IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 11679 of 1995 (O&M)
Date of decision : 29.4.2016
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The Doaba Cooperative Sugar Mills Ltd.,
Labour Union, Nawanshahr, through
Sarvshri Ram Lubhaya and Inderjit Singh
................Petitioner

vs.

The Management of Doaba Cooperative
Sugar Mills Ltd., Nawanshahr and another
.................Respondents

Coram: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. D.V. Sharma, Senior Advocate with
Ms. Shivani Sharma, Advocate for the petitioner.

Mr. Abhinav Ghabroo, Advocate for
Mr. Rahul Sharma, Advocate for respondent No.1.
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1. *Whether Reporters of local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

P.B. Bajanthri, J.

In this writ petition, the petitioner has questioned the Labour Court order dated 4.5.1995 (Annexure P-6) passed in Application No. 494/1991.

2) The petitioner is registered Union under the Trade union Act. The Union had authorized Ram Lubhaya and Inderjit Singh to present this petition by means of a resolution dated 22.6.1995. Doaba Cooperative Sugar Mills Ltd., Nawanshahr (for short 'Sugar Mills'), is a co-operative society under the Punjab Co-operative Societies Act, 1961 (for short 'the Act'). The management of Sugar Mills vests in an

elected Board of Directors which is elected in accordance with the provisions of the Act and Rules framed thereunder. Under Section 26 (2) (b) of the Act, the State Government nominated the then Joint Registrar, Cooperative Societies, on the Board of Directors of the Sugar Mills while appointing him as a Managing Director of the Sugar Mills being a nominee of the government. Under Rule 80-B of the Punjab Cooperative Societies Rules, 1963 (for short 'the Rules'), the duties and functions of Managing Director are assigned in the said provision. Even under bye-law 21 certain powers and responsibilities have been assigned to the Managing Director, like general conduct, supervision and management of the day to day business and affairs of the Sugar Mills and also subject to the regulations to be framed by the Board to enter into negotiations and contracts and make such notes etc. However, the Board is yet to frame any regulations.

(3) The workers of the Sugar Mills submitted demand notice to the management of Sugar Mills. Since the management did not consider the demands, workers proceeded on strike on 17.10.1989. A settlement was arrived at between the management of the Sugar Mills and the representative of the workers on 29.11.1989 vide Annexure P-1. 7 demands of the workers were settled and the settlement was signed by the Chairman, Vice Chairman, 2 Directors, Managing Director and 12 others on behalf of workers. The management implemented 6 demands. In so far as demand No.4, namely " Implementation of recommendations of IIIrd Wage Board" i.e.

enhancement of salary to the extent of Rs.75.20 is concerned, it was not implemented. The workers feeling aggrieved by the non-implementation of Item No.4 of the settlement filed application under Section 2 of the Section 33-C (2) of the Industrial Disputes Act, 1947 before the Presiding Officer, Labour Court, Jalandhar, in the year 1991. Respondent-management filed their written statement. The management contended that the respondent-Sugar Mills has its own bye-laws and bye-law No. 19(b) which reads as follows:-

> " The meeting of the Board shall be convened by the Managing Director of the Mills. A fifteen days clear notice shall be given for the meeting of the Board of Directors unless prior permission of Registrar is obtained for calling the meeting at a shorter notice. The quorum for the meeting of the Board shall be 1/3rd of the total members of the Board, provided that at least two elected members must be present in such meeting."

and it has not been complied before settlement dated 29.11.1989 (Annexure P-1). Therefore, the minutes/deliberations of the said meeting could not be considered as decision of the Board of Directors and have no legal force. It was submitted that on 17.1.1990, Board of Directors in its meeting accepted the recommendations of IIIrd Wage Board and decided to implement the same w.e.f. 1.1.1988. As regards the scheme of payment of Rs.75.20, it was contended that U.P. Government has allowed w.e.f. 1.10.1989 and the same is not maintainable. It was further contended that the U.P. Government allowed the arrears of Rs.75.20 without accepting the IIIrd Wage Board. Therefore, the petitioner-workers are not entitled to the relief sought before the Labour Court. The Labour Court rejected the petitioners claim on the sole ground that procedure for holding meeting on 29.11.1989 was not adhered. The Registrar of Cooperative Societies has not given necessary approval. Even Section 18 of the Industrial Disputes Act, 1947 read with Rule 58 of the Industrial Disputes (Punjab) Rules, 1952, has not been complied. Under Section 33-C (2), the application is not properly presented. Thus Labour Court dismissed the application of the petitioner.

4) Learned counsel for the petitioner submitted that vide Annexure P-1 there was a settlement of 7 demands of the petitioner-workers and the same has been signed by the Chairman, Vice Chairman, 2 Directors, Managing Director and representatives of the workers. The grouse of the management is that demand No. 4 "Implementation of recommendations of IIIrd Wage Board" to the extent of granting Rs.75.20 in salary, is concerned, it was contended by management-respondent that the entire settlement itself is contrary to bye-law 21, Section 18 of the Industrial Disputes Act, 1947 and Rule 58 of the Industrial Disputes (Punjab) Rules 1952, that it was not in the form 'H'. Therefore, the petitioners are not entitled to get implemented demand No.4 of Annexure P-1 dated 29.11.1989. Learned counsel for the petitioner submitted that the Government representative, Managing Director, who was party to the settlement

dated 29.11.1989 and Board of Directors are also party to the settlement, therefore, there is no lacuna in the settlement, if the same is not in form 'H'. On that score, the settlement dated 29.11.1989 would not vitiate. In support of the said contention, the learned counsel for the petitioner relied on the following decisions :-

1. ***Namor Ali Choundhuri and others vs. The Central Inland Water Transport Corporation Ltd., and another 1978 AIR (SC) 275;***
2. ***General Manager, Security Paper Mill, Hoshangabed vs. R.S. Sharma and others 1986 AIR (SC) 954;***
3. ***Messrs Punjab Kesri and another vs. Rattan Singh and others 1991 (2) S.C.T. 35;***
4. ***M/s Febril Gasosa etc. vs. Labour Commissioner 1997 AIR (SC) 954.***

5) In ***Messrs Punjab Kesri's case (Supra),*** in paragraphs 4 to 6, it has been held as follows:-

> " 4. To appreciate the respective contentions of the parties, it will be appropriate to notice the definition of 'settlement' given under Section 2 (p) of the Act, as also Section 18(1), which gives the binding effect of the settlement, Rule 58 of the Rules, which prescribes as to what formalities are to be gone into and how the settlement is to be written is also reproduced:

> "Section 2. (p) In this Act, unless there is anything repugnant in the subject or context, -(p) '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."

Section 18(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.

Rule 58. - Memorandum of Settlement.- (1) A settlement arrived at in the course of conciliation proceedings or otherwise, shall be in Form H.

(2) The settlement shall be signed by, -(a) in the case of an employer, the employer himself, or by his authorised agent, or when the employer is an

incorporated company, or other body corporate, by the agent, manager or other principal officer of the corporation;

(b) in the case of workmen,

(i) The President and Secretary of a Trade Union of workmen; or

(ii) The President, Vice-President, Secretary or General Secretary of the Trade Union of workmen preferably one of the aggrieved workmen; or

(iii) Five representatives of the workmen duly authorised in this behalf at a meeting of the workmen held for the purpose.

(c) in the case of an individual workman, in an industrial dispute under Section 2A, by the workman concerned.

(3) Where a settlement is arrived at in the course of conciliation proceedings, the Conciliation Officer shall send a report thereof to the State Government together with a copy of the memorandum of settlement signed by the parlies to the dispute.

(4) Where a settlement is arrived at between an employer and his workmen otherwise than in the course of conciliation proceedings before a Board

or a Conciliation Officer, the parties to the settlement shall jointly send a copy thereof to the State Government, the Labour Commissioner, Punjab and to the Conciliation Officer concerned."

5. The learned counsel for the appellant submitted that the learned single Judge had gone wrong in upsetting the award when he held that the settlement was not of the kind envisaged by Section 18(1) of the Act, inasmuch as the requisite formalities provided under Rule 58 of the Rules had not been complied with. According to the learned counsel, there are only two requirements of Rule 58, firstly, that the settlement arrived at between the parties has to be in form H and secondly, the settlement which has been arrived at has to be sent to the Labour Commissioner. The learned counsel went on to argue that both these requirements were directory and not mandatory and in any case he submitted that in fact there was a compliance of these provisions. We find force in the arguments of the learned counsel for the appellant that there was in fact compliance with Rule 58 of the Rules. Before the Labour Court, evidence had been led by the management where a copy of letter dated July 19,

1971, had been produced to show that the Labour Officer had written a letter to the Labour Commissioner in regard to the settlement. This would show that the settlement had been sent to the Labour Commissioner. As the settlement which had been sent along with a letter dated July 19, 1971, was not forthcoming. it necessitated the management to lead secondary evidence whereby it was amply proved that a settlement had been arrived at between the parties, the copy of which was produced before the Labour Court as Exhibit M/8. This being a pure finding of fact on the appreciation of evidence that a settlement between the parties had been sent to the Labour Commissioner and the contents thereof were as contained in exhibit M/8, we are of the opinion that this part of Rule 58 had been duly complied with.

6. As far as the other aspect of the matter that the settlement has to be in form H, we find from Form H to the Rules that it only requires that the names of the parties to be mentioned, terms of settlement, the signatures of the parties and the signatures of the witnesses and the Conciliation Officer are to be there. In the present case, we find from the

> copy of the settlement that all these requirements have been met, inasmuch as it mentions that the parties are present who have compromised, the terms of the compromise are mentioned, it is signed by both the parties as well as by a witness and Labour Inspector. In view of this, we find that the settlement though it is not a typed Form H, but it contains all the ingredients which were required to be filled in Form H. Under the circumstances, it is held that the settlement arrived at between the parties was : substantially in the same format as Form H. It is not necessary that it should necessarily be written or jotted down on Form H, and if it is not on Form H, in no case it can be acted upon. In each a case, it will have to be seen how the settlement has been written."

6) Learned counsel for the petitioner further submitted that the Registrar has ample power to cancel the settlement. However, the Registrar till date has not exercise the power. Moreover, the portion of settlement cannot be in violation of bye-law 19 (b), if at all the settlement is contrary to bye-law 19(b), the entire settlement would be bad. The argument of the management, in so far as demand No. 4 is concerned, it is bad and cannot be accepted.

7) Per contra, counsel for respondent submitted that Annexure P-1 dated 29.11.1989 – settlement is only a

recommendation. Ultimately, it is for the management to accept or not to accept the recommendation. Annexure P-1 is not in accordance with bye-law 19(b) and it is also not in the form 'H'. These three contentions have been taken into consideration by the Labour Court while rejecting the claim of the petitioner-workers. Therefore, there is no infirmity in the decision of the Labour Court. Learned counsel for the respondent submitted that it is mandatory that 19(b) of bye-law to be complied, since the same has not been complied before Annexure P-1 – settlement, consequently, the petitioners are not entitled for the relief sought in this petition.

(8) Heard learned counsel for the parties and perused the records.

(9) It is undisputed that Annexure P-1 dated 29.11.1989 proceedings were drawn in the presence of Chairman, Vice Chairman, 2 Directors, Managing Director and representatives of the workers. The Managing Director is Government nominee and is party to the Annexure P-1 – proceedings dated 29.11.1989, therefore it is binding on the management, Government and the workers. The respondent-management's objection is that there is a non-compliance of Rule 19 (b) of the bye-laws. The management-respondent, their grouse is against only item No. 4 of Annexure P-1. Annexure P-1 settlement consists of 7 items. In so far as items No. 1 to 3 and 5 to 7 are concerned, there is no objection and it has been implemented. Only for the purpose of implementing item No.4 “4. Implementation of recommendations of IIIrd Wage Board” i.e. granting Rs.75.20

enhancement in salary, the respondent have objection that proceedings is not in accordance with law. When the management-respondent did not have any objection in respect of implementing items No. 1 to 3 and 5 to 7, so far as implementation of item No.4, is concerned, they cannot have objection that proceedings Annexure P-1 dated 29.11.1989 is illegal as bye-law 19 has not been complied, it is not in the form 'H' and the Labour Court has no jurisdiction to entertain application under Section 33-C (2() of the Industrial Disputes Act, 1947. For non-compliance of bye-law 19 and it is not in the form 'H' is concerned, the Registrar did have the power of cancellation of Annexure P-1 proceedings dated 29.11.1989. However, the same has not been cancelled. As long as Annexure P-1 proceedings dated 29.11.1989 is in existence, the same shall have to be given effect. Even assuming that Annexure P-1 is illegal/void, the competent authority is required to hold that it is a void or unless and until there is a declaration by competent authority that Annexure P-1 is illegal and void, Annexure P-1 is required to be implemented. Learned counsel for the petitioner rightly pointed out decision of this Court in ***Messrs Punjab Kesri's case (Supra),*** wherein it is held that if all the requirements of form 'H' are fulfilled, it is not necessary that settlement must be in the typed form 'H'. Paragraphs 4 to 6 of the abovesaid judgment, which have been extracted above, are relevant. Learned counsel for the respondent submitted that Labour Court rightly held that there is non-compliance of Rule 58 of the Industrial Disputes (Punjab) Act, 1952. In view of the decision of this Court, the contention of the respondent, non-compliance of bye-law 19 as well as non-compliance of form 'H' are not tenable.

10) Having regard to the facts and circumstances and legal position, Labour Court order dated 4.5.1995 (Annexure P-6) is set aside. The respondents are directed to implement item No. 4 of the proceedings dated 29.11.1989 (Annexure P-1) within a period of 3 months.

11) The writ petition is allowed.

12) No order as to costs.

(P.B. Bajanthri)

April 29, 2016 **Judge**

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