

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.790 of 2005

1. I B P Company Ltd through its Executive Director (HR), I B P Company Ltd, IBP House, 34 A, Nirmal Chandra Street, Kolkata.
2. Dy. General Manager, I B P Company Ltd, Explosive Division, Gopalpur, Katghora, District Korba.

---- Petitioners

Versus

General Secretary, Chemical Employees Union, Mazdoor Sabha Bhavan, Nandini Road, Bhilai.

---- Respondent

For Petitioners:	Mr. Vinod Deshmukh, Advocate.
For Respondent:	Mr. Gary Mukhopadhyay, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

21/11/2016

1. The petitioner Company was a Government of India undertaking at the relevant point of time having three separate business groups engaged in three separate and distinct business carrying on the business of Petroleum, Chemical and Engineering. Each business group had its own set of rules and regulations and respective long term settlement were operating in specified business group for the purposes of benefit extended to the employees of different business groups. All the different business groups are governed by individual long term settlement.

2. Productivity Linked Incentive (PLI) for Chemical group was calculated at the limit of maximum salary of Rs.750/- per month. On 24-3-2001, the petitioner Company arrived at a long term settlement with the respondent Union representing the business group of Chemical division under the provisions of the Industrial Disputes Act, 1947 and the said scheme was revised and computation of incentive was limited to the maximum of Rs.3,500/- per month. The respondent Union raised industrial dispute before the Conciliation Officer in respect of ceiling imposed by the management of the petitioner Company i.e. Rs.3,500/- per month and after conciliation, the appropriate Government vide its order dated 17-11-2003 referred the industrial dispute to the Industrial Court invoking Section 51 of the Chhattisgarh Industrial Relations Act, 1960. The term of reference was, "whether it is proper / necessary to grant the benefit of PLI scheme without ceiling to the employees working in the establishment and if yes, what would be scheme for it".
3. Before the Industrial Court, the respondent Union was the first party and it filed the statement of claim stating inter alia that the petitioner is a Government of India undertaking and it has to act as a model employer. It has been averred that the discriminatory policy of the petitioner Company is writ large from the fact that favoured units like Corporate Office and Petroleum division employees were given the benefit of PLI

without any ceiling limit whereas, the employees working in the Chemical division now renamed as Business Group Explosives are being given the said benefit but with ceiling limit of Rs.3,500/- per month and thereby it is clearly discriminatory in nature.

4. The petitioner Company filed its statement of claim that each business group is an independent business division and service conditions of employees working in different groups are governed by their own long term settlements arrived at between the Union and management from time to time. Long term settlement for each group is separate. It is further pleaded that PLI is paid as per profit and loss of the respective concerned division. It is also pleaded that placing ceiling limit of Rs.3,500/- in payment of PLI to the employees of the first party while removing this limit for the employees working in the Petroleum Division and Corporate Office cannot be termed as discrimination and therefore the reference petition deserves to be answered in favour of the Company.
5. The Industrial Court by its impugned award held that placing ceiling limit of Rs.3,500/- per month in PLI to the members of the employees working in the petitioner Company (Chemical Division) is discriminatory policy of the management and it is further held that the employees working in the business group of Chemical division deserve to be given benefit under

the PLI scheme without any ceiling limit maintaining parity with the benefits given under the scheme to the employees working in the Business Group of Petroleum.

6. Feeling dissatisfied and aggrieved against the award holding that employees of the respondent Union are entitled for PLI without any ceiling limit, this writ petition under Article 227 of the Constitution of India has been filed assailing the award and holding that the employees of the respondent Union are governed by the settlement entered into on 24-3-2001 (Ex.NA-8) which is binding settlement between the parties and therefore the circular dated 5-11-2002 (Ex.NA-7) would not be applicable and as such, the impugned award deserves to be set aside.
7. Return has been filed opposing the said writ petition.
8. Mr. Vinod Deshmukh, learned counsel appearing for the writ petitioners, would submit that claim of the respondent Union in respect of placing the ceiling limit of PLI is not maintainable on the ground of estoppel as the respondent had already entered into long term settlement with the petitioner Company under Section 12(3) read with Sections 18(1) and 2(p) of the Industrial Disputes Act, 1947 (for short 'the Act of 1947'), and such a settlement is binding between the parties. As per the settlement, PLI applicable in the Chemical division of the petitioner Company would be given effect to as agreed

by the Union and its members and the circular Ex.NA-7 would not be applicable, as no fresh settlement superseding the settlement dated 24-3-2001 (Ex.NA-8) has been entered into. He would finally submit that the said settlement is a settlement within the meaning of Section 2(p) of the Act of 1947 and is binding on both the parties, unless same is altered, modified or substituted by another agreement and therefore, the impugned award deserves to be set aside.

9. Mr. Gary Mukhopadhyay, learned counsel appearing for the respondent, would however, support the impugned award and submit that attitude and action of the petitioner Company which is a Government of India undertaking is clearly discriminatory. Ceiling limit in respect of PLI has been lifted so far as the other divisions i.e. Petroleum and Engineering Divisions are concerned but there is no reason as to why such ceiling limit has been placed while granting PLI to the members of the respondent Union i.e. the Chemical division. Therefore, the learned Industrial Court is absolutely justified in awarding such a benefit to the members of the respondent Union and as such, the writ petition deserves to be dismissed.

10. I have heard learned counsel for the parties, perused the impugned award and also gone through the record with utmost circumspection.

11. The respondent Union is a representative union representing the employees of Business Group (Chemicals) under the Federation of Unions of All India IBP Employees and entered into a memorandum of settlement under Section 12(3) read with Sections 18(1) and 2(p) of the Act of 1947 on 24-3-2001 for a period of ten years from 1-4-1997 to 31-3-2007.
12. The question for consideration would be the effect of the memorandum of settlement entered into between the parties with respect to allowance including PLI.
13. At this stage, it would be proper to notice Sections 17, 18, 19 and 20 of the Act of 1947. Section 18(3) of the Act of 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.”

14. 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 have held that settlement as defined by Section 2(p) of Industrial Disputes Act and one under Section 12(3) are binding on workmen under Section 18(3) of the Act until it is validly terminated.

15. 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 also on all parties to the industrial dispute which would

1 AIR 1969 SC 1280

2 AIR 1998 SC 554

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 settlements 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.”

16. 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, 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.”

17. Settlement within the meaning of Section 2(p) of the Act of 1947 is binding on both the parties unless the same is

³ AIR 1990 SC 1801

altered, modified or substituted by another settlement. (See **Mohan Mahto v. Central Coal Field Ltd. and others**⁴.)

18. This Court also in the matter of **Avinash Saloman v. South Eastern Coalfields Limited, Bilaspur (C.G.) and others**⁵

has held that settlement entered into between the parties under Section 12(3) read with Section 18(1) of the Act of 1947 is binding between the parties.

19. 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 petitioners as well as the respondent Union by virtue of Section 18(3) of the Act of 1947.

20. Clause 6 of the terms of settlement dated 24-3-2001 entered into between the parties provides as under: -

"6.0 Productivity Linked Incentive :

Workmen are eligible for productivity linked incentive on the basis of the respective performance of the unit/office where posted, in accordance with laid down parameters and subject to the provisions of the scheme. The max. rate at which the incentive are payable are as under :

- i. For workmen eligible for profit sharing bonus or ex-gratia payment in lieu thereof :

Total of incentive benefit and profit sharing bonus or ex-gratia payment in lieu thereof not to exceed 32% of "actual basic pay + SFA (CB)+ VDA limited to Rs. 2500/- per month".

- ii. For workmen not eligible for profit sharing bonus or ex-gratia payment in lieu thereof :

⁴ (2007) 8 SCC 549

⁵ ILR 2016 Chhattisgarh 158

The benefit under the scheme will not exceed 12% of the "actual basic pay + SFA (CB) + VDA limited to Rs. 3500/- per month".

21.A careful perusal of the aforesaid clause of the settlement clearly provides that workmen are eligible for productivity linked incentive on the basis of the respective performance of the unit and it has also been held that the benefit under the scheme will not exceed 12% of the "actual basic pay + SFA (CB) + VDA limited to Rs.3,500/- per month", as it has already been held that terms of settlement are binding between the parties by virtue of Section 2(p) of the Act of 1947 and it has not been shown to be altered, modified or substituted by another agreement. Therefore, in the considered opinion of this Court, the Industrial Court could not have ignored the binding settlement entered into between the parties, clause 6 of which places ceiling limit of Rs.3,500/- per month so far as productivity linked incentive is concerned.

22.Now, the question is whether in view of Ex.NA-7, the Industrial Court is justified in holding that there is discrimination in the policy of the management.

23.Ex.NA-7, Inter Office Correspondence of the petitioner Company dated 5-11-2002, reads thus,

"As per the extant provisions of the Productivity Linked Incentive Schemes of the respective Business Groups, the employees are entitled to Productivity Linked Incentive payments based on

the respective performance of the Business Groups in accordance with the laid down parameters. The payment of incentive is calculated on salary (Basic Pay plus VDA) limited to Rs. 3500/- p.m.

The existing Productivity Linked Incentive Schemes of the BGs have been reviewed and it has now been decided to remove the ceiling of salary (Basic Pay plus VDA) of Rs. 3500/- under the scheme applicable to the Business Group (Petroleum) and instead make payment from the financial year 2001-02 on the actual Basic Pay and VDA drawn by the employees covered by the scheme. As per the laid down parameters, Productivity Linked Incentive payment for the employees of Business Group (Petroleum) for the financial year 2001-02 works out to 12.90% and on proportionate basis for the employees of Corporate Office/Group functions works out to 11.88%. The employees of BG(P) and CHO/ Group functions shall accordingly be paid Productivity Linked Incentive payment for the year 2001-02 @ 12.90% and 11.88% respectively of their actual Basic Pay plus VDA.

Since the Business Groups Chemicals and Engineering are incurring losses, it has been decided not to remove the ceiling of salary (Basic Pay plus VDA) for the purpose of payment of Productivity Linked Incentive payment till these Business Groups make sufficient profits. The employees of Business Groups Chemicals and Engineering shall be paid Productivity Linked Incentive payment as under for the financial year 2001-02 as per laid down parameters calculated on salary (Basic Pay plus VDA) limited to Rs. 3500/- p.m:

Employees on the rolls of BG(C) including those who have worked for BG(C) during the full or part of the financial year	@ 11%
Employees on the rolls of BG(E) including those who have worked for BG(E) during the full or part of the financial year	@ 3%

The employees who have worked for a part of the year in any of the Business Groups, they shall be

entitled for pro-rata Productivity Linked Incentive payment based on the scheme applicable to that Business Group.

It is being clarified that the following elements shall also be taken into account for the purpose of computing Productivity Linked Incentive payment :"

24. In this Inter Office Correspondence, the petitioner Company has clearly held that the existing Productivity Linked Incentive Schemes were reviewed and it was decided to remove the ceiling of salary of Rs.3,500/- under the scheme applicable to the Business Group (Petroleum) and Corporate Office, but it has also been provided in that scheme that since the Business Groups Chemicals and Engineering are incurring losses, the ceiling limit was not removed with regard to Productivity Linked Incentive till those Business Groups make sufficient profits. So, valid reason has also been assigned for making distinction between Petroleum division and Chemical division. The reason appears to be justified. It is not the case of the respondent Union that the petitioner Company so far as the Chemical division, has started making sufficient profits and it has not been established so by the respondent herein.

25. The equality clause contained in Article 14 of the Constitution of India requires that equals have to be treated equally and unequals ought not to be treated equally. The classification must not be arbitrary but must be rational.

26.Discrimination implies an unfair classification. There is distinction between 'discrimination without reason' and 'discrimination with reason'. The whole doctrine of classification is based on this and on the well-known fact that the circumstances covering one set of provisions or objects may not necessarily be the same as those covering another set of provisions and objects so that the question of unequal treatment does not arise as between the provisions covered by different sets of circumstances. (See **Video Electronics Pvt. Ltd. and another v. State of Punjab and another**⁶.)

27.Since the settlement entered into is binding between the parties in which the Productivity Linked Incentive has been limited to Rs.3,500/- per month and that has not been shown to be superseded or altered by another new settlement. Ex.NA-7, the Inter Office Correspondence of the petitioner Company dated 5-11-2002, is applicable only to the employees of Petroleum Division and sufficient reason has been provided for not extending the same benefit to the respondent Union and it has not been established that the petitioner Company / Petroleum division has started sufficient earning and therefore the Industrial Court is absolutely unjustified in holding it discriminatory. Even otherwise, classification so made is just and fair.

28.As a fallout and consequence of aforesaid discussion, the

6 (1990) 3 SCC 87

impugned award dated 24-1-2005 passed by the Industrial Court, Raipur in Ref. Case No.15/C.G.I.R.Act/I/2003 is set aside and it is held that the respondent Union employees are not entitled for Productivity Linked Incentive at par with the employees of Petroleum division, till the validity of the memorandum of settlement already entered into. However, for subsequent period, the respondent Union is free to proceed in accordance with law.

29.The writ petition is allowed to the extent indicated herein-above leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge