

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on
30.08.2019

Pronounced on
18.10.2019

Coram

THE HONOURABLE Mr. JUSTICE S.VAIDYANATHAN

W.P.21916 of 2013

V.Murugaiyan

... Petitioner

-vs-

1. Presiding Officer,
Labour Court,
Cuddalore.

2. Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Railway Station Road, Kumbakonam. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records on the files of the 1st respondent pertaining to the Award passed in I.D.No.136 of 2003 dated 23.03.2011 insofar as the stoppage of the backwages alone of the petitioner concerned and the consequential settlement under Section 18(1) of the Industrial Dispute Act, 1947, bearing Ref:TNSTC/Legal/L2/15/2011 dated 02.12.2011 and the consequential order issued by the 2nd respondent vide its proceedings NO.ThApo/T8/Vea/179/2000 dated 26.12.2011 and quash all the proceedings and consequently direct the 2nd respondent to re-fix the basic pay and all other allowances with continuity of service along with back wages and all other attendant benefits and to disburse the arrears.

For Petitioner : M/s.A.V.Bharathi

For Mr.L.N.Praghasam

For R1 : Court

For R2 : Mr.D.Venkatachalam

O R D E R

This Writ Petition has been filed, seeking to quash a) the Award passed in I.D.No.136 of 2003 dated 23.03.2011, insofar as the stoppage of the backwages alone of the petitioner is concerned; b) the consequential settlement under Section 18(1) of the Industrial Dispute Act, 1947, bearing Ref:TNSTC/Legal/L2/15/2011 dated 02.12.2011 and c) the order issued by the 2nd respondent in No.ThApo/T8/Vea/179/2000 dated 26.12.2011, by which a punishment of two years increment cut with cumulative effect was inflicted on the petitioner as per settlement dated 02.12.2011. The petitioner also sought a direction to the 2nd respondent to re-fix the basic pay and all other allowances with continuity of service along with back wages and all other attendant benefits with disbursement of arrears.

2. For the sake of brevity, the parties, namely, the petitioner and the 2nd Respondent would be referred to as 'the Workman' and 'the Management' respectively.

3. The case of the Workman was that he joined the Management as Driver on 27.11.1989 and his services were regularized with effect from 01.11.1990. While so, when he was driving the bus bearing Reg.No.TN-49-N-1029 from Vedaranyam to Nagapattinam on 28.11.2000, an accident had occurred due to rash and negligent driving of an opposite vehicle / lorry, which resulted in toppling of the bus in order to save the passengers on board. It was the further case of the Workman that for the accident caused, departmental action was initiated and domestic enquiry was conducted and he, after receiving the report, had sent a reply to the Management and the Management, being not satisfied with the explanation, dismissed him from service on 16.01.2002 and the consequential memorandum of appeal had also gone against him. Aggrieved by the order of dismissal from service, he had raised an industrial dispute under Section 2-A (2) of the Industrial Disputes Act, 1947 (in short 'the I.D.Act, 1947'), in which, the 1st Respondent, though set aside the order of dismissal dated 23.03.2011, had wrongly denied backwages and other attendant benefits.

4. It was also the case of the Workman that subsequently, a Memorandum of Settlement dated 02.12.2011 was arrived at between the Management and the Workman, by which it was resolved that instead of dismissing him from service, it was agreed to impose a punishment of two years increment cut with cumulative effect and on the basis of the said settlement, the Management had also passed an order to that effect. Now, the Workman has come up with the present writ petition, questioning the particular portion of the Award and the settlement. In the meanwhile, in the pending criminal case in C.C.No.22 of 2004 for causing the accident, he was acquitted by the Criminal Court on 12.10.2004.

5. The Management has filed a counter affidavit, stating that in obedience to the Award of the Labour Court, the Workman was reinstated into service with continuity of service based on the consensus between the Management and the Workman by way of settlement dated 02.12.2011. It was further stated that the Workman, on rendering the remaining period of service in Thiruthiraipoondi Branch, had attained superannuation on 29.02.2016 and his retiral benefits were also settled by sanctioning a monthly pension of Rs.5,529/- to him. There were two settlements entered into between the Management and the employees of the Corporation under Section 12(3) of the I.D.Act, 1947, in respect of revision of wages in the year 2003 and 2007 respectively and the benefits of those two settlements were given to the Workman and accordingly, his pay was also hiked gradually.

6. It was also stated in the counter affidavit that the Workman was imposed punishments of increment cut for four times and therefore, he cannot claim the benefits on par with other employees, who had rendered unblemished services. Moreover, he had given up the attendant benefits in the settlement under Section 18(1) and therefore, his salary would be naturally lower than that of other employees. The allegation made by the Workman that the inscription of the settlement was in an unknown language, namely, English was opposed to by the Management that before arriving at settlement, the terms and conditions of the settlement was duly explained to the Workman by following the procedures and therefore, there is no arbitrariness and illegality committed by the Management while arriving at the settlement. Hence, it was prayed that the Writ Petition is liable to be dismissed as not maintainable.

7. The learned counsel for the Workman has submitted that the Labour Court, having found that the Workman was not solely responsible for the accident, ought to have granted continuity of service with back wages and all other attendant benefits and such deprivation is indeed illegal and inhumane. It was submitted that both the denial of wages and stoppage of two increments to the Workman are hit by the doctrine of double jeopardy and the order of the 2nd respondent based on 18(1) settlement cannot be allowed to traverse beyond the boundary laid down by the 1st respondent, as the same erodes the rights and benefits accrued to the Workman by means of Award rendered by the 1st respondent herein. The learned counsel for the Workman has relied upon a judgment of the Hon'ble Supreme Court in the case of Central Inland Water Transport Corporation Ltd., and another vs. Brojo Nath Ganguly and another, reported in (1986) 3 SCC 156 to state that when a contract is apparently unenforceable and opposed to public policy, the said contract / agreement can be non-suited and the relevant observation made in the judgment (supra) is extracted below:

"93. The normal rule of Common Law has been that a party who seeks to enforce an agreement which is opposed to public policy will be non-suited. The case of A. Schroeder Music Publishing Co. Ltd. v. Macaulay, however, establishes that where a contract is vitiated as being contrary to public policy, the party adversely affected by it can sue to have it declared void. The case may be different where the purpose of the contract is illegal or immoral. In Kedar Nath Motani and others v. Prahlad Rai and others, [1960] 1 S.C.R. 861 reversing the High Court and restoring the decree passed by the trial court declaring the appellants' title to the lands in suit and directing the respondents who were the appellants' benamidars to restore possession, this Court, after discussing the English and Indian law on the subject, said (at page 873):

"The correct position in law, in our opinion, is that what one has to see is whether the illegality goes so much to the root of the matter that the plaintiff cannot bring his action without relying upon the illegal transaction into which he had entered. If the illegality be trivial or venial, as stated by Willistone and the plaintiff is not required to rest his case upon that illegality, then public policy demands that the defendant should not be allowed to take

advantage of the position. A strict view, of course, must be taken of the plaintiff's conduct, and he should not be allowed to circumvent the illegality by restoring to some subterfuge or by mis-stating the facts. If, however, the matter is clear and the illegality is not required to be pleaded or proved as part of the cause of action and the plaintiff recanted before the illegal purpose was achieved, then, unless it be of such a gross nature as to outrage the conscience of the Court, the plea of the defendant should not prevail."

The types of contracts to which the principle formulated by us above applies are not contracts which are tainted with illegality but are contracts which contain terms which are so unfair and unreasonable that they shock the conscience of the court. They are opposed to public policy and require to be adjudged void.

Thus, it was finally submitted by the learned counsel that the stoppage of two increments would be a great financial and mental hardship to the Workman and the same needs interference by this Court.

8. Per contra, the learned Standing Counsel appearing for the Management has contended that the Workman, being aware of the fact that the Labour Court had directed for reinstatement with continuity of service and without back wages, had himself consented for a settlement under Section 18(1) of the I.D.Act, 1947 and accepted the punishment of two increment cuts on reinstatement and also signed the memorandum of settlement. Therefore, he cannot make any hue and cry on the punishment imposed and moreover, after settlement, he had joined duty immediately in the year 2011 and filed this petition after a lapse of two years, viz., in the year 2013. Hence, there is no need to interfere either with the Award of the Labour Court or with the consequential order passed by the 2nd Respondent on the basis of 18(1) settlement and the Writ Petition has got to be dismissed in entirety.

9. Heard the learned counsel for the Petitioner and the learned Standing Counsel for R2 and perused the material documents available on record.

10. From the facts pleaded on both side, it could be visualized that the Workman joined the service on 27.11.1989 and got his service regularized with effect from 01.11.1990. After rendering sufficient years of service, he was designated as a Senior Driver and there was an accident caused by him, pursuant to which, he was suspended from service, followed by departmental action. In the industrial dispute raised in I.D.No.136 of 2003, an Award dated 23.03.2011 was passed, holding that though the Workman is entitled to reinstatement, he would not be entitled to back wages and other attendant benefits. After the said Award, the Workman and the Management have entered into a settlement dated 02.12.2011 under Section 18(1) of the I.D. Act, 1947 and the Terms of Settlement are extracted below:

"TERMS OF SETTLEMENT

1. The Management agrees to reinstate Thiru V.Murugaiyan, St.No.89 DY 419 LX-senior driver as driver with continuity of service and without any back wages and other attendant benefits till the date of joining duty by virtue of this settlement.
2. It is agreed by the workman that a punishment of 2 years increment cut with cumulative effect be inflicted to him in lieu of dismissal order dated 16.1.2002.
3. The reinstatement order will be issued separately by the personnel section and his pay will be fixed as per the clause No.2 of this settlement and he will abide by the same.
4. It is also agreed by the workman that he will not go in for any litigation with the management regarding the claim of back wages and other attendant benefits from the date of Labour Court award to the date of joining duty subsequent to this settlement.
5. Both the parties agree to the above terms."

11. Consequent to the settlement, the Workman was reinstated and it was also not in dispute that he was acquitted by the Criminal Court in C.C.No.22 of 2004 by order dated 12.10.2004, which culminated on account of the accident caused by him. After

entering into the settlement, the Workman has approached this Court, challenging the Award dated 23.03.2011, concerning the stoppage of backwages alone due to the petitioner, the settlement under Section 18(1) of the Industrial Dispute Act, 1947, bearing Ref:TNSTC/Legal/L2/15/2011 dated 02.12.2011 and the consequential order issued by the 2nd respondent vide its proceedings No.ThApo/T8/Vea/179/2000 dated 26.12.2011. A direction was also sought to re-fix the basic pay and all other allowances with continuity of service along with back wages and other attendant benefits.

12. It is seen that the Workman was imposed stoppage of increment for two years by the Management in terms of settlement and when the Labour Court had rendered a finding and given its verdict, the normal remedy open to the Workman to challenge the settlement is only before the Labour Court and not before this Court, as its fairness cannot be decided on disputed facts. It is appropriate to mention here that after passing of an Award by the Labour Court, depriving the backwages to the Workman, the Management ought not to have imposed the punishment of two years increment cut with cumulative effect, as it will definitely have a bearing on the pensionary and other benefits. Similarly, the Workman, having signed the settlement, cannot go back and endeavour to unsettle the settled issues. Anyhow, the Management in this case makes an attempt to defeat the very purpose of the Award by way of settlement and wants to impose higher punishment indirectly than the one given by the Labour Court.

13. Even though the Workman had knowingly or unknowingly signed the settlement dated 02.12.2011 for the betterment of his family, in the light of the judgment of the Hon'ble Supreme Court in Central Inland Water Transport Corporation Ltd., and another vs. Brojo Nath Ganguly and another (referred to supra), there is force in the contention of the learned counsel for the petitioner that what was not able to be achieved by the Management before the Labour Court was attempted to be achieved by way of settlement. In the very same judgment, it was held that in the negotiation table, the relationship between the employer and the employee is like a lion and a lamb and both the lion and the lamb will be free to roam about in the jungle and each will be at liberty to devour the other. When one considers the unequal position of the Corporation and its employees, the argument of mutuality becomes laudable.

14. If the settlement arrived at between the Workman and the Management in the present case is tested in the light of the aforesaid judgment, no other conclusion than the one that the settlement requires interference by this Court, can be arrived at, as the settlement entered into is not fair and if the contention of the management is accepted, then all the employers will force their employees to sign the settlement for accepting the punishment, thereby depriving the legitimate rights due to them, as the Management had acted as an Appellate Authority for the Labour Court and therefore, this Court has no other option, but to hold that the settlement dated 02.12.2011 is obnoxious.

15. It is not in dispute that any Award passed under the provisions of the Industrial Disputes Act, 1947 can be modified by means of settlement, but, at the same time, in the garb of settlement, further punishment should not be inflicted on employees in addition to the one imposed by the Labour Court. The Management had exactly committed such error in this case, ignoring the fact that the Labour Court had already deprived back wages to the Workman for the accident caused by him, even though he was not solely responsible for the same. That being the case, adding one more punishment will amount to double jeopardy and though the Management is entitled to modify the punishment by way of settlement, it does not mean that it is absolutely necessary for them to incorporate additional punishment in the settlement so as to defeat the very purpose of the Award.

16. Of course, it is true that as per the ratio laid down by the Hon'ble Supreme Court in the case of Tata Engineering and Locomotive Co. Ltd., vs. Workman, reported in (1981) 4 SCC 627, a settlement cannot be weighed in any golden scales and the question whether it is just and fair has to be answered on the basis of principles different from those which come into play when an industrial dispute is under adjudication, but at the same time, the basic question which has to be asked and answered as in the case of any other order made in exercise of administrative discretion is, whether the said order is vitiated by mala fides, abuse of power or though worded in innocuous terms, really camouflages collateral or oblique purposes like unduly favouring one at the expense of another or is to penalise or victimise or harass the concerned employee and the answer, which courts have given over the years has been that if such vitiating circumstances are shown to exist, the courts will step in, review the order and grant such relief, as the

justice of the cause demands.

17. This Court has not lost sight of the fact that the Workman was a party to the settlement and had signed the contract and therefore, this Court is not inclined to grant monetary benefits to the Workman and the monetary benefits that may be available to the Workman shall be calculated, except for the punishment imposed in terms of Clause No.II of the settlement and the benefits should be notionally calculated for giving effect to retiral benefits, like gratuity and pension.

18. Insofar as the challenge to the Award of the Labour Court dated 23.03.2011 is concerned, since it is a finding of fact rendered in an application filed under Section 2A(2) of the I.D.Act, 1947; that the Labour Court, by invoking Section 11-A of the I.D.Act, 1947 had interfered with the punishment and that no valid ground has been urged by the Workman to establish that the particular portion of the Award is bad in the eye of law, this Court does not want to interfere with the Award of the Labour Court and the same is upheld. Apart from this, there is a delay of two years in challenging the Award and therefore, the challenge to the Award of the Labour Court has no legs to stand on the ground of laches too.

19. In the result,

i) the Writ Petition is partly allowed;

ii) While confirming the Award of the Labour Court dated 23.03.2011, the settlement under Section 18(1) of the Industrial Dispute Act, 1947, bearing Ref:TNSTC/Legal/L2/15/2011 dated 02.12.2011 and the consequential order dated 26.12.2011, issued by the 2nd respondent are set aside;

iii) there shall be a direction to the Management to re-fix the amount due to the Workman, but for the period of punishment imposed in terms of Clause No.II of the settlement dated 02.12.2011, notionally calculate the amount due to the Workman and extend the benefit as if there is no punishment impose at all;

iv) Since the settlement is being struck down by this Court today, the Management is expected to implement the Award within a period of 90 days from the date of receipt of a copy of this order in the light of the decision of the Hon'ble Apex

Court in the case of Tamil Nadu State Transport Corporation vs. Neethivilangan, Kumbakonam, reported in (2001) 9 SCC 99. It goes without saying that if any complaint is made by the Workman under Section 29 of the Industrial Disputes Act, 1947, the persons who are falling under Section 32 of the Industrial Disputes Act, 1947, need to be prosecuted and the Government shall sanction prosecution taking note of the decision of Apex Court in the case of Rajkumar Gupta vs. Lt. Governor, Delhi reported in 1997 (1) LLJ 994. Once the prosecution is launched, the appropriate criminal court is expected to take up the matter and it shall proceed with the matter on a day-to-day basis without adjourning the matter beyond fifteen working days at any point of time so as to bring the issue to a logical end;

v) If the admitted amount is not paid, it is open to the Workman to seek remedy under Section 33C(1) of the Industrial Disputes Act, 1947 in view of the decision of the Apex Court in the case of Fabril Gasosa vs. Labour Commissioner, reported in (1997) 3 SCC 150 and in case of disputed amount, the computation lies only by invoking Section 33C(2) of the Industrial Disputes Act, 1947. No costs.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To:

The Presiding Officer,
Labour Court, Cuddalore.

+1 cc to Mr.L.N.Praghasam Advocate sr87674

W.P.21916 of 2013

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