

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.Nos.5520, 5521 & 7764 of 2001

The Management of Panchura
Estates Ltd., Panchura,
Bithercand Post 643 248,
The Nilgiris District.

... Petitioner in W.P.No.5520/2001

The Management of Kilmelfort Estate,
Kotagiri 643 127,
The Nilgiris District.

.. Petitioner in W.P.No.5521/2001

The Management of Pariashola Estate,
Periashola 643 255,
The Nilgiris District.

... Petitioner in W.P.No.7764/2001

Vs.

1.The Presiding Officer,
Industrial Tribunal,
Chennai-104.

2.The Workmen,
represented by the General Secretary,
The Estates Staff Union of South India,
88, Vekatasamy Road,
R.3 Puram (West),
Coimbatore 641 002.

.. Respondents in all W.Ps.

Common Prayer: Writ Petitions are filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari to call for the records in I.D.No.104 of 1992 on the file of the 1st respondent herein and to quash the award passed thereon dated 23.08.2000.

(In all W.Ps.)

For Petitioner : Mr.Prasad Vijayakumar
for M/s.Uma Vijayakumar

For R2 : Mr.V.Ajoy Khose

R1 : Tribunal

C O M M O N O R D E R

These Writ Petitions are filed challenging the award dated 23.08.2000 made in I.D.No.104 of 1992 on the file of the 1st respondent.

2.The issue in all the three Writ Petitions are interlinked and therefore, they are disposed of by this common order.

3.The 2nd respondent Union in all the Writ Petitions entered into a settlement under Section 12 (3) of the Industrial Disputes Act (hereinafter referred to as 'the Act') on 01.03.1990 with United Planters' Association of South India (in short referred to as 'UPASI') and Planters' Association of Tamil Nadu (in short referred to as 'PAT') covering the service conditions of workmen, including wages, grade, scale of pay and revision of D.A and other allowances. The 2nd respondent insisted the petitioners also to pay the wages as per the settlement dated 01.03.1990. The petitioners did not agree for the same on the ground that they are not members of UPASI and PAT and therefore, the settlement is not binding on them. The 2nd respondent on 19.03.1990 raised dispute before the Conciliation Officer and the Conciliation Officer filed failure report on 01.07.1992 and sent the failure report to the Government. On the failure report filed by the Conciliation Officer, the Government referred the matter to the 1st respondent. The 2nd respondent raised I.D.No.104 of 1992 before the 1st respondent. The 1st respondent considering the pleadings, oral and documentary evidence, arguments and judgments relied on by the parties, held that the claim of the 2nd respondent Union for payment of wages as per the settlement dated 01.03.1990 entered with UPASI and PAT is justified and passed the award accordingly against the petitioners. Against the said award, the three Writ Petitions have been filed.

4.The learned counsel appearing for the petitioners contended that as much as the petitioners are not members of UPASI or PAT, the settlement dated 01.03.1990 under Section 12 (3) of the Act between the 2nd respondent Union and the said two associations are not binding on the petitioners and the petitioners are not bound to pay the wages as per the settlement dated 01.03.1990. The 2nd respondent Union raised I.D.No.9 of 1975 against the petitioner in W.P.No.5520 of 2001 before the Labour Court, Coimbatore. The said I.D was rejected by the Labour Court, Coimbatore on the ground that the petitioner in W.P.No.5520 of 2001 is not member of the two associations and settlement dated 01.03.1990 entered between the 2nd respondent Union and UPASI and PAT is not binding on them. The 2nd respondent Union filed W.P.No.777 of 1976 before this Court against the award dated 28.10.1975 made in I.D.No.9 of 1975.

This Court dismissed the Writ Petition on 14.03.1978, confirming the award of the Labour Court. The workers of the petitioner in W.P.No.5520 of 2001 raised I.D.No.57 of 1975 against the petitioner on the file of the Labour Court, Coimbatore, claiming that they should be paid wages as per the settlement dated 01.03.1990. The said I.D was rejected by the Labour Court on the ground that petitioner in W.P.No.5520 of 2001/ Panchura Estate was not the member of either UPASI or PAT. The order in W.P.No.777 of 1976 and award passed in I.D.No.57 of 1975 have become final as no appeal has been filed against the same and no further proceedings were initiated either by the 2nd respondent or by workers of the petitioners. Hence, the present issue is barred by the Principles of resjudicata. The service conditions of the staff of the petitioners are purely on the contract basis and terms and conditions mutually agreed upon. The 1st respondent erred in holding that the issue raised by the 2nd respondent Union is not hit by the Principles of resjudicata. The 1st respondent proceeded to consider the issue in I.D erroneously on the ground that the dispute is with regard to wages. The reference itself is not maintainable and the 1st respondent has traveled beyond the scope of reference. Once it is admitted that the petitioners are not members of UPASI or PAT, the 1st respondent ought to have dismissed the Industrial Dispute.

5.Per contra, the learned counsel appearing for the 2nd respondent contended that the owners of the estates formed association and entered into settlement with the 2nd respondent Union with regard to wages and other benefits. The workers employed under the members of the said association and workers of petitioners are doing same work and the business carried on by the members of the association and petitioners are one and the same. The workers in the same type of industry in the same region must be paid same wages and there should not be any difference in wages paid to the workers doing the same work in that region. The 1st respondent has considered the question of resjudicata and by giving valid reason, rejected the said contention and referred to Section 12 (3) of the Act. The Labour Court can consider all the industrial issues other than the reference and can give finding in all the issues. The question of whether the petitioners are members or not is immaterial if they are doing same work and the terms and conditions entered into with other estates are applicable to the petitioners also and prayed for dismissal of the Writ Petitions.

6.The learned counsel appearing for the 2nd respondent in support of his contentions, relied on the judgment reported in AIR 1953 SCC 53 [State of Madras Vs. C.P.Sarathy and another]:

"14.But, in truth, it was not material to consider whether there was any dispute outstanding between the first respondent and his employees

when the Government made the reference on 20th May, 1947. The learned Judges appear to have assumed that the disputes referred to a tribunal under Section 10(1)(c) of the Act must, in order that the resulting award may be binding on any particular industrial establishment and its employees, have actually arisen between them. "Analysing the order of reference of the Madras Government now under consideration," the learned Judges observe, "it is obvious that there is no mention of the existence of any dispute between the petitioner (the first respondent herein) and his workmen... In fact there was no dispute to be referred to a Tribunal so far as this petitioner is concerned. If, therefore, there was no jurisdiction to make any reference, it follows that the whole reference and the award are both invalid and not binding on the petitioner". This view gives no effect to the words "or is apprehended" in Section 10(1). In the present case, the Government referred "an industrial dispute between the workers and managements of cinema talkies in Madras city in respect of certain matters". As pointed out in the Labour Commissioner's letter to the Government, there were 24 cinema companies in Madras, and the Association, which, as a duly registered trade union, represented their employees, put forward the demands on behalf of the employees of all the cinema houses in the city. Fifteen out of 43 workers of the "Prabhat Talkies" were admittedly members of the Association which thus figured as one of the parties to the dispute. In that situation, the Government may have thought, without a close examination of the conditions in each individual establishment, that disputes which affected the workmen collectively existed in the cinema industry in the city and that, even if such disputes had not actually arisen in any particular establishment, they could, having regard to their collective nature, well be apprehended as imminent in respect of that establishment also. It is not denied that notices were sent by the Tribunal to all the 24 companies and they all filed written statements of their case in answer to the demands made by the Association on behalf of the employees. In these circumstances, it is idle to claim that the Government had no jurisdiction to make the reference and that the award was not binding on the respondent's organization. The

latter was clearly bound by the award under Section 18 of the Act."

7. Heard the learned counsel appearing for the petitioners as well as the 2nd respondent and perused the materials available on record.

8. From the materials on record, it is seen, admittedly the 2nd respondent and UPASI and PAT entered into settlement under Section 12(3) of the Act on 01.03.1990 with regard to wages, revision of D.A. and other allowances. It is also admitted that the petitioners are not members of either of the above two associations. The contention of the 2nd respondent is that there must be parity in the wages paid to the workers working in similar industry, in the same region. Apart from this contention, the 2nd respondent has not raised any other contention for forcing the petitioners to pay wages as per settlement under Section 12 (3) of the Act 01.03.1990. It is not in dispute that petitioners are not members of UPASI and PAT. When the 2nd respondent Union has not entered into any settlement with the petitioner's management who are not members of UPASI and PAT, the said settlement under Section 12 (3) of the Act dated 01.03.1990 is not binding on the petitioners. The judgment relied on by the learned counsel appearing for the 2nd respondent is not applicable to the facts of this case. The award of the 1st respondent dated 23.08.2000 made in I.D.No.104 of 1992 holding that the claim of the 2nd respondent for payment as per the settlement dated 01.03.1990 is justified, is erroneous and is hereby set aside.

9. For the above reason, all the Writ Petitions are allowed. No costs.

Sd/-

Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

gsa

To

1. The Presiding Officer,
Industrial Tribunal,
Chennai-104.

2.The General Secretary,
The Workmen,
The Estates Staff Union of South India,
88, Vekatasamy Road,
R.3 Puram (West),
Coimbatore 641 002.

+3cc to Mr.Prasad Vijayakumar, Advocate SR.No.70650,70651,70652

W.P.Nos.5520, 5521 & 7764 of 2001

MR (CO)
GMY (15/11/2019)



WEB COPY