

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8108 OF 2018**

Yazaki India Employees Union
V/s.

...Petitioner

Yazaki India Ltd.

...Respondent

Mr. Rahul Nerlekar, for the Petitioner.

Mr. Varun Joshi a/w. Mr. Chetan A. Alai, for the Respondent.

CORAM : SANDEEP V. MARNE, J.

Dated : 7 November 2023.

P.C. :

1. By this petition, Petitioner-Union challenges Judgment and Order dated 21 September 2017 passed by the Presiding Officer, Labour Court No. 2, Pune rejecting Application (IDA) No. 06 of 2013 filed under the provisions of Section 33-C(2) of the Industrial Disputes Act, 1947 (**I.D. Act**) for recovery of amount due under Settlement dated 20 January 2004.

2. The Labour Court has proceeded to reject the application on the ground that the applicability of Settlement dated 20 January

2004 to the temporary employees of the Respondent-Company was under dispute. It has arrived at a finding that the settlement was to be made applicable only to the permanent employees of the Company. It has also referred to the subsequent Settlement dated 30 September 2004 for rejecting Petitioner's application.

3. Mr. Nerlekar, the learned counsel appearing for the Petitioner-Union would submit that the Settlement dated 20 January 2004 nowhere uses the word 'permanent workmen'. That it applied to all the workmen employed by the Respondent-Company without making any distinction between permanent and temporary workmen. He would further submit that while the Labour Court has referred to the subsequent Settlement dated 30 September 2004, the benefits under that settlement are also denied to the members of the Petitioner-Union on the ground that the Settlement dated 30 September 2004 is inapplicable to them. He would further submit that the Labour Court has jurisdiction to interpret the Settlement in exercise of jurisdiction under Section 33-C(2) of the I.D. Act.

4. *Per-contra*, Mr. Joshi the learned counsel appearing for Respondent No.2-Company would oppose the petition and support the order passed by the Labour Court. He would submit that the Settlement dated 20 January 2004 was consciously not made applicable to the temporary employees. That it was restricted to permanent employees of the Respondent-Company. He would invite my attention to the written statement filed before the Labour Court.

He would place reliance on the judgment of the Apex Court in *Bombay Chemical Industries Versus. Deputy Labour Commissioner and Anr.* (2022) 5 SCC 629.

5. I have considered the rival submissions canvassed by the learned counsel for the parties.

6. There is serious dispute about applicability of Settlement dated 20 January 2004 to the temporary employees, on whose behalf the application under Section 33-C(2) was filed by the Petitioner-Union. It is the contention of Respondent-employer that the benefits of settlement dated 20 January 2004 were restricted to permanent employees. Thus Respondent-employer has raised serious dispute about applicability of the Settlement dated 20 January 2004 to the members of the Respondent-Union. In that view of the matter, the Labour Court was not expected to determine the issue of applicability of Settlement dated 20 January 2004 in proceedings filed under the provisions of Section 33-C(2). Also of relevance is the fact that Petitioner union has recognized the principle that the issue of applicability of Settlement is required to be decided in substantive proceedings and not under Section 33-C(2) by filing proceedings before the Industrial Court seeking benefit of Settlement dated 30 September 2004. If Petitioner-Union can file independent proceedings for applicability of Settlement dated 30 September 2004 it is beyond comprehension as to why such proceedings were not be

filed for seeking applicability of Settlement dated 30 September 2004 to the members of the Petitioner-Union.

7. The law with regard to the limited jurisdiction of the Labour Court while entertaining application under Section 33-C(2) of the Industrial Disputes Act is well settled. The Labour Court's jurisdiction under Section 33-C(2) is akin to that of executing Court. Under Section 33-C(2) the labour court can implement the pre-existing right. It cannot make any declaration with regard to existence of a right or otherwise. In this regard, it would be apposite to refer to the judgment of the Apex Court in *Bombay Chemical Industries* (supra) in which the Apex Court has held in paras-7 and 10 as under :

7 At the outset it is required to be noted that Respondent 2 herein filed An application before the Labour Court under Section 33 - C(2) of the Industrial Disputes Act, demanding difference of wages from 1-4-2006 to 31-3-2012. It was thus the case on behalf of Respondent 2 that he was working with the appellant as a salesman. However, the appellant had taken a categorical stand that Respondent 2 was never engaged by the appellant. It was specifically the case on behalf of the appellant that Respondent 2 had never worked in the 9 establishment in the post of salesman. Therefore, once there was a serious dispute that Respondent 2 had worked as an employee of the appellant and there was a very serious dispute raised by the appellant that Respondent 2 was not in employment as a salesman as claimed by Respondent 2, thereafter, it was not open for the Labour Court to entertain disputed questions and adjudicate upon the employer-employee relationship between the appellant and Respondent 2.

10. Applying the law laid down by this Court in the aforesaid decision to the facts of the case on hand, when there was no prior

adjudication on the issue whether Respondent 2 herein was in employment as a salesman as claimed by Respondent 2 herein and there was a serious dispute raised that Respondent 2 was never in employment as a salesman and the documents relied upon by Respondent 2 were seriously disputed by the appellant and it was the case on behalf of the appellant that those documents are forged and/or false, thereafter the Labour Court ought not to have proceeded further with the application under Section 33-C(2) of the Industrial Disputes Act. The Labour Court ought to have relegated Respondent 2 to initiate appropriate proceedings by way of reference and get his right crystalised and/or adjudicated upon.

8. Mr. Nerlekar, is right in contending that subsequent Settlement dated 30 September 2004 would not have been the reason for rejection of the application filed for payment of benefits under the Settlement dated 20 January 2004. It appears that the employer has disputed applicability of even the Settlement dated 30 September 2004 to the temporary employees and the issue is pending before this Court. However, so far as settlement dated 20 January 2004 is concerned, there is a serious dispute about applicability of that Settlement to the members of the Petitioner-Union. The Labour Court therefore could not have exercised jurisdiction under Section 33-C(2) of the I.D. Act. True it is that the Industrial Court can decide the issue of interpretation of settlement. However, interpreting a settlement and deciding its applicability to particular workman are two separate issues. In the present case, there is a dispute about applicability of the settlement to the Petitioner-Union. In that view of the matter, no error can be traced in the order passed by the Labour Court. The Writ

Petition being devoid of merits is **dismissed**. Any pending Interim Application, also stand disposed of.

SANDEEP V. MARNE, J.

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