

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.A.Nos.1277 and 1278 of 2010
and
M.P.Nos.1 and 1 of 2010

W.A.No.1277 of 2010:

M/s.Rane Brake Lining Limited,
Plot No.30, II Main Road,
Industrial Estate, Ambattur,
Chennai-600 058. ... Appellant/Petitioner

-vs-

- 1.The Government of Tamil Nadu
Department of Labour & Employment
Fort St.George, Chennai-600 009.
- 2.The Asst.Commissioner of Labour-II,
Department of Labour & Employment,
III Floor, Kuralagam, Prakasam Salai,
Chennai-600 108.
- 3.Rane Brake Lining Employees Union
(Regd.No.MDS/461),
through its General Secretary, R.Sundar
Plot No.30, II Main Road,
Industrial Estate, Ambattur,
Chennai-600 058.

4.G.Jayapalan ... Respondents/Respondents

W.A.No.1278 of 2010:

The Management of
Rane Brake Lining Limited,
Plot No.30, II Main Road,
Industrial Estate, Ambattur,
Chennai-600 058. ... Appellant/2nd Respondent

-vs-

1.The Workmen
rep.by General Secretary,
Mr.G.Jayapalan,
Rane Brake Linings Employees Union
33, Nehru Theru 1st Cross
Poonamallee Road, Avadi,
Chennai-600 054.

... 1st Respondent/Petitioner

2.The Presiding Officer,
Industrial Tribunal,
Chennai-600 104.

... Respondents/1st Respondent

Appeals filed under Clause 15 of Letters Patent, against the orders passed by this Court in W.P.No.5987 of 2008 dated 25.01.2010 and W.P.No.26083 of 2009 dated 25.01.2010.

PRAYER IN W.P.No.5987 of 2008:

Petition Under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari Call for records and quash G.O.(D)No.886, dated 28.12.2007 issued by the 1st Respondent, Government of Tamil Nadu, Department of Labour & Employment, Fort St. George, Chennai 600 009 represented by its Additional Secretary.

PRAYER IN W.P.No.26083 of 2008:

Petition Under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus to Calling for the records pertaining to I.d.No.10/2008 and quash the order dt.11.7.2008 passed by the 1st respondent herein dismissing the same for default and direct the 1st respondent to restore the same on file.

W.A.No.1277 of 2010:

For Appellant :: Mr.S.Ravi for Mr.Gupta Ravi

For Respondents:: Mr.P.S.Sivashanmugasundaram,
Spl.GP for R1 and R2

No appearance for R3

Mr.Nazarullah for
Mr.K.V.Shanmuganathan for R4

W.A.No.1278 of 2010:

For Appellant :: Mr.S.Ravi for Mr.Gupta Ravi

For Respondents:: Mr.Nazarullah for
Mr.K.V.Shanmuganathan for R1

COMMON JUDGMENT

(Delivered by M.DHANDAPANI, J.)

These writ appeals have been filed by the appellant-Management against the common order passed by this Court in W.P.No.5987 of 2008 dated 25.01.2010 and W.P.No.26083 of 2009 dated 25.01.2010, respectively.

2.W.P.No.5987 of 2008 was filed by the Management to quash the order in G.O.(D)No.886, dated 28.12.2007 issued by the Government of Tamil Nadu, Department of Labour & Employment, Fort St.George, Chennai, wherein the matter was directed to be posted before the Industrial Tribunal. W.P.No.26083 of 2009 was filed by the Rane Brake Linings Employees Union, represented by one G.Jayapalan, praying to quash the order dated 11.07.2008 passed by the Industrial Tribunal, dismissing the same for default and to direct the Tribunal to restore the same to file.

3.The learned single Judge allowed the writ petition in W.P.No.26083 of 2009 and dismissed the writ petition in W.P.No.5987 of 2008 and directed the Industrial Tribunal to issue notice on I.D.No.10 of 2008 to the Management as well as to the workmen as well as both the factions of the Union represented by G.Jayapalan and R.Sundar and then proceed to answer the reference in accordance with law.

4.Challenging the order passed in W.P.Nos.5987 of 2008 and 26083 of 2009, the present appeals have been filed by the Management.

5.When the matter has been taken up today, the learned counsel appearing for the appellant-Management has submitted that subsequent to the order passed by this Court in the above writ petitions on 25.01.2010, interim stay was granted by the Industrial Tribunal and during that period, three settlements have been arrived at between the Management and the Workers' Union and further another settlement had been arrived at between them and out of 270 members in the Union, about 250 of them have accepted the settlement. In view of the same, the order passed by the learned single Judge directing the Tribunal, does not survive consideration, as the matter has become infructuous, according to the submission made by the learned counsel for the appellant-Management.

6.Per contra, the learned counsel for M/s.Rane Brake Linings Employees Union, has submitted that many issues are involved in the matter and hence the same needs to be redressed.

7.Heard the learned counsel on either side and perused the materials available on record.

8.It appears that the said Jayapalan, the General Secretary of Rane Brake Linings Employees Union, was dismissed from service on account of charges framed against him. It appears that subsequent to the order passed by the learned single Judge in the writ petitions, about four settlements under Section 12 (3) of the Industrial Disputes Act, have been arrived at between the Management and the Union and about 250 out of 270 members have agreed to the settlements, ie., about more than 90% of the members have agreed to the settlements. One such settlement dated 18.05.2007 is available in the typed set of papers.

9.In this respect, it would be appropriate to refer to the decision of the Hon'ble Supreme Court in K.C.P.Limited v. Presiding Officer and others, reported in (1996) 10 SCC 446, wherein, it has been held as follows:

"17.Having given our anxious consideration to these rival submissions, we find that the terms of the settlement cannot be considered to be in any way exfacie, unjust or unfair and that the said settlement consequently must be held to be binding on these contesting workmen also.

18.It has to be kept in view that the industrial dispute was raised by respondent No. 2 - union on behalf of all the 29 workmen who were dismissed from service by the appellant company. It was an industrial dispute as defined by Section 2(k) of the Act raised by the union on behalf of its members. Respondents Nos.3 to 14 were at the relevant time, members of the union and even till date they continue to be the members of the sponsoring union. This was not a reference raised by a dismissed employee as per Section 2A of the Act. Consequently, as which was incharge of the proceedings and could represent all the 29 dismissed workmen on whose behalf the dispute was raised by it. When the said union having considered the pros and cons of the situation, entered into the settlement on behalf of all the workmen from whom it had taken cudgels unless the said settlement was found to be ex-facie, unjust or unfair it could not be gone behind by these respondents who can be said to be parties to the same through their representative union - respondent No. 2. In this

connection a reference is also required to be made to Section 18(1) of the Act which lays down as under:

"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."

19.It is not in dispute that the settlement arrived at by respondent No. 2 - union with the appellant company was not in the course of conciliation proceedings. Therefore, it would be binding to the parties to the agreement, namely, the appellant company on the one hand and respondent No.2 - union representing all the 29 dismissed employees, who were its members and on whose behalf it had raised the industrial dispute under Section 2(k) of the Act, on the other.

20.Section 2(p) of the Act defines a settlement to mean a settlement arrived at in course of conciliation proceedings and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceedings 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.

21.It is also not in dispute that parties to the settlement were the appellant company on the one hand and respondent No. 2 - union on the other, which acted on behalf of all the 29 dismissed workmen for whom reference was pending in the Labour Court. It was duly signed by both these parties. Under these circumstances, respondent Nos. 3 to 14 also would be ordinarily bound by this settlement entered into by their representative union with the company unless it is shown that the said settlement was ex-facie, unfair, unjust or malafied. No such case could be even alleged much less made out by the dissenting respondent Nos. 3 to 14 before the trial court. It is interesting to note that before the Labour Court the only argument put forward on behalf of the respondent Nos 3 to 14 was that they were not parties to the settlement and therefore, it was not binding on them. Once it is kept in view that the entire industrial dispute was raised by respondent No. 2 union on behalf of all the 29

dismissed workmen and as it was not an industrial dispute covered by Section 2A whereunder individual dismissed workman could come in the arena of contest, it could not be held, as wrongly assumed by the Labour Court that this settlement was not entered into under Section 18(1) of the Act by these dissenting workmen when the respondent - union did represent them from beginning to end and is still representing them as they are members of the union even at present. In the case of Ram Prasad Vishwakarma vs. The Chairman, Industrial Tribunal, 1961 (3) SCR 196 a Bench of three Hon'ble Judges of this Court had an occasion to consider the effect of a settlement entered into by the union of workmen which had espoused the cause of its members by raising an industrial dispute under Section 2(k) of the Act and further question whether under these circumstances an individual workman had any independent locus standi in proceedings before the reference court. Rejecting the contention on behalf of the individual workman, it was observed by Das Gupta, J. speaking for the court that the concerned workman was not entitled to separate representation when already represented by the Secretary of the union which espoused his cause. A dispute between an individual workman and an employer cannot be an industrial dispute as defined in Section 2 (k) of the Act unless it is taken up by a union of workmen or by a considerable number of workmen. When an individual workman becomes a party to a dispute under the Act he is a party, not independently of the union which has espoused his cause. It was further observed that although no general rule can be laid down in the matter, the ordinary rule should be that representation by an officer of the trade union should continue throughout the proceedings in the absence of exceptional circumstances justifying other representation of the workman concerned.

... सत्यमेव जयते ...

26.As in the present case the settlement arrived at between the parties was not during conciliation proceedings, it would remain binding to parties to the settlement as per Section 18(1) of the Act. But as we have seen above, respondent no. 2 union while entering into that settlement acted on behalf of all the 29 dismissed workmen who were its members including the present respondent nos.3 to 14 who are also its members as noted earlier. We have also seen earlier that the Labour court had erred in taking the view that respondents 3 to 14 were not parties to the said settlement as individually they had no locus standi and

they were represented by their union respondent no.2 which had signed the settlement on behalf of its members for whom the dispute was raised by the union. Nothing could be alleged by respondents 3 to 14 to the effect that the said settlement was in any way unjust or unfair or was a mala fide one. There were no exceptional circumstances to reject this settlement qua even the contesting respondents. However, as learned counsel for the respondent-workmen tried faintly to suggest to the effect we have carefully gone through the circumstances which are brought on record which had led to the settlement. It may be noted that about 500 workmen had gone on strike and that had resulted in the lock-out by the appellant company and ultimately disciplinary action was initiated against 29 workmen who had indulged into various acts of misconduct. It is for these 29 workmen who were ultimately dismissed from service that the respondent-union had raised a dispute under Section 2(k) of the Act on their behalf. Earlier the remaining workmen had gone on strike for nearly 5 months. Ultimately, the strike was withdrawn; lock-out was lifted and a broad understanding was reached between the appellant company and the workmen represented by their union whereby it was agreed that 29 workmen, who were dismissed, would be either given Rs75,000/- as compensation or reinstatement with continuity of service without back wages and the concerned workmen should express apology for misconduct and also assure good conduct in future.

27. Out of 29 workmen for whom the industrial dispute was raised 17 workmen agreed and accepted settlement and joined the service. Remaining 12 workmen (respondent nos.3 to 14) have not agreed to the said settlement. It is under these circumstances that the settlement arrived at by the union on behalf of all of them has to be scrutinized. It has clearly transpired on the record of this case that all the 500 workmen excluding 29 dismissed workmen had struck the work. Ultimately, when they were reinstated in service leaving aside the 29 workmen for whom industrial dispute lingered on, all the remaining workmen lost their wages from 20.10.1990 to 21.5.1991 and also from 13.5.1991 to 6.10.1991. They lost their wages because they were expressing sympathy for their 29 colleagues who were facing disciplinary action and even for these 29 workmen respondent no.2 union entered into a settlement so that they could be reinstated in service with continuity of service or could walk out from

service with Rs.75,000/- and other monetary benefits. All that was agreed to by the union as a condition for reinstatement was that the workmen would be give up back wages and had to sign a written undertaking to behave properly in future. In our view there was nothing unreasonable or unfair in these terms of settlement. The relief of reinstatement without back wages could not be said to be unreasonable as for nearly 12 months all other workmen lost their back wages only because they supported the cause of these colleagues of theirs and hence there was no reason why the workmen who indulged in the acts of misconduct and who were also to be taken in service should not lose their wages for 12 months. Relief of reinstatement was made available to respondents 3 to 14 on the same line as it was made available to their 17 remaining colleagues who were covered by the very same settlement and who accepted the relief of settlement without back wages or a lumpsum compensation of Rs.75,000/- and other monetary benefits in lieu of that. In our view such a package deal entered into by respondents no.2 in the best interest of these workmen could not be said to be unfair or unjust from any angle. On the contrary, if the back wages were given to them, then the remaining workmen against whom there was no disciplinary action or any alleged misconduct and who had also lost wages for 12 months only because they were in sympathy with these 29 dismissed workmen would have stood discriminated against. Consequently, it is not possible to agree with the learned counsel for respondents nos.13 to 14 that the said settlement was in any way unfair or unjust. Once this conclusion is reached it is obvious that the entire industrial dispute should have been disposed of in the light of this settlement and an award in terms of the settlement should have been passed by the first respondent-court in the case of respondents 3 to 14 also. Consequently, the judgement and order of the Division Bench of the High Court dated 4th. April, 1995 and the order of the learned Single Judge dated 29th September, 1993 are quashed and set aside. The writ petition filed by the appellant company will stand allowed with a direction to the first respondent-Labour Court to pass award in terms of the settlement dated 14th December, 1992 by treating it to be binding to respondent nos. 3 to 14 also.

10.The principle enunciated in the above judgment of the Hon'ble Supreme Court is that if some of the dismissed workmen repudiating the proposed settlement but the Trade Union entering

into the settlement on behalf of all the dismissed workmen including the dissenting ones and copies of the settlement sent to proper authorities, in such circumstances, the settlement, since on facts was not ex facie, unjust or unfair, is binding even on such of the dismissed workmen who had repudiated the same. We find that the facts of the present case rests on the said principle.

11. In view of the above stated circumstances, the impugned order passed by the learned single Judge directing the Tribunal to adjudicate the issue, stands set aside and the writ appeals are allowed. No costs. Consequently the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-ix)

//True Copy//

Sub Assistant Registrar

KM

To

1. The Secretary to Government,
Government of Tamil Nadu
Department of Labour & Employment
Fort St. George, Chennai-600 009.
2. The Asst. Commissioner of Labour-II,
Department of Labour & Employment,
III Floor, Kuralagam, Prakasam Salai,
Chennai-600 108.
3. The Presiding Officer,
Industrial Tribunal,
Chennai-600 104.

+1cc to the Government Pleader, S.R.No.46552
+1cc to Mr. GUPTA & RAVI, Advocate, S.R.No.45982
+1cc to Mr. K.V. SHANMUGANATHAN, Advocate, S.R.No.45941

W.A.Nos.1277 and 1278 of 2010
and
M.P.Nos.1 and 1 of 2010

SJ(CO)
TR(30/07/2018)