

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Writ Petition No.13692 of 2003

The Workmen rep. By
Secretary
Chemplast Employees Union,
Raman Nagar
Mettur Dam 636 403

Petitioner

Vs

1. Presiding Officer
Industrial Tribunal,
Chennai.

2. The Management of Chemicals
and Plastics India Limited,
Mettur Dam, Salem District.

Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorified Mandamus to call for the records from the 1st respondent relating to the Award dated 25.09.2000 passed in I.D.No.25 of 1995, Quash the same and consequently direct the 2nd respondent to pay bonus to the 122 workmen concerned for the year 1992-93, on par with the other workmen employed in Plant II of the 2nd respondent Management with interest, Award costs.

For Petitioners : Mr.V.Ajay Khose

For Respondents : Mr.Anantha Gopalan for
M/s T.S.Gopalan & Co. (R2)
R2-Tribunal

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O R D E R

To understand the crux of the dispute between the Union and the Management in this case, it may be relevant to recapitulate the facts leading to the 12(3) Settlement dated 26.12.1992 entered into between the parties in the presence of the Joint Commissioner of Labour.

2. The preamble to the terms of the Settlement dated 26.12.1992 would by itself graphically portray the industrial climate that was prevailing in the Establishment

".....6.Towards ensuring that there is no disruption of work arising out of the bonus disputes, management proposed that the company, in future, would strictly implement provision of the Payment of Bonus Act 1965 from 1.4.1991. Towards this, a long term settlement would be offered to ensure that the workmen, who have been enjoying the benefits by way of substantive bonus/ex-gratia in the past, are not affected.

7.Union maintained that they are unable to examine Long term bonus arrangement at this juncture and are prepared to consider such proposal beginning from next financial year and therefore insisted upon negotiating bonus applicability for the year 91-92 only.

.....

11. With a view to expedite a settlement and to restore normalcy further conciliation talks were taken up before Joint Commissioner of Labour (Conciliation), Madras commencing from 10.11.1992 in Madras and continued at Coimbatore on 14.11.1992 and at Salem on 25.11.1992 and subsequently at Madras. During the meeting on 14.12.1992, the management communicated to the Joint Commissioner, Labour, that the Union/Workmen of six other units of Chemicals and Plastics India Limited have accepted the long term settlement of 27.11.1992 and hence such an arrangement would only be available to the PVC division as well, as these divisions form part of the company.

....

13. Management during the bilateral talks held on 19.12.1992 and 20.12.1992 had conveyed that it is the policy of the Company to strictly implement provisions of the Payment of Bonus Act, 1965 from 1.4.1991 and that while changing the existing system of Bonus/ex-gratia towards achieving the above objective, ensure that permanent workmen who have been enjoying such benefits are not affected in any way. Management also

conveyed that introduction of monthly allowance in lieu of the amount determined as Bonus/ex-gratia is an integral part of this arrangement....".

3. From a reading of the above paragraphs, it is evident that the payment of bonus to the permanent workmen under the Management was the bone of contention between the parties. According to the Management, the permanent workers would very frequently go on strike and thereby hamper production and to placate them, the Management would dole out ex-gratia payments as bonus for maintaining industrial peace. This became an annual feature and therefore, the Management wanted a long term settlement to the issue of bonus and ex-gratia payments.

4. Initially, the Union resisted and at last, on the intervention of the Joint Commissioner of Labour, both parties agreed to enter into a long term settlement with regard to payment of ex-gratia and bonus to the permanent workers and at last succeeded in entering into a 12(3) settlement dated 26.12.1992, under which the Management agreed to pay 56.5% to the actual earnings between 01.04.1991 and 31.03.1997 to the permanent workmen including bonus. The relevant clauses in the 12(3) Settlement are as follows:-

"Terms of Settlement

.....

3. On the advice of Joint Commissioner of Labour and taking into account the reasons conveyed by the Union as well as the obvious advantages arising out of Long term arrangement, management agreed to apply a percentage of 56.5% applicable exclusively to the long term arrangement from the commencement of the settlement and for the period from 1.4.91 to 31.3.97 and pay the same as a separate monthly allowance to all permanent workmen on the rolls of the company as on date, as follows:

4. In terms of Para 3 it is agreed to apply 56.5% to the actual earnings between 1.4.1991 and 31.3.1992 and pay as a separate monthly allowance based on attendance.

5. The monthly allowance will be increased from 1.4.1992 calculated at 56.5% of Basic, PP of 1.7.1992 but DA of 1.4.1992. This payment will be added to existing pay as separate monthly allowance based on

attendance.

6. Beginning from 1.4.92 out of the monthly allowance mentioned in para 5, Rs.500/- will be paid as Special Fixed Dearness Allowance and the balance as Special Personal Allowance. the Special Fixed Dearness Allowance will attract Provident Fund, Gratuity, Production Incentive, Leave encashment and Medical Reimbursement. The Special Personal Allowance will be considered as salary under section 2(21) of Payment of Bonus Act, 1965, for the purpose of determining Bonus eligibility.

.....

18.The union agreed not to raise any demand in respect of Bonus/Ex-gratia payments during the currency of this Settlement.

.....

20.The settlement is applicable only to permanent workmen who are on the rolls as on the day of the settlement. (emphasis supplied)

21.The settlement will be in force from 01.04.1991 to 31.3.1997 and thereafter until terminated by either of the parties in accordance with law.

....."

5. After the said Settlement was entered into, the Union took cudgels on behalf of 122 Workmen, who were not permanent workmen on 26.12.1992 when the 12(3) Settlement was entered, but later became permanent during the currency of the settlement on various dates and demanded that they also be paid 56.5% on par with those covered by the settlement. The Union raised Industrial Dispute and settlement talks with the Management held before the Labour Officer failed and the matter was referred by the Government to the Industrial Tribunal for adjudication. The Reference made by the Government to the Industrial Tribunal is extracted verbatim:

"Whether the demand of 122 workmen listed below for payment of Bonus and Exgratia for the year 1992-93 on par with other workmen of Chemicals and Plastics India Ltd., Plant II Mettur Dam in the context of the settlement dated 26.12.92 is justified. If so, to what relief they would be entitled to compute the relief, if any, awarded in terms of money if

it could be so computed".

6. Before the Tribunal, both parties adduced only documentary evidence and after considering the same and hearing them, an Award dated 25.09.2000 was passed, negating the claim of the Union, challenging which, the Union is before this Court.

7. Heard Mr.V.Ajay Khose, learned counsel appearing for the Union and Mr.Anantha Gopalan, learned counsel appearing for the Management.

8. Mr.V.Ajay Khose, learned counsel appearing for the Union submitted that the 12(3) Settlement dated 26.12.1992 would undoubtedly apply to the 122 Workmen in the light of Section 18 (3)(d) of the Industrial Disputes Act (hereinafter referred to as "the Act") and that they cannot be discriminated. He drew analogy from the Pay Commission Reports and submitted that, as and when the Government accepts the report of the Pay Commission, all benefits recommended by the Pay Commission and accepted by the Government would not only be applicable to those who are in service, but would also apply to those who joined the service later. In support of his contentions, he placed strong reliance upon the following Judgments:

(i) 1997-II-LLJ-147 (Mettur Chemicals Podhu Thozhilalar Sangam, Mettur and Chemplast Sanmar Limited, Mettur v. Chemplast Employees Union, Mettur and Chemplast Sanmar Ltd., Mettur)

(ii) 2000 (1) SCC 371 (National Engineering Industries Ltd. v. State of Rajasthan and others),

(iii) 2005(3) Supreme Court Cases 224 (Oswal Agro Furane Ltd. and another) v. Oswal Agro Furane Workers Union and others.

9. Per contra, Mr.Anantha Gopalan, learned counsel for the Management submitted that the 12(3) Settlement dated 26.12.1992 was entered into between the Management and the Union in order to put an end to the frequent strikes called for by the Union demanding ex-gratia payment and bonus. Therefore, to usher Industrial peace, the Management wanted to come to a long term settlement with the Union and after several rounds of talks with the Union, the Union, wholeheartedly came forward to agree to a long term settlement and signed the Settlement dated 26.12.1992, wherein, they have agreed that the terms of the Settlement will be in force from 01.04.1991 to 31.03.1997. In the said settlement, the Union had clearly agreed that only workmen who were permanent as on 26.12.1992 will be entitled to 56.5% as allowances including bonus in three components viz., 8.33%

bonus, 11.67% ex-gratia and 36.50% production incentive. After having agreed so, it does not lie in the mouth of the Union to contend that 12(3) Settlement should be extended to the 122 employees, who became permanent subsequently. He also relied upon Section 18(3)(d) of the Act and stated that 12(3) Settlement dated 26.12.1992 will be binding on every one including the 122 workers.

10. This Court gave its anxious consideration on the rival submissions.

11. In Mettur Chemicals case reported in 1997-II-LLJ-147, the issue before the learned Single Judge of this Court was whether the terms of a 12(3) Settlement would continue even after the date of expiry. This Court, relying upon the Judgment of the Supreme Court in the case of LIC Vs. D.J.Bahadur reported in (1981) 1 LLJ 1, held that even after the expiry of the period mentioned in the 12(3) Settlement, until a new Settlement is entered into, the old Settlement would have currency. The issue in the case at hand is different and therefore the said Judgment may not be of any assistance to the petitioner.

12. As regards the Judgment of the Supreme Court in National Engineering Industries case, reported in 2000 (1) SCC 371, the Supreme Court held that a 12 (3) Settlement is binding even on the employees who are not signatories to it. The Supreme Court in that Judgment relied upon the earlier Judgement in the case of Barauni Refinery Pragatisheel Shramik Parishad vs. Indian Oil Corporation Limited reported in (1991) 1 SCC 4 and held that the settlement arrived at under Section 12(3) would be applicable to all including those who were not signatories to it. It may be relevant to extract the following passage from Barauni Case.

"17. ... Therefore, a settlement arrived at in the course of conciliation proceedings with a recognised 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."

In the opinion of this Court, this Judgment, in fact, supports the plea of the Management and not the Union.

13. In Oswal Agro Furane Ltd. Case reported in 2005(3) Supreme Court Cases 224, the issue before the Supreme Court was whether the agreement entered into between the Management and the Union in violation of Section 25(O) of the Act, would be valid in law. The Supreme Court, held that a contract between parties in violation of a statutory provision will not be valid in law. This Judgment also would not come to the aid of the Union as the facts there in are not similar to the case at hand.

14. At this juncture, it is relevant to extract below Section 18(3)(d) of the Act:

"(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".

15. From a reading of Section 18(3)(d) of the Act, it is beyond doubt that a settlement arrived at between the Management and the majority Union under Section 12(3) of the Act, in the presence of the labour Officer, would have a binding effect on one and all. Mr.V.Ajay Khose's contention is that Section 18(3)(d) of the Act should be interpreted in such a manner that the terms of the agreement should be extended to those 122 persons, who became permanent subsequently. The Pay Commission analogy proffered by Mr.V.Ajay Khose cannot be extended to the facts obtaining in this case. The Pay Commission would fix the pay for various grades and categories of Government Servants and on the acceptance of the report by the Government, the Government will amend the rules and refix the pay for various grades of Government servants and after refixation, whoever joins the service, would get the revised the scale of pay.

16. In the case at hand, the petitioner Union is undoubtedly the majority Union and had entered into the 12(3) Settlement on 26.12.1992, wherein, they have specifically agreed that the terms of the settlement will apply only for those who were permanent workmen as on 26.12.1992. Section 18(3)(d) of the Act cannot be interpreted to mean that the terms of

settlement should be extended to those who were specifically excluded by the Settlement. In other words, as on 26.12.1992, these 122 workmen were not permanent workmen. They were only temporary workmen. The 12(3) settlement dated 26.12.1992, clearly states that only the permanent workmen will be entitled to 56.5% payment, as they were already enjoying it. By no stretch of imagination, the same can be extended to 122 workmen, who were not permanent workmen as on 26.12.1992 and who became permanent only subsequently.

17. Mr.V.Ajay Khose, the learned counsel for the Union brought to the notice of this Court the subsequent 12(3) settlements dated 22.07.2002, 13.08.2007, wherein the benefits therein were extended even to probationers, who would become permanent during the currency of the settlement. Though these settlements were not placed before the Industrial Tribunal, yet, on a perusal of the relevant clauses in those settlements, it is apparent that both the Management and the Union had mutually agreed to extend the benefits to probationers as well, but, whereas, under the impugned Settlement dated 26.12.1992, both the parties have categorically agreed that the same would be applicable only for permanent workmen. Just because in the subsequent settlements they have agreed to extend the benefits to probationers, the same cannot be telescoped into the settlement at hand.

18. In the result, the writ petition is devoid of merits and accordingly, the same is dismissed. No costs.

sd/
Assistant Registrar (CS V)

/true copy/

सहायमेव अधिकारी
Sub Assistant Registrar

rg
To

The Proceedings officer,
Industrial Tribunal,
chennai.

+1cc to Mr.V.Ajay Khose, Advocate sR.No.9380
+1cc to Mr.T.S.Gopalan & Co, Vide SR.No.9332

Writ Petition No.13692 of 2003

SSI (CO)
GN(03/03/2017)