the evidence that Sannaiah had an opportunity to contest the settlement on February 11, 1966, when evidence was being recorded by the Tribunal and he was present in Court. He did not choose to participate in the said proceedings.

(ii) (1981) 4 SCC 627 (Tata Engineering and Locomotive Company Limited vs Their workmen) wherein the Apex Court has held as follows:

12. There is no quarrel with the argument addressed to us on behalf of the workers that mere acquiescence in a settlement or its acceptance by a worker would not make him a party to the settlement for the purpose of Section 18 of the Act [vide Jhagrakhan Collieries (P) Ltd. v. G.C. Agarwal, Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Jabalpur²]. It is further unquestionable that a minority union of workers may raise an industrial dispute even if another union which consists of the majority of them enters into a settlement with the employer (vide Tata Chemicals Ltd. v. Workmen³). But then here the Company is not raising a plea that the 564 workers became parties to the settlement by reason of their acquiescence in or acceptance of a settlement already arrived at or a plea that the reference is not

maintainable because the Telco Union represents only a minority of workers. On the other hand the only two contentions raised by the Company are:

(i) that the settlement is binding on all members of the Sanghatana including the 564 mentioned above because the Sanghatana was a party to it, and

(ii) that the reference is liable to be answered in accordance with the settlement because the same is just and fair."

13. And both these are contentions which we find fully acceptable for reasons already stated.

(iii) (1976) 4 SCC 736 (Herbertsons Limited vs The Workmen of Herbertsons Limited and Ors), wherein, the Apex Court has held as follows:

27. It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained the Court will be slow to hold a settlement as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or unjust. Even before this Court the third respondent representing admittedly the large majority of the workmen has stood by this settlement and that is a strong factor which it is difficult to ignore. As stated elsewhere in the judgment, we cannot also be oblivious of the fact that all workmen of the company have accepted the settlement. Besides, the period of settlement has since expired and we are informed that the

employer and the third respondent are negotiating another settlement with further improvements. These factors, apart from what has been stated above, and the need for industrial peace and harmony when a union backed by a large majority of workmen has accepted a settlement in the course of collective bargaining have impelled us not to interfere with this settlement.

28. That being the position, we uphold the settlement as fair and just and order that the award of the tribunal shall be substituted by the settlement dated October 18, 1973. The said settlement shall be the substituted award. The appeal is disposed of accordingly. There will be no order as to costs.

(iv) 2005 12 SCC 738 (ANZ Grindlays Bank Ltd (now known as Standard Chartered Grindlays Bank Ltd) vs Union of India and Others, wherein, the Apex Court has held as follows:

10. However, the Bank also extended the benefit of settlement to such other employees, who were not members of the Association. In order to avail of the benefit they had to give a receipt that they were accepting the settlement and the same shall be binding upon them and the format of the receipt, which has been reproduced earlier, does not contain any such term, which may be of detriment to them. To protect its interest the Bank was perfectly justified in asking for a receipt from those employees, who were not members of the Association (the third respondent), but wanted to avail of the benefit of the settlement. Therefore, we do not find anything wrong in the Bank asking for a receipt from the aforesaid category of employees.

22. Mr.P.R. Thiruneelakandan, learned counsel appearing for the second respondent Union submitted that since the Union is disputing the very settlement itself stating that the signature of the workers were obtained by force and coercion, it can be decided only after a full fledged trial and not as a preliminary issue.

23. That apart, the learned counsel also submits that when the petitioner/Management agreed to pay the enhanced pay of Rs.2,806/- per month, they are bound to pay the enhanced pay as an interim measure to the workers.

24. The Government of Puducherry had referred the dispute before the Labour Court, Puducherry for adjudicating the following issues:

(a) Whether the dispute raised by HLL Tea Workers Welfare Union against the management of M/s Hindustan Unilever Pvt Ltd., Tea Factory, Puducherry over charter of demands such as wage revision, annual increment, HRA, Educational allowance, HBA and other allowances etc is justified?

(b) If justified, what relief the workers are entitled to?

(c) To compute the relief, if any, awarded in terms of money, if it can be so computed?

25. In the case on hand, the Management had filed an interlocutory application, seeking for prayer to record the settlement between the Management and the Union.

26. On the contrary, the Union disputed the very settlement itself and submitted that the same was obtained by threat, coercion and undue influence. The Union contended that the issue, with regard to the settlement, can be decided only after full fledged trial of the industrial dispute by the Labour Court.

27. In the judgment reported in 1983 2 LLJ 425 (D.P. Maheswari vs Delhi Administration and Others), the Apex Court held that "the Tribunals and Courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part adjudication is really necessary and whether it will not lead to other woeful consequences. After all Tribunals like Industrial Tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections and journeying up and down.

28. The Apex Court depreciated the Management old Tactics of raising preliminary objection as to maintainability of the Industrial Dispute to prolong the case in the judgment reported in 1996 (2) LLJ 125 SC (National Council for Cement & Building Materials vs State of Haryana and Ors).

29. The ratio laid down on these two judgments squarely applies to the facts and circumstances of the present case.

30. Since the execution of the settlement can be decided only after full fledged trial with regard to the alleged settlement, even if the said issue is decided as a preliminary issue, the same can be done only after recording the oral and documentary evidence of the parties.

31. Further, the issues referred before the Labour Court have to be decided by the Labour Court, after affording opportunity to both the parties for adducing oral and documentary evidence. If the issue, with regard to the alleged settlement, is decided after completion of the trial, no prejudice would be caused to either of the party. Taking note of this aspect, the Labour Court has rightly dismissed the application. That apart, the Management has taken a stand in I.A.No 63/2012 that the issue involved in the said application with regard to payment of wage increase can be decided only when evidence is let in and documents are marked and not at an interim stage. Whereas the Management is taking a stand in I.A.No 53/2014 to decide the issue with regard to alleged Sec. 18(1) settlement as a preliminary issue. Thus the Management is taking contradictory stand in both the applications. The Management cannot contend in one application that the issue can be decided only after adducing oral and documentary evidence and in the other that the issue should be decided as a preliminary issue, involving the very same industrial dispute.

32. In these circumstances, the judgments relied on by the learned counsel for the petitioner is not applicable to the facts and circumstances of the present case.

33. With regard to the application filed by the respondent Union, seeking for wage revision of Rs.2,806/-per month to other workers with retrospective effect from 7.5.2011 is concerned, it was contended by the petitioner/Management that they had already entered into an agreement with the recognised Trade Union by name "National Employees Trade Union" attached with the petitioner/Management factory.

34. Further, according to the Management, as many as 53 workers agreed to receive the benefits as per the settlement Deed dated 4.3.2013 which would be valid till 3.3.2017. As per the said

settlement, the workers, who had agreed to sign the settlement, were eligible for additional increment of Rs.3,800/- per month for the agreement period. However, the Union did not agree to enter into the settlement dated 4.3.2013.

35. It is evident that the petitioner Management accepted to increase the wage revision as per the agreement dated 4.3.2013. 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 4.3.2013.

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 4.3.2013, 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 4.3.2013, 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 date the date of agreement i.e., 4.3.2013 till the disposal of the main petition in I.D(T) No.4 of 2014.

38. In these circumstance, I do not find any reason to interfere with the orders passed by the Labour Court in I.A.No.63 of 2012 and in I.A.No.53 of 2014 in I.D.No.4/2012.

39. In the result, both the writ petitions are dismissed. No costs. Consequently, connected Mps are closed.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

sr

To

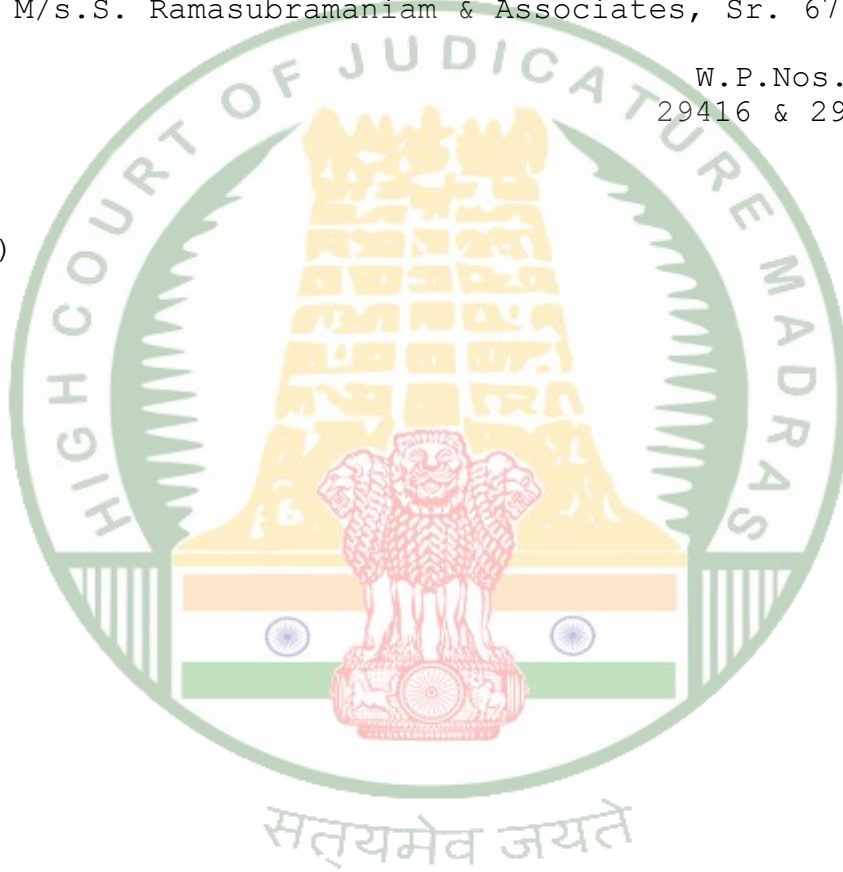
The Presiding Officer,
Labour Court,
Pondicherry

1 cc to Mr.P.R. Thiruneelakandan, Advocate, sr. 6549

1 cc to M/s.S. Ramasubramaniam & Associates, Sr. 6707

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