IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No.6067 of 2011

Glaxosmithkline Consumer Healthcare Ltd. ... Petitioner

Versus

The State of Punjab and others ...Respondents

2. **CWP No.12766 of 2011**

Glaxosmithkline Consumer Healthcare Ltd. ... Petitioner

Versus

State of Punjab and others ...Respondents

3. **CWP No.13373 of 2011**

Glaxosmithkline Consumer Healthcare Ltd. ... Petitioner

Versus

State of Punjab and others ...Respondents

4. **CWP No.14040 of 2011**

Glaxosmithkline Consumer Healthcare Ltd. ... Petitioner

Versus

State of Punjab and others ...Respondents

5. **CWP No.15516 of 2011**

Glaxosmithkline Consumer Healthcare Ltd. ... Petitioner

Versus

State of Punjab and others ...Respondents

6. **CWP No.15519 of 2011**

Glaxosmithkline Consumer Healthcare Ltd. ... Petitioner

Versus

State of Punjab and others ...Respondents

7. **CWP No.15520 of 2011**

Glaxosmithkline Consumer Healthcare Ltd. ... Petitioner

Versus

State of Punjab and others ...Respondents

8. **CWP No.15686 of 2011**

Glaxosmithkline Consumer Healthcare Ltd. ... Petitioner

Versus

State of Punjab and others ...Respondents

9. **CWP No.14075 of 2011**

Glaxosmithkline Consumer Healthcare Ltd. ... Petitioner

Versus

State of Punjab and others ...Respondents

10. **CWP No.26738 of 2013**

Glaxo Smithkline Consumer Healthcare Ltd. ... Petitioner

Versus

State of Punjab and others ...Respondents

11. **CWP No.26737 of 2013**

Glaxo Smithkline Consumer Healthcare Ltd. ... Petitioner

Versus

State of Punjab and others ...Respondents

12. **CWP No.26739 of 2013**

Glaxo Smithkline Consumer Healthcare Ltd. ... Petitioner

Versus

State of Punjab and others ...Respondents

13. **CWP No.5820 of 2013**

Glaxosmithkline Consumer Healthcare Ltd. ... Petitioner

Versus

State of Punjab and others ...Respondents

14. **CWP No.5821 of 2013**

Glaxosmithkline Consumer Healthcare Ltd. ... Petitioner

Versus

State of Punjab and others ...Respondents

15. **CWP No.5823 of 2013**

Glaxosmithkline Consumer Healthcare Ltd. ... Petitioner

Versus

State of Punjab and others ...Respondents

16. **CWP No.5836 of 2013**

Glaxosmithkline Consumer Healthcare Ltd. ... Petitioner

Versus

State of Punjab and others ...Respondents

Date of Decision: 13.7.2017

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. P.K. Mutneja, Advocate,
for the petitioner.

Mr. B.M. Vinayak, DAG, Punjab.

Mr. S.K. Sharma, Advocate,
for private respondents in CWP No.6067 of 2011.

Mr. Deepak Thapar, Advocate,
for respondent No.5 in CWP No.6067 of 2011
for respondents No.5 to 64 in CWP Nos.12766, 14040, 13373, 14075, 15519, 15520 and 15516 of 2011.

Mr. Chanderdeep Singh, Advocate,
for respondent No.5 in CWP Nos.5820, 5821, 5823, 5836,
26737 to 26739 of 2013.

RAJIV NARAIN RAINA, J.

This order will dispose of CWPs No. 6067, 12766, 13373, 14040, 15516, 15519, 15520, 15686 and 14075, of 2011 & CWP Nos.26738, 26737, 26739, 5820, 5821, 5823 and 5836 of 2013.

At no point of time did the respondent No.5 raise any dispute as regards fairness of the settlement dated June 14, 2005 or that the disputes had been compromised thereunder by exerting pressure or undue influence. If there was a dispute on the question as to whether the settlement was bona fide or obtained by fraud, misrepresentation or concealment of facts, the same could be subject matter of another industrial dispute. If the settlement arrived at with the management under Section 18 (1) of the Industrial Disputes Act, 1947 ("1947 Act") was entered with eyes wide open and did not suffer from any of the above infirmities then settlement would be binding on the parties. A settlement in industrial law is statutory in nature and is treated as sacrosanct.

The respondent 5 having compromised the matter by a settlement, the memorandum of which was reduced into writing duly signed and acknowledged by the workmen with the guidance of a member of the Legislative Assembly present and in the presence of the Sub Divisional Magistrate and the DSP, Nabha at Chandigarh on June 10, 2005 as per notice dated June 13, 2005 (P-2/5) and the Memorandum of Settlement pacted on June 14, 2005 then what was signed will have to be understood in the terms of the settlement which I reproduce in full:-

"The services of <u>Karamjeet Singh</u> were utilized by the management as a worker intermittently and on temporary basis in the exigencies of the work in the factory of the Company at Nabha. <u>Karamjeet Singh</u> has now approached the management to give him some gratis amount for the services rendered by him from time to time. The management explained to him that his services were utilized as temporary employee for a fixed period and he was not entitled to any payment whatsoever Karamjeet, however, still requested that some compensation may be paid to him as a special case for the services rendered by him. The matter was discussed between the parties and after discussions a settlement was reached on the following terms:-

TERMS OF SETTLEMENT

1. That the management has agreed to pay a lump sum amount of Rs.93500/- to Karamjeet for the services rendered by him from time to time upto the date of the settlement including earned wages, payment in lieu of unavailed earned leave, bonus, gratis, compensation etc. etc.

2. That <u>Karamjeet</u> accepts the amount mentioned in para 1 above in full and final settlement of all his claims, dues and disputes etc. against the management for the services rendered by him from time to time upto the date of this settlement. He acknowledged and declared that he has no other claim, due or dispute of any nature whatsoever with the management after this settlement.

3. For settlement of his Provident Fund dues <u>Karamjeet</u> shall make a separate application to the Trustees, Glaxo SmithKline Consumer Healthcare Limited Provident Fund Trust. This will be settled as per the Trust Rules.

4. That <u>Karamjeet</u> irrevocably undertakes, acknowledges and declares that he shall not raise any dispute or demand of any nature whatsoever and any demand raised so far on his behalf is deemed to have been settled and nothing is outstanding. He further irrevocably *undertakes and acknowledges that he shall not raise any dispute or controversy or re-open or re-agitate any matter at any time in future either by himself or through any Agency/Union.*

5. That this agreement is a settlement with the meaning of Section 2 (p) of the Industrial Disputes Act, 1947 and the rules framed thereunder:-

Signed on this 14th day of Jun'05 at Nabha.

Sd/- Karamjeet Singh	*For & on behalf of M/s GlaxoSmithKline*
E.C. No. 11350	*Consumer Healthcare Limited*
(Karamjeet Singh)	*Sd/-"*

It was the management's case in the memorandum of settlement that the services of the respondent 5 were utilized as temporary employee for a fixed period and he was not entitled to any payment whatsoever. However, the workman still requested that some compensation be paid to him as a special case for the services rendered by him. Deliberations on this moot and sore point led to the making of the settlement.

What appears to me on a reading of the terms of the settlement is a claim for payment of gratis amount for work done or not done. The settlement does not in as many words say that the effect of it would be retrenchment, termination or an end of employment. When the settlement is so read then para.4 indicates, to my mind, that Karamjeet would not raise any dispute with the management or demand re-opening and re-agitation of the dispute or controversy settled willingly of any matter at any time in future either by himself or through an agency or union or workers. I fail to see termination of employment in the memorandum of settlement.

If my reading of the settlement is correct, then termination or loss of employment may give rise to an independent industrial dispute and that is what has been referred by the appropriate Government to the Labour Court for determination. Karamjeet Singh may have accepted payments of ₹93,500/- and ₹26,768 towards PF accumulations but those have to be understood in the light of the memorandum of settlement. Accordingly, the Assistant Labour Commissioner as a delegate of the appropriate Government has referred the following dispute to the Industrial Tribunal, Patiala.

> *"Whether the termination of service of Sh. Karamjit Singh E.C. No.11350 has been conducted in an illegal and improper manner, in view of compromise dated 14.06.2005, arrived at with the management under Section 18 (1) of Industrial Disputes Act, 1947."*

The issue is highly debatable to be settled by evidence and no final opinion can be expressed as of now and can be decided only when evidence is collected by the Tribunal. The cases of Jagjit Singh, Avtar Singh and Devender Singh have to be kept aside. They also settled their dues after executing a settlement and raised the dispute in conciliation. Reference was declined by the Labour Commissioner by order dated December 22, 2006. These three claimants approached this Court in CWP No.5730 of 2008 which petition was allowed and a direction issued to the appropriate Government to consider making reference. The management aggrieved by the order filed SLP No.30517 of 2008 before the Supreme Court in which the operation of the judgment of this Court has been stayed and the matter is pending. Their cases will be governed by the final outcome of the appeal.

However, the present petitioner did not approach Court and secured references of their dispute on January 17, 2011 which is the second prayer in this petition urging that the reference is not legal and valid and the order deserves to be quashed. The first issue has been repelled by the Division Bench in the present case upholding the notification dated March 19, 2008 whereby State Government had delegated powers to Conciliation Officers to make references. In the view of the Division Bench the notification does not suffer from the vice of excessive delegated legislation and is a valid law and the same was upheld by Apex Court on September 15, 2016. After the orders were passed by the Division Bench on May 07, 2012, the case was remitted to the Single Judge for decision on the merits of the other questions arising in the writ petitions.

I have heard Mr. Mutneja for the management. He has relied on a large number of judgments to contend that the reference order is bad; that it is within the jurisdiction of this Court under Articles 226 & 227 of the Constitution of India to interfere with the order of reference. The matter is covered by contract by a signed Memorandum of Settlement; settlements are binding and sacrosanct and are statutory in character when the matter is compromised under Section 18 (1) of the Act; that there is a bar in amended Section 2-A of the 1947 Act which introduced sub sections (2) and (3) which prescribe the period of limitation of three years in approaching Court by the new methodology and, therefore, the reference itself is barred by time; the demand notice has been moved after four and half years of delay when the workmen have used the money given by cheques. In case, they wanted to challenge the settlement then equity demands they return the money with interest; person who seeks equity must do equity; dispute resolution by settlement and payment of compensation debars raising of claim. On these counts, the following judgments have been relied upon:-

1. Bank of India and others v. O.P. Swarnakar and others, (2003) 2 SCC 721;
2. A.K. Bindal and another v. Union of India and others, (2003) 5 SCC 163;
3. ANZ Grindlays Bank Ltd. (Now known as Standard Chartered Grindlays Bank Ltd.) v. Union of India and others, (2005) 12 SCC 738;
4. State of Uttaranchal v. Jagpal Singh Tyagi, (2005) 8 SCC 49;
5. Ramesh Chandra Sankla and others v. Vikram Cement and others, (2008) 14 SCC 58;
6. Bombay Union of Journalists and others v. State of Bombay and another, AIR 1964 SC 1617

I am one with Mr. Mutneja on these points and the binding law in the judgments but I am also commanded not to apply judgments of the Supreme Court blindly to facts which may be different and to apply their ratio. See Haryana Financial Corporation v. M/s Jagdamba Oil Mills and another, (2002) 3 SCC 496. The Supreme Court guided Courts with the observation while quoting from Lord Denning:-

> *"Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statues, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton (1951 AC 737 at P. 761),*

Lord Mac Dermot observed:

"The matter cannot, of course, be settled merely by treating the ipsissima vertra of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said, "Lord Atkin's speech is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J. in (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of even Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board, (1972) 2 WLR 537 Lord Morris said: "There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

The following words of Lord Denning in the matter of applying precedents have become locus classicks:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

xxx xxx xxx "Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

The impugned reference is in view of the compromise dated June 14, 2005 and all the issues raised by Mr. Mutneja are wide open for determination before the Labour Court including the interpretation of the Memorandum of Settlement which view taken in this order is a only tentative one. I would not think of trying to influence the mind of the Tribunal by any expression of opinion to avoid prejudice to the parties as it will take an independent decision when parties produce their evidence but the trial cannot be stifled at this stage by quashing the order of reference.

Prima facie a case for adjudication exists and the dispute deserves to be settled one way or the other. Finding no legal infirmity in the order of reference, these petitions are declined. The present order will govern the rest of the cases in this bunch. I may briefly notice some of the judgments relied upon by the respondent workers which are six in number.

On the contention raised by Mr. Mutneja regarding equity and encashment of cheques I would draw my attention to Para.12 of the judgment in <u>Nar Singh Pal v. Union of India</u>, AIR 2000 SC 1401 and the observations made therein by the Supreme Court. Those read as follows:-

> *"12. <u>The Tribunal as also the High Court, both appear to have been moved by the fact that the appellant had encashed the cheque through which retrenchment compensation was paid to him. They intended to say that once retrenchment compensation was accepted by the appellant, the chapter stands closed and it is no longer open to the appellant to challenge his retrenchment. This, we are constrained to observe, was wholly erroneous and was not the correct approach.</u> The appellant was a casual labour who had attained the `temporary' status after having put in ten years' of service. Like any other employee, he had to sustain himself, or, may be, his family*

members on the wages he got. On the termination of his services, there was no hope left for payment of salary in future. The retrenchment compensation paid to him, which was only a meagre amount of Rs.6,350/-, was utilised by him to sustain himself. This does not mean that he had surrendered all his constitutional rights in favour of the respondents. Fundamental Rights under the Constitution cannot be bartered away. They cannot be compromised nor can there be any estoppel against the exercise of Fundamental Rights available under the Constitution. As pointed out earlier, the termination of the appellant from service was punitive in nature and was in violation of the principles of natural justice and his Constitutional rights. Such an order cannot be sustained."

That on delay and laches the workers rely on Kuldeep Singh v. G.M., Instrument Design Development and Facilities Centre and another, AIR 2011 SC 455; Ajaib Singh v. Sirhind Cooperative Marketing-Cum-Processing Service Society Limited and another, (1999) 6 SCC 82 & Gurmail Singh v. Principal, Govt. College of Education and others, 2000 (1) Labour & Services Judicial Reports 770.

On the nature of power exercised by the appropriate Government in making a reference the learned counsel for the respondents including address by Mr. Deepak Thapar, learned counsel and Mr. Chanderdeep Singh, they submit that the power is administrative in nature. Reliance is placed on M/s Ariane Orgachem Pvt. Ltd. v. Wyeth Employees Union & Ors., (2015) 7 SCC 561 on the issue of non-observance of procedure in Section 25-F holding that it would render retrenchment invalid. Respondents also rely on H.D. Singh v. Reserve Bank of India and others, AIR 1986 SC 132.

In *M/s Ariane Orgachem Pvt. Ltd.* the Supreme Court observed that refusal by the State Government's delegatee to make an order of reference amounts to determination of the existing disputes between the parties by the State Government in the absence of relevant and material evidence on record. To clarify my own mind I have tried to explain reasons in support of the orders of reference under Section 10 of the Act and not to define any of the issues raised by the petitioner and pre-empt the adjudication which is yet to take place.

The impugned orders of reference carve out a dispute by narrowing it down to whether the compromise/settlement dated 14.06.2005, arrived at with the management under Section 18 (1) of the Act gave license to them not to comply with the statutory provisions of the Act aimed at protecting labour against wanton termination at the relevant time. This is open to evidence and proof which recourse can only be taken and achieved by determination before the Tribunal.

I do not find any legal infirmity in the purely administrative act of making a reference of the dispute capable of vitiating it altogether.

Accordingly, the petitions are dismissed.

(RAJIV NARAIN RAINA)
JUDGE

13.7.2017
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Whether speaking/reasoned *Yes*

Whether reportable *No*