In the High Court of Punjab and Haryana at Chandigarh

CWP No. 2838 of 2013 (O&M)
Date of Decision: April 04, 2018

Bhupendera Cement Worker's Union, Surajpur ... *Petitioner*

Versus

State of Haryana and others ... *Respondents*

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Arun Jain, Sr. Advocate with
Mrs. Abha Rathore, Advocate,
for the petitioner.

Mr. Rajesh Gaur, Addl. A.G., Haryana.

Mr. M.L. Sarin, Sr. Advocate with
Mr. Nitin Sarin and Mr. Ritesh Aggarwal, Advocates,
for respondents no. 3 and 4.

P.B. Bajanthri, J. ***(Oral)***

1. In the instant petition, petitioner has challenged the order dated 28.09.2012 (Annexure P/16). Further sought for a direction for issuance of recovery certificate in respect of sum of Rs.40,67,24,833.37 upto 10.01.2012 and with further interest @ 12% pursuant to the recommendation by the Deputy Labour Commissioner's report dated 25.01.2012 (Annexure P/10).

2. Respondent - company is into the business of cement, namely, Bhupendera Cement Works at Surajpur with mining at Mallah, namely, Mallah Quarry. Due to administrative difficulties, respondent Cement Company could not continue the manufacturing of cement at Bhupendera Cement Works, Surajpur, therefore, there was a Early Separation Scheme between the management and the workers' union on 11.04.1997 and it was not acceptable to the workers' union in respect of some of the issues.

Consequently, terms of settlement was drawn on 20/21.06.1997. Accordingly, terms of settlement have been executed in the month of June, 1997. Petitioner - union and two others filed a writ petition i.e. CWP No. 19327 of 1998 before this Court seeking a mandamus to the respondents to secure the payment of the rightful dues of the workmen and fully implement the settlement dated 20/21.06.1997. Writ petition was decided on 20.08.2002. Judgment is reproduced hereunder:-

> *"Judgment*
>
> *V.K. Bali, J.(Oral)*
>
> *Shri Beni Prasad, President of Joint Committee of B.C.W. Surajpur and Mallah Quarry Workers along with two others has filed present petition under Article 226 of the Constitution of India seeking issuance of a writ in the nature of mandamus directing respondents 5 to 7 i.e. The Associated Cement Companies Limited and others to implement settlements dated 21.6.1997 (Annexure P-4) signed and entered into for the benefit of hundreds' of workers said to have been rendered unemployed due to closure of Associated Cement Co. Ltd.*
>
> *There is no need to give detailed facts, as enumerated in the writ petition, as all that has been canvassed before this Court is that even though the litigating parties i.e. petitioners' union and respondents 5 to 7 had entered into a binding settlement under the provisions of the Industrial Disputes Act, 1947, the same is not being implemented. Settlement arrived at between the parties is Annexure P-4 dated 21.6.1997.*
>
> *Clause of settlement, which, as stated, has not been complied with or implemented by respondents 5 to 7, reads thus:*
>
> > *"The 'Early Separation Scheme' announced by the Management on 11th April, 1997; is accepted*

> *by the Union in its totally except that the monthly pension will be paid in lump sum by 15% discounting on half yearly basis as per the statement enclosed hereto and marked as Annexure "2".*

Mr. Mittal, learned senior counsel representing the petitioners vehemently contends that the only interpretation of clause, reproduced above, am be that the Early Separation Scheme was totally accepted except that there cannot be 15% discounting on half yearly basis. In other words, the workmen of the petitioners' Union have to be paid in lump sum spread over two times in a year without any discounting.

This contention and which is, as mentioned above, the only contention, in the context of this case, has necessarily to be repelled. It is conceded position that prior to the Settlement (Annexure P-4), an Early Separation Scheme came into being, which is annexed as Annexure – 1 to the settlement, on 11.4.1997. Clause dealing with the pension reads thus:-

> *MONTHLY PENSION:*
>
> *(b) The employees willing to retire under the Scheme, who have completed 50 years of age as on the date of separation will be entitled to get a monthly pension equivalent to Basic Pay, Personal Pay, wherever applicable and Dearness Allowance last drawn by them, till their age of attaining superannuation i.e. age of 60 years.*
>
> *(b) Employees not attaining the age of 50 years shall get, a monthly pension equivalent to Basic Pay, Personal Pay, wherever applicable and Dearness Allowance last drawn by them at the time of separation for ten years only and in addition will also get an additional amount as ex-*

gratia lump sum payment as mentioned below at the time of separation.

Age Year	*Proposed Additional Ex-gratia lump sum. Payment (in Rs.)*
40-49	*25,000/-*
Below 40 years	*40,000/-*

It is absolutely clear that in the original scheme known as "Early Separation Scheme", there was no provision of paying pension in lump sum for a period of six months. Pension was payable every month. There was a change in the matter of payment of pension when the settlement was finally arrived at. If clause 5 of Annexure P-4 is read in the context, as referred to above, the only meaning that can be given to it is that if the employees are to get lump sum pension for a period of six months, there has to be reduction of 15%. That apart, what further clinches the issue is that discounting of half-yearly basis has to be as per the statement enclosed and marked as Annexure-2. Annexure – 2 is also, therefore, a part of the terms of settlement (Annexure P-4). The reading of the same would clearly manifest that if the employees were to get lump sum pension for a period of six months, there has to be reduction of 15%. That being so, the only contention raised by Mr. Mittal needs to be repelled.

It is significant to mention here that similar Civil Writ Petition bearing No. 7055 of 1999 on behalf of respondent No.8, namely Mallah Quarry Workers' Union for the same very relief based upon similar settlement (Annexure P-5) has since already been dismissed by the Court on 6.9.1999.

Finding no merits in this petition, the same is dismissed, leaving, however, the parties to bear their own costs."

Thereafter, petitioner did not file appeal against the Division Bench order dated 20.08.2002. Petitioner was stated to have filed complaint relating to non-implementation of settlement with reference to clause 1 of terms of settlement dated 20/21.06.1997. It was rejected on 05.05.2006 stating that if petitioners are still aggrieved, they have a remedy under Section 33-C(2) of the Industrial Disputes Act, 1947. Instead of challenging the order dated 05.05.2006, further complaint is being made in the year 2007. Ultimately, contents of the complaint was recommended by the Deputy Labour Commissioner and it was rejected by the Labour Commissioner on 28.09.2012. Hence, the present petition in challenging the order dated 28.09.2012.

3. Learned counsel for the petitioner on preliminary objections raised by the respondents relating to maintainability of the present petition by the trade union, it was submitted that writ petition was filed in the year 2013, whereas the trade union registration has been cancelled on 22.06.2016. Thus, as on the date of presenting the present petition, trade union was very much existing. Consequently, preliminary objection is untenable.

4. Learned counsel for the petitioner further submitted that while entering into terms of settlement on 20/21.06.1997, first clause is relating to its acceptance in respect of earlier scheme dated 11.04.1997 except monthly pension will be paid in lumpsum by 15% discounting on half yearly basis as per the statement enclosed (Annexure – 2). In other words, it was submitted that terms of settlement dated 20/21.06.1997 has been accepted by the petitioner except clause relating to 15% discounting on half yearly basis with reference to scheme dated 11.04.1997. Whereas, the respondents calculation under Annexure – 2 relating to 15% discounting on half yearly

basis chart is not in accordance with settlement, what has been deducted is 50% of the amount instead of 15%. Therefore, Labour Commissioner has erred in passing the order dated 28.09.2012.

5. Per contra, learned counsel for the respondents vehemently contended that Annexure – 2 relating to 15% discounting on half yearly basis chart was not existing as on 11.04.1997 when the scheme was proposed. In the scheme proposed dated 11.04.1997, para no.4 relating to pension period, pension and monthly pension. This clause has been later on removed as and when settlement was entered into on 20/21.06.1997 while incorporating Annexure – 2 relating to 15% discounting on half yearly basis chart. Therefore, petitioner has no claim or grouse against the terms of settlement dated 20/21.06.1997. It was further submitted that petitioner had suffered order before this Court in CWP No. 19327 of 1998 relating to implementation of terms of settlement dated 20/21.06.1997. Thus, there is a finality in respect of implementation of terms of settlement between the petitioner and the respondents. It was further contended that there is an inordinate delay in presenting the present petition for the reasons that if, at all, cause of action accrued to the petitioner it was in the year 1997 when the settlement was implemented by the parties, after entering into settlement including monetary benefits for the first time, petitioner has raised dispute in the year 2006. In other words, after decision of the Division Bench dated 20.08.2002. It was also submitted that trade union activity was not in vogue during the year 1997 to 2013, therefore, under the Trade Union Act, trade union ceases. Consequently, writ petition is not maintainable by the union. Impugned order dated 28.09.2012 is a very elaborate order whereby the authority has considered from the date of introduction of earlier separation

scheme under Section 12(3) of the Industrial Disputes Act, 1947. In fact, Division Bench decision has been taken note of. Therefore, there is no infirmity in the order dated 28.09.2012.

6. Heard the learned counsel for the parties.

7. Question for consideration in the present petition is whether petitioners have any right to claim or dispute terms of settlement between the parties with reference to terms of settlement dated 20/21.06.1997 read with scheme dated 11.04.1997 or not?

8. At the first instance, the petitioner has misled this Court in respect of producing scheme dated 11.04.1997 in particularly at page 58 which reads as under:-

> *"12. <u>COMPETENT AUTHORITY:</u>*
>
> *The competent authority for accepting requests for separation under the Early separation Scheme will be Unit Head of Bhupendra Cement Works.*
>
> *Sd/-*
>
> *Annexure – 2*
>
> *15% Discounting on half yearly basis chart*

Half Year	*Half yearly payment*	*DCF 7.5000% is 15% p.a*	*Payment value*	*Cumulative present value*
1.	*6000*	*0.9302*	*5581.40*	*4481.40*
2.	*6000*	*0.8653*	*5192.00*	*10773.39*
3.	*6000*	*0.8050*	*4829.76*	*15603.15*
4.	*6000*	*0.7488*	*4492.00*	*20095.96*
5.	*6000*	*0.6966*	*4179.35*	*24275.31*
6.	*6000*	*0.6480*	*3887.77*	*28163.00*
7.	*6000*	*0.6028*	*3616.53*	*31779.61*
8.	*6000*	*0.5607*	*3364.21*	*35143.82*
9.	*6000*	*0.5216*	*3129.50*	*38273.32*
10.	*6000*	*0.4852*	*2911.16*	*41184.49*

11.	*6000*	*0.4513*	*2708.06*	*43892.54*
12.	*6000*	*0.4199*	*2519.12*	*46411.67*
13.	*6000*	*0.3906*	*2343.37*	*48755.04*
14.	*6000*	*0.3633*	*2179.88*	*50934.92*
15.	*6000*	*0.3380*	*2027.80*	*52962.72*
16.	*6000*	*0.3144*	*1686.32*	*54849.04*
17.	*6000*	*0.2925*	*1754.72*	*56603.76*
18.	*6000*	*0.2720*	*1632.30*	*58236.05*
19.	*6000*	*0.2531*	*1518.41*	*59754.47*
20.	*6000*	*0.2354*	*1412.48*	*61166.95*

Dated: Nil."

Perusal of the records like early separation scheme dated 11.04.1997 and terms of settlement dated 20/21.06.1997, Annexure – 2 relating to 15% discounting on half yearly basis chart was not part and parcel of the scheme dated 11.04.1997. Perusal of page 58 of the writ paper, it reveals that as if Annexure – 2 is part and parcel of scheme dated 11.04.1997 whereas Annexure – 2 relating to 15% discounting on half yearly basis chart is part of terms of settlement dated 20/21.06.1997. Thus, petitioner has not approached this Court with clean hands. On that score itself, writ petition is liable to be rejected.

9. The preliminary objections relating to existence of trade union and maintainability of writ petition is concerned, one has to draw inference that trade union would be existing in the eye of law as long as its registration is not cancelled by the competent authority under the particular statutory provision. It is undisputed that writ petitioner – trade union registration was cancelled by the competent authority under the statutory rule only on 22.06.2016. Since present petition was filed in the year 2013, therefore, as on the date of presentation of the writ petition, trade union was

very much existing in the eye of law even though it was not functioning. In other words, as long as trade union registration is not cancelled one has to draw inference that trade union is existing. In the present case, trade union is existing till 22.06.2016.

10. Insofar as challenge to Annexure P/16 is concerned, it is to be noted that settlement between the parties has attained finality in the month of June, 1997 with reference to terms of settlement, therefore, cause of action, if at all, anything existing it should have been in the year 1997. On the other hand, petitioners have themselves approached this Court seeking for implementation of terms of settlement dated 20/21.06.1997, whereas their writ petition was dismissed on 20.08.2002, therefore, in respect of implementation of settlement dated 20/21.06.1997 is concerned, it was decided by a Division Bench of this Court. If at all petitioners were still aggrieved in respect of non-implementation of terms of settlement read with Division Bench order dated 20.08.2002, they have remedy elsewhere and not by filing a fresh complaint that too in the year 2006. Moreover, there is a judicial pronouncement in respect of implementation of terms of settlement dated 21.06.1997. Therefore, the authorities under the Labour Act cannot interfere since judicial pronouncement dated 20.08.2002 is binding on parties as well as authorities.

11. In view of these facts and circumstances, petitioners have not made out a case. Accordingly, present petition stands dismissed.

April 04, 2018 **[P.B. Bajanthri]**
vkd **Judge**

Whether reasoned / speaking : Yes
Whether reportable : No