

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10760 OF 2018

Hindustan Unilever Limited	...	Petitioner
Versus		
Sanjay Dattu Patil	...	Respondent

Mr. R.N. Shah a/w Mr. Afrin Dalal i/b Haresh Mehta & Co. for the Petitioner.
Mr. Bennet D'Costa a/w Jignasha Pandya for the Respondent.

CORAM : S.C. GUPTE, J.

DATE : 27 FEBRUARY 2020

(Oral Judgement)

. Heard learned Counsel for the parties.

2 This writ petition challenges an award passed by the Court of Civil Judge, Senior Division, at Daman on a reference made to it under the Industrial Disputes Act 1947, by the appropriate government.

3 The subject matter of controversy before the Court related to
applying a settlement signed between the Petitioner and its workmen
on 16 June 2001 to the Respondent employee. Originally, the
Respondent had refused to sign the settlement. He instead raised an

industrial dispute in the matter. The reference resulted into an award in the negative. The Respondent thereupon filed a writ petition, at the hearing of which, this court set aside that award and remitted the matter to the court for a fresh hearing. The court, thereafter, heard the parties and passed an award directing the Petitioner to sign the settlement with the Respondent by amending a particular clause and extend its benefits to him. That award is the subject matter of challenge in the present petition.

4 It is, firstly, submitted by learned Counsel for the Petitioner that the award was outside the terms of reference. The terms included application of a settlement between the employer and its workmen. It is submitted that there was no term of reference for deletion of any particular clause forming part of the settlement. So also, it is submitted that in the statement of claim, there was no reference to any clause, which the Respondent sought to delete from the settlement, whilst making the same applicable to him. The argument has no substance. When the entire settlement and its applicability were matters at large before the reference court, application or otherwise of a particular clause of that settlement certainly forms part of the reference; it is not foreign to the reference.

5 Learned Counsel, secondly, submits that when the settlement was made, the Respondent did not sign the same. It is submitted that for a certain period, during which this settlement would have applied, i.e. from 7 March 2000, when the Respondent was transferred to

Jalpaiguri, West Bengal and when that transfer was set aside on the basis of a consent order passed by this court on 1 January 2002, the Respondent did not actually work for the Petitioner, but was employed at EPCOS India Pvt. Ltd., at Nasik. It is a matter of record that this aspect was not reflected in the order passed by this court in the Respondent's writ petition challenging his transfer. The order simply indicated that by consent, the management had agreed not to press the matter of transfer and instead pay all his wages for the subject period, i.e. the period between the date of his transfer and the date of the court order. It is impermissible in that case for the management to now contend that for this period the employee, in fact, did not render any service.

6 It is, thirdly, submitted that there are some payments forming part of the subject settlement, which are based on performance; these are really in the nature of work-related incentives. It is not in dispute that these norms were already existing under the earlier settlement and what the subject settlement does is to simply provide additional compensation for the same performance norms. Since it is not in dispute that incentives under the earlier settlement were paid to the Respondent purportedly based on his performance, and since, as we have noted above, it is not really open to the management to now contend that the Respondent did not carry out the work, there is no reason why he should not be entitled to these incentives at the additional rate. The question of performance, thus, does not bear any significance from the point of view of relief to be granted to the

Respondent.

7 It is, lastly, submitted by learned Counsel for the Petitioner that the settlement must be accepted as a whole by the Respondent employee; he cannot pick and choose from it. If one has regard to the impugned order of the court, what emerges is that the court has made parties sign the subject settlement, subject to deletion of one individual clause, namely, Clause 6 Part D-(G) at page 12 of the settlement. This paragraph *inter alia* records that workmen who are parties to the settlement were not represented by any union. In case of the Respondent, he is, however, a member of a union, namely, Hindustan Lever Employees' Union. In fact, it was this union, who was representing his cause in the matter, in which consent terms came to be filed. In these facts, the Petitioner management could certainly not have expected the Petitioner to sign the particular clause of the settlement (Clause 6 Part D-(G) at page 12) as the other workmen were expected to do and in fact did. Secondly, at any rate, because of his membership of the union, the Respondent could never have been denied the benefits of the settlement. After all he had performed the same work as did the others for the Petitioner. Accordingly, it cannot be said that deletion of the particular clause of the settlement, ordered by the court, is either perverse or unreasonable. The direction to delete the particular clause, thus, cannot be faulted. In any event, it does not have any implication, so far as the Petitioner Management is concerned.

8 Learned Counsel for the Petitioner relies on the case of **Herbertsons Limited Vs. The Workmen of Herbertsons Limited**¹. Relying on the statement of law in this judgement, it is submitted that a settlement has to be accepted or rejected as a whole. As we have noted above, deletion of the particular clause, in the facts of the case, does not indicate that the settlement was not being accepted by the Respondent as a whole. The settlement as a whole, in all its essential particulars, is being clearly accepted by the Respondent and there is no reason why benefits thereunder should not be extended to him.

9 There is, accordingly, no merit in the challenge. The writ petition is dismissed.

(S.C. GUPTE, J.)

Rajesh V. Chittewan

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1 (1976) 4 Supreme Court Cases 736