

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 4845 OF 2022

Bombay Hospital Trust
12-New Marine Lines,
Mumbai-400 020

...Petitioner

Versus

- 1 Rajesh R. Chavan
Old Sambhaji Nagar, Behind
Mumbadevi, Saint Anthony Road,
Chembur, Mumbai – 400 007
- 2 Vinayak P. Chavan
- 3 Prashant S. Agre
- 4 Archana A. Pawar
- 5 Rakeshkumar J. Walmiki
- 6 Pankaj Chavan
- 7 Mahesh Walmiki
- 8 Mahendra Bakul
- 9 Vijay Chajlana
- 10 Vinod Yadav
- 11 Savita Zende
- 12 Bipin Chavan
- 13 Sagita Rewaskar
- 14 Vinod Jadhav
- 15 Sunil Rajbhar
- 16 Dilip Shinde
- 17 Narendra Chalke
- 18 Rakeshkumar Walmiki
- 19 Supriya Mohite
- 20 Deepakumar Kehar
- 21 Shrinivas Pakhare
- 22 Meena Gotamya
- 23 Anil Padave
- 24 Suman Kamble
- 25 Anilkumar Walmiki
- 26 Deepak Chauhan
- 27 Chotelal Ram
- 28 Vinesh Chauhan
- 29 Lata Maprolkar
- 30 Dinesh Chavan

- 31 Jogendra Pawar
- 32 Ramdas Walmiki
- 33 Rekha Solanki
- 34 Ranjeet Walmiki
- 35 Vimala Kuvekar
- 36 Jitendra Walmiki
- 37 Jaichand Barkhairaliya
- 38 Dipika Jadhav
- 39 Laxmi Varma
- 40 Sangita Salvi
- 41 Jyoti Kamble
- 42 Kashmiri Parmar
- 43 Ashis Lohar
- 44 Bharati Smt. V. Bariya
- 45 Bharatiya Kamgar Sena

...Respondents

Mr. Sudhir Talsania, Senior Counsel, a/w N. B. Jalota, Netaji Gawde and Rahul Sanghvi, i/b Sanjay Udeshi and Co., for the Petitioner.

Mr. Arshad Shaikh, Senior Counsel, i/b Rahul Oak, for respondent Nos.1 to 6, 8 to 11, 13 to 18, 20, 21, 23, 26 to 28, 30, 31, 37, 38, 41, 43 and 44.

Mr. Kiran Bapat, Senior Counsel, a/w Gaurav Gawande, i/b Desai and Desai Asso., for Respondent No.45.

CORAM: N. J. JAMADAR, J.

RESERVED ON : 2nd MAY, 2023

PRONOUNCED ON: 6th SEPTEMBER, 2023

JUDGMENT:-

1. Rule. Rule made returnable forthwith and with the consent of the learned Counsel for the parties heard finally.

2. By this petition under Article 226 of the Constitution of India, the petitioner calls in question the legality, propriety and correctness of an order dated 20th February, 2021 on an application for disposal of the complaint (ULP) No.398 of 2017,

whereby the said application came to be rejected and a further order dated 7th April, 2022 passed by the learned Member, Industrial Court, declining to review the said order.

3. Shorn of unnecessary details, the background facts can be stated as under:

(a) The petitioner Trust runs Bombay Hospital. It employs above 3000 employees in various categories such as ward boys, nurses and accountants etc. Respondent Nos.1 to 44 are the badli employees, who were given employment in various categories whenever a badli vacancy arose in the petitioner's establishment. Bharatiya Kamgar Sena, respondent No.45, is a recognized Union within the meaning of Section 3(17) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("the Act, 1971"), functioning at the petitioner's establishment

(b) Respondent Nos.1 to 44 – the complainants filed a complaint before the Industrial Court purportedly under Items 5, 6 and 9 of Schedule IV of the Act, 1971, *inter alia*, seeking permanency from the dates wherefrom the respondents - complainants claimed to have been employed with the petitioner.

(c) Since permanency was the principal relief, the petitioner claimed a complaint of unfair labour practice under

Item 6 Schedule IV of the Act, 1971, could have been filed only by the recognized Union. Eventually, at the instance of the petitioner, respondent No.45 – recognized Union came to be impleaded in the said complaint.

(d) Respondents had taken out an application for interim relief. By an order dated 3rd August, 2018, the learned Member, Industrial Court declared that the petitioner had, *prima facie*, indulged in unfair labour practice under Items 5, 6 and 9 of the Schedule IV of the Act, 1971, directed the petitioner to continue the complaint Nos.1 to 44 as per the then prevailing practice till the disposal of the complaint and also consider grant of permanency to the complainants on the basis of seniority list of badli workmen while signing the settlement with the recognized union.

(e) The recognized union had already raised a Charter of Demand. On 21st January, 2020, the petitioner reached a settlement with respondent No.45 - the recognized union on the pending Charter of Demands. The petitioner claimed one of the demands settled under the said settlement was that of grant of permanency for the badli employees employed with the petitioner's establishment and the settlement would necessarily include the grant of permanency to respondent Nos.1 to 44 also.

(f) Asserting that the prayer in the complaint stood granted, as a result of 21st January, 2020 settlement arrived at between the petitioner and recognized union, and no fruitful purpose would be served in prosecuting the complaint, the petitioner preferred an application (Exhibit-C8) seeking disposal of the complaint.

(g) Respondent Nos.1 to 44 resisted the said application contending, *inter alia*, that the complainants - workmen were not members of any of the Union and they were not extended the benefit of the alleged settlement and, therefore, the alleged settlement, which was executed contrary to the provisions of Maharashtra Industrial Employment (Standing Orders) Rules, 1959, in respect of permanency, was not binding on the complainants. It was denied that the said settlement records and sets out the criteria – conditions for grant of permanency to badli workmen including complainant Nos.1 to 44. The proposed settlement wherein badli workmen were to be made temporary employee and thereafter permanent was contrary to Clause 4-C of Maharashtra Industrial Employment (Standing Orders) Rules, 1959, which governs the petitioner's establishment and, thus, the said allegedly illegal settlement was not binding on the complainants.

(h) The learned Member, Industrial Court, after appraisal of the application (Exhibit C-8), reply thereto and the material on record was persuaded to reject the application and also direct the petitioner to adduce evidence to facilitate an expedite decision on the complaint on its own merit. The learned Member was of the view that, *prima facie*, it appeared that while signing the settlement, the petitioner and the recognized union did not consider the provisions of Rule 4-C of the Model Standing orders. It was noted that out of 44 complainants, few of the complainants were considered by the petitioners in terms of the directions of the Court and no provision was made under the settlement qua rest of the complainants. It was thus necessary to decide the complaint on its own merits. The facts that the hearing in the complaint had commenced, complainants had adduced their evidence and the matter had been posted for the evidence of the petitioner – employer, also weighed with the learned Member, Industrial Court, in declining to dispose of the complaint, for the reason that a settlement was signed between the petitioner and recognized union.

(i) The petitioner sought review of the aforesaid order by filing Review Application (ULP) No.7 of 2021. The complainants

resisted the review. It was, *inter alia*, contended that there was neither any error apparent on the face of the record nor any sufficient ground to review the earlier order. It was also contended that the Industrial Court was not conferred with the power to review its order under the governing enactment.

(j) By an order dated 7th April, 2022, the learned Member, Industrial Court, rejected the application for review finding no justifiable ground to exercise the review jurisdiction. Neither the review was warranted on account any defect in procedure nor there was any patent error. The Industrial Court again noted that the complaint was posted for cross-examination of petitioner's witness and it was desirable for the petitioner to keep its witness present for cross-examination and proceed with the hearing and disposal of the complaint.

4. Being aggrieved, the petitioner has preferred this petition.

5. I have heard Mr. Talsania, the learned Senior Advocate for the petitioner, Mr. Bapat, the learned Senior Advocate for respondent No.45 - recognized Union and Mr. Shaikh, the learned Senior Advocate for respondent Nos.1 to 6, 8 to 11, 13 to 18, 20, 21, 23, 26 to 28, 30, 31, 37, 38, 41, 43 and 44 at some length. With the assistance of the learned Counsel for the parties, I have carefully perused the material on record.

6. Mr. Talsania, the learned Senior Advocate for the petitioner, submitted that with the settlement having been arrived at between the petitioner and the recognized Union, *inter alia*, providing for grant of permanency, in a structured manner, there was no propriety in continuing with the instant complaint. Mr. Talsania laid emphasis on the fact that the principal relief claimed by the complainant was that of permanency. In fact, by way of interim order, the learned Member, Industrial Court, had directed the petitioner to consider the complainants in the matter of grant of permanency. The petitioner adhered to the said direction and made a provision for the same in the settlement arrived at between the petitioner and the recognized Union. Resultantly, nothing survived for adjudication in the complaint. The learned Member, Industrial Court, therefore, ought to have allowed the application and disposed of the complaint which, in a sense, became infructuous on account of subsequent developments.

7. Mr. Talsania would urge that the objection sought to be raised on behalf of the complainants to the disposal of the said complaint was based on an incorrect premise that the terms of the settlement were not beneficial and lawful. If that is the case, according to Mr. Talsania, a complaint of unfair labour practice

is not the remedy. Such a grievance can only be made by raising another industrial dispute. In the instant complaint, however, the complainants cannot be permitted to assail the legality, propriety and correctness of the settlement arrived at between the petitioner and recognized Union. In any event, the said settlement binds all the workmen on the establishment of the petitioner and it is not open for the complainants to question the same.

8. Mr. Bapat, the learned Senior Advocate for respondent No.45 – recognized Union, sought to lend support to the submissions of Mr. Talsania. It was submitted that once a recognized Union is impleaded as a party to the proceedings no workmen is entitled to be represented in such proceedings, other than the one in which the legality or propriety of an order of dismissal, discharge, removal, retrenchment, termination of service or suspension of an employee is under consideration, except by such recognized union. Mr. Bapat would further urge that in view of the provisions contained in Section 21 of the Act, 1971 no employee in an undertaking to which the provisions of ID Act, 1947, apply shall be allowed to appear or act or be represented in any proceedings relating to unfair labour practices specified in Item Nos.2 and 6 of Schedule IV of the Act,

1971, expect through the recognized Union. Since the principal relief in the instant complaint falls under Item 6 of Schedule IV, the complaint at the instance of respondent Nos.1 to 44 has not been properly constituted, submitted Mr. Bapat.

9. Mr. Bapat would further urge that the legal position is no longer *res integra* and settled by the decision of the Supreme Court in the case of *Maharashtra State Road Transport Corporation and another vs. Casteribe Rajya Parivahan Karmachari Sanghatna*¹, wherein it was enunciated that it is only the recognized Union which has been empowered to espouse the cause relating to unfair labour practices specified in Items 2 and 6 of Schedule IV and unrecognized Unions are not competent to file such a complaint.

10. Lastly, Mr. Bapat would submit, once a settlement is signed between the employer and recognized Union that should be the end of the matter. Such a settlement binds all the parties including the workmen, who were employed in the establishment to which the dispute relates on the date of the dispute and all the persons, who subsequently join that establishment under Section 18(3)(d) of the ID Act, 1947. Mr. Bapat supplemented the submission of Mr. Talsania that if the

1 2009(8) SCC 556.

complainants are aggrieved by the said settlement, that can, at best, be a subject matter of a fresh industrial dispute.

11. Mr. Shaikh, the learned Senior Advocate for the complainants, stoutly controverted the aforesaid submissions canvassed on behalf of the employer and the recognized Union. At the outset, it was submitted that there is neither any error in jurisdiction nor procedural defect in the impugned orders and, therefore, the impugned orders do not deserve to be interfered with in exercise of writ jurisdiction. If the industrial adjudicator has committed an error within jurisdiction leading to an incorrect order, such error is not capable of correction in exercise of writ jurisdiction submitted Mr. Shaikh. Nextly, it was submitted by Mr. Shaikh that so far as the impugned order declining to review the earlier order rejecting the application for disposal of the complaint, no fault can be found with. The learned Member, Industrial Court, has kept in view and correctly applied the principles of review and finding no error apparent on the face of the record or any other sufficient cause, declined to exercise review jurisdiction. Such an order, according to Mr. Shaikh, cannot be assailed in a writ petition.

12. On the issue of the tenability of the complaint at the instance of the complainants, Mr. Shaikh submitted that the

contention of the petitioner and respondent No.45 that the complaint is under Item 6 of Schedule IV, is misconceived. Since the employer has committed breach of Model Standing Orders the complaint squarely falls within the ambit of Item 9 of Schedule IV as it covers the breach of statutory provision. Mr. Shaikh would further urge that though the application for disposal of the complaint for the stated reason of the settlement appears innocuous at the first blush yet the consequences of the dismissal of the complaint, which include vacation of interim order, would be termination of the complainants. Therefore, the learned Member, Industrial Court, was justified in refusing to dispose the complaint.

13. Lastly, Mr. Shaikh would urge that a settlement to have a binding efficacy under Section 18 of the ID Act, 1947 must be in conformity with the statutory provisions. A settlement which is contrary to the applicable standing orders cannot be pressed into service to deny the benefit of the statutory provisions. Inviting the attention of the Court to the settlement, Mr. Shaikh submitted that under the terms of the settlement no permanency is granted to any of the complainants.

14. Mr. Talsania joined the issue by submitting that the grievance of the complainants is in respect of the terms of the

settlement rather than that of an unfair labour practice. Placing a strong reliance on the decision of the Supreme Court in the case of *State of Uttaraanchal vs. Jagpal Singh Tyagi*², Mr. Talsania reiterated that such a grievance can be a matter of another industrial dispute. In the said case, the Supreme Court held that if there was a dispute on the question as to whether the settlement was *bona fide* or was obtained by fraud, misrepresentation or concealment of facts, the same can only be the subject matter of another industrial dispute. The Supreme Court relied upon its previous pronouncement in the case of *National Engineering Industries Ltd. vs. State of Rajasthan*³, wherein it was observed as under:

“Settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements it could be the subject-matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is underlying assumption that the settlement reached with the help of the Conciliation Officer must be fair and reasonable.”

(emphasis supplied)

15. Mr. Talsania would further urge that the submission that the settlement is not lawful as it is in breach of the Model Standing Orders is wholly misconceived. It was submitted that

2 (2005) 8 SCC 49.

3 (2000)1 SCC 371.

Clause 32 of the Model Standing Orders overrides Clause 4-C as it provides that nothing contained in these Standing Orders shall operate in derogation of, *inter alia*, settlement or award applicable to the establishment. To buttress this submission Mr. Talsania placed reliance on a Division Bench judgment of this Court in the case of *Pune Municipal Corporation and others vs. Dhananjay Prabhakar Gokhale*.⁴ In the said case, it was enunciated that once it was indisputable that under the valid and lawful settlement the employees had agreed with the employer that their claim for permanency would be available only on completion of five years continuous service and depending upon the availability of permanent vacant posts duly approved by the Government, no claim under Clause 4-C of the Model Standing Orders ignoring the settlement arrived at, between the parties, can be entertained.

16. I have given anxious consideration to the aforesaid rival submissions.

17. To begin with the nature of the complaint filed by respondent Nos.1 to 44 – the complainant - employees. The substance of the complaint purportedly under Items 5, 6 and 9 of Schedule IV of the Act, 1971 is that the complainant -

4 2006 (4) Mh.L.J. 66.

employees have been working with petitioner No.1 Hospital for years together on clear and permanent vacancies and yet they have been treated as badli workers and deprived of the status of permanency. Complainant – employees thus prayed that it be declared that the employer - petitioner has committed and/or continuing to commit unfair labour practice, direct it to cease and desist from engaging in unfair labour practice and also sought allied reliefs.

18. In the said complaint, the complainant - employees took out an application for interim relief (Exhibit-U2). By an order dated 30th August, 2018, the learned Member, Industrial Court, allowed the application directing the petitioner - employer to continue complainant Nos.1 to 44 as per prevailing practice and also to consider the claim of permanency of the complainant - employees on the basis of seniority list of badli workmen while signing the settlement with the recognized Union. It appears that the said interim order has not been assailed.

19. The petitioner, however, asserts that in view of the settlement arrived at between the employer and the recognized Union under Section 2(p) read with Section 18(1) of the ID Act, 1947 and signed on 21st January, 2020 post aforesaid interim order which binds all the workmen including the complainant -

employees there is no justification for further adjudication of the complaint. The petitioner also asserts that since the complaint is primarily under Item 6 of Schedule IV, such complaint can only be filed by recognized Union and which, in the instant case, is a party to the said settlement, the complaint becomes untenable.

20. Item Nos.5, 6 and 9 of Schedule IV of the Act, 1971 under which the complaint has been filed, read as under:

“5. To show favouritism or partiality to one set of workers, regardless of merits.

6. To employ employees as “badlis”, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees.

9. Failure to implement award, settlement or agreement.”

21. Section 21 of the Act, 1971 governs the locus to institute proceedings relating to unfair labour practices specified in Items 2 and 6 of Schedule IV. It reads as under:

“**S.21** Right to appear or act in proceedings relating to certain unfair labour practices: (1) No employee in an undertaking to which the provisions of the Central Act for the time being apply, shall be allowed to appear or act or allowed to be represented in any proceedings relating to unfair labour practices specified in items 2 and 6 of Schedule IV of this Act except through the recognized union:

Provided that, where there is no recognized union to appear, the employee may himself appear or act in any proceeding relating to any such unfair labour practices.

(2) Notwithstanding anything contained in the Bombay Act, no employee in any industry to which the provisions of the Bombay Act, for the time being apply, shall be allowed to appear or act or allowed to be represented in any proceeding relating to unfair labour practices specified

in items 2 and 6 of Schedule IV of this Act except through the representative of employees entitled to appear under Section 30 of the Bombay Act.”

22. A bare reading of Section 21(1) of the Act, 1971 would indicate that where a certificate of recognition is issued to a Union under Chapter III of the Act, 1971, in relation to an undertaking, no employee in such undertaking to which the provisions of the ID Act, 1947 apply, shall be allowed to appear or act or be represented in the proceedings where unfair labour practices specified in Items 2 and 6 of Schedule IV are alleged, save and except through such recognized Union.

23. Mr. Bapat, the learned Senior Advocate for the recognized Union – respondent – complainant No.44 was justified in banking upon the pronouncement of the Supreme Court in the case of *Casteribe* (supra), wherein the Supreme Court enunciated that Section 21 creates a bar qua an unrecognized Union from acting, appearing or representing any employees in a proceeding relating to unfair labour practices under Items 2 and 6 of Schedule IV and right to represent the employees, in the said matter, is exclusively available to the recognized Union and none else.

24. The aforesaid proposition, however, in the facts of the case at hand does not seem to advance the cause of the submission

of either employer or recognized Union. Indisputably, pursuant to an order passed by the Industrial Court on 14th February, 2018, Bharatiya Kamgar Sena, the recognized Union, came to be impleaded as complainant No.45; a co-complainant. Thus, on the date of the interim order dated 30th August, 2018, the recognized Union was espousing the cause of the complainant employees, though reluctantly. The defect, if any, in the institution of the complaint alleging unfair labour practice under Item 6 of Schedule IV, thus stood rectified with the impleadment of the recognized Union as a co-complainant. In my considered view, it is now not open for either the employer or the recognized Union to assail the tenability of the complaint on the count of bar under Section 21 of the Act, 1971, at this intermediatary stage.

25. In the light of the aforesaid view, which I am persuaded to take, I do not deem it appropriate to delve into the submissions of Mr. Shaikh that the unfair labour practices attributed to the employer fall within the ambit of Item 9 of Schedule IV as well and, therefore, the complainant employees can very well seek redressal of the grievances on account of those unfair labour practices.

26. This leads me to the thrust of the challenge to the impugned order dated 20th February, 2021 on the count that the settlement having been arrived at under Section 2(p) read with Section 18(1) of the ID Act, 1947 between the employer and the recognized Union, it renders the complaint wholly untenable and infructuous as the settlement equally binds the complainant employees. As noted above, a two-pronged submission was canvassed. One, if the complainant employees are aggrieved by the terms of the settlement, as such, the proper course is to raise another industrial dispute and not a complaint of unfair labour practice under the Act, 1971. Two, the foundational premise of the complainant employees that the settlement is in breach of statutory provision especially Clause 4-C of the Model Standing Orders is legally unsustainable as under Clause 32 of the Model Standing Orders the provisions therein do not operate to the prejudice of, *inter alia*, any settlement applicable to the establishment.

27. In order to properly appreciate the aforesaid submissions in the context of the facts of the case, it may be apposite to note the provisions of Standing Orders and the terms of the settlement signed between the employer and recognized Union on 21st January, 2020.

28. Clause 4-C of the Model Standing Orders reads as under:

“4-C. A *badli* or temporary workman who has put in 190 days’ uninterrupted service in the aggregate in any establishment of seasonal nature or 240 days “uninterrupted service” in the aggregate in any other establishment, during a period of preceding twelve calendar months, shall be made permanent in that establishment by order in writing signed by the Manager, or any person authorised in that behalf by the Manager, irrespective of whether or not his name is on the muster roll of the establishment throughout the period of the said twelve calendar months.”

29. Clause 32 of the Model Standing Orders reads as under:

“32. Nothing contained in these Standing Orders shall operate in derogation of any law for the time being in force or to the prejudice of any right under a contract of service, custom or usage or an agreement, settlement or award applicable to the establishment.”

30. Clause 1 of the Memorandum of Settlement (Exhibit-F to the petition) reads as under:

“Clause 1 Applicability: The provisions of this settlement shall be applicable to all permanent workmen in scale of pay LT, L1 to L5 and C1 to C5, who are on the pay roll of the Hospital on the date of signing of this Settlement as well as those permanent workmen who may be subsequently employed on the roll of the Hospital at 12, New Marine Lines, Mumbai: 400 020 in the above mentioned pay scale. The benefits under this settlement shall not be applicable to Probationer, temporary, casual, *badli*, trainee, contract workmen and apprentice including apprentices engages under Apprentices Act, 1961 etc. or on any workmen who are employed on a consolidated monthly, fortnightly, weekly, daily rated or tenure post including part time employee/workmen on salary/wages.”

31. The clause providing for conversion of *badli* workmen, with which we are primarily concerned, reads as under:

“28. Age Of Superannuation:-

.....

Conversion of Badli Workmen as Temporary Workmen:

It is agreed between the parties that notwithstanding the order dated 30th August, 2018 of Industrial Court, Mumbai, the Badli Workmen whose names are shown in Annexure "C" hereto shall be given the status of temporary workmen of the Hospital w.e.f. the dates shown against their names as per the prevailing practice in the Hospital for number of years. These workmen will continue to be hold status of temporary workmen for the period of three years from the date of their enrollment in the temporary category. It is further agreed that the status of temporary workmen shall be enrolled from status of Badli Workmen subject to fulfilling the following criteria/conditions:

Criteria:

Each Badli Workman should have worked for actual 240 days in a period of 12 months excluding weekly off for a period of two years preceding to date of enrollment of temporary status.

.....

All the Badli workmen who are party to the matter pending in the Industrial Court Complaint No.(ULP) 398 of 2017 shall immediately within a period of seven days initiate the steps to withdraw the matter from the Industrial Court."

32. A "settlement" is defined under Section 2(p) of the ID Act, 1947 as under:

"Section 2(p): "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy hereof has been sent to [an officer authorised in this behalf by] the appropriate Government and the conciliation officer;].

33. Section 18 of the ID Act, 1947, which governs the binding efficacy of the settlement and awards reads as under:

"18. Persons on whom settlements and awards are binding.-[(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

[Provided that, where there is recognized union for any undertaking under any law for the time being in force, than such agreement (not being an agreement in respect of dismissal, discharge, removal, retrenchment, termination of service, or suspension of an employee) shall be arrived at between the employer and the recognized union only; and such agreement shall be binding on all persons referred to in clause (c) and clause (d) of sub-section (3) of this section.]

(2) [Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.]

[(3) A settlement arrived at in the course of conciliation proceedings under this Act [or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A] or [an arbitration award in case where there is a recognized union for any undertaking under any law for the time being in force] or [an award [of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on-

(a) all parties to the industrial dispute;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, [arbitrator,] [Labour Court, Tribunal or National Tribunal], as the case may be, records the opinion that they were so summoned without proper cause;

(c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.”

34. A settlement, as is evident, can be arrived at in two modes.

First, a settlement arrived at in the course of conciliation proceeding. By its very nature, where the settlement is arrived at before the conciliation officer, a degree of sanctity is attached to such settlement. Second, a settlement arrived at otherwise than in the course of conciliation proceeding, where an

agreement has been signed by and between the employer and the workmen, in such manner, as may be prescribed and a copy thereof has been sent to the appropriate Government and the conciliation officer. Under Section 18(1), a settlement arrived at between employer and the workmen otherwise than in the course of conciliation proceeding binds the parties to the agreement. The proviso to Section 18(1) envisages that where there is a recognized union for any undertaking then such agreement, not being an agreement in respect of dismissal, discharge, removal, retrenchment, termination of service, or suspension of an employee, shall be arrived at between the employer and the recognized Union only and such agreement shall be binding on all persons referred to in clauses (c) and (d) of sub-section (3) of the said Section. Under Clause (c) of sub-section (3) the settlement binds the heirs, successors or assignees of the employer. Under Clause (d) the settlement binds all persons, who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons, who subsequently become employed in that establishment or part.

35. The statutory provisions as to the binding efficacy of the settlement especially when arrived at between the employer and

recognized union are abundantly clear. However, the recognized union cannot arrogate unto itself the authority to enter into the settlement *de hors* its nature and consequences. The proviso to Section 18(1) contains an inbuilt guarantee of protecting the interest of an employee by carving out an exception in case of an agreement adversely affecting the interest of the employee by providing for dismissal, discharge, removal, retrenchment, termination of service or suspension of an employee. Therefore, the consequence of the settlement, either direct or indirect, becomes germane while testing the legality and propriety of the settlement. Even otherwise, the settlement cannot, on first principles, be in flagrant violation of the statutory mandate.

36. In the case of *Workmen of M/s. Delhi Cloth General Mills Ltd. vs. The Management of M/s. Delhi Gloth and General Mills Ltd.*⁵, on which reliance was placed by Mr. Shaikh, the Supreme Court observed that the management and the union even when a dispute is referred to a conciliation officer, cannot claim absolute freedom of contract to arrive at a settlement in all respects. The settlement has to be in compliance with the statutory provisions. The observations of the Supreme Court in paragraph 15 are instructive and, hence, extracted below:

5 AIR 1970 Supreme Court 1851.

“15. The respondent's learned Advocate in reply obliquely suggested in this connection that the Management and the Union were free to arrive at a settlement of their dispute and if they agreed to do so then the agreement could not but be held to be binding. We do not think the Management and the Union can, when a dispute is referred to the Conciliation Officer, claim absolute freedom of contract to arrive at a settlement in all respects binding on all workmen, to which no objection whatsoever can ever be raised by the workmen feeling aggrieved. The question of a valid and binding settlement in such circumstances, is in our opinion, governed by the statute and the rules made thereunder. Reliance was next placed on S. 18(1) to support the binding character of the settlement. This sub-section for its proper construction must be read with the other sub-sections and the relevant rules, in the light of the definition of 'settlement' as contained in S. 2(p) of the Industrial Disputes Act. 'Settlement' as defined therein means settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to the appropriate Government and the Conciliation Officer. In the light of these provisions we do not think that S.18(1) vests in the Management and the Union unfettered freedom to settle the dispute as they please and clothe it with a binding effect on all workmen or even on all member workmen of the Union. The settlement has to be in compliance with the statutory provisions.

(emphasis supplied)

37. I am mindful of the fact that neither in the complaint before the Industrial Court nor in this petition, the question of legality and validity of the settlement between the employer and the recognized union can be delved into. Mr. Talsania was right in submitting that the challenge to the settlement for being illegal, or for that matter, *mala fide*, can be properly laid in an industrial dispute. Reliance placed on the decision of the Supreme Court in the case of *Jagpal Singh Tyagi* (supra), as a

matter of principle, is well founded. However, the peculiar facts of the case and the consequences which the termination of the proceedings in the ULP complaint would entail cannot be lost sight of.

38. The stipulations in the Memorandum of Settlement especially as regards conversion of badli workmen as temporary workmen extracted above on its plain reading indicates that the status of “badli workmen” is agreed to be upgraded to that of “temporary workmen” upon fulfillment of certain conditions. Evidently, a new step in the ladder to permanency is sought to be created. Under Clause 4-C of the Standing Orders no distinction is made in the matter of entitlement to conferment of permanency between a badli and temporary workmen. Item 6 of the Schedule IV also proscribes employment of employees as badlis, casuals or temporaries and their continuation as such for years with the object of depriving them of the status and privilege of permanent employees.

39. For the determination of this petition, it is unwarranted to embark upon an enquiry about the juridical connotation of distinction between, “badli” and “temporary workmen”. Nonetheless, the fact remains that the complainant employees claimed that they are entitled to the benefit and privilege of

permanency for having rendered the requisite service as badli. Clause 4-C of the Model Standing Orders lends support to their claim. The complainant employees, therefore, cannot be precluded from asserting that they are entitled to the benefit of permanency while working as “badlis” and without being upgraded or re-designated as “temporary workmen”. In my considered view, the settlement in question does not constitute an impediment in pursuing the said claim.

40. As noted above, the validity of the settlement cannot be gone into in this petition. What can certainly be enquired into is the consequence of the termination of the proceedings in the complaint. The learned Member, Industrial Court, noted that out of 44 complainant – employees, the employer considered 12 employees for the benefit of the settlement. Rest of the complainants were not extended any benefit under the settlement. At this juncture, the scope of the interim order passed by the Industrial Court dated 30th August, 2018 becomes critical. By the said order, the Industrial Court directed the employer to continue the complainant employees as per prevailing practice till the disposal of the main complaint. Mr. Shaikh was fully justified in canvassing the submission that the moment the proceedings in the complaint are terminated, the

aforesaid protection afforded to the complainant employees by the interim order would come to an end. This consequence of the termination of the complaint proceedings is self-evident and cannot be lost sight of.

41. The stage of the proceedings also bears upon the determination. The learned Member, Industrial Court, in the original order noted that the complainants had led their evidence and it was for the employer to adduce evidence. In the order in review, the learned Member, Industrial Court, noted that the matter was posted for cross-examination of the employer's witnesses. As the proceedings in the complaint have reached an advanced stage, the Industrial Court considered it appropriate to adjudicate the complaint on merits. No fault can be found with this approach.

42. The conspectus of aforesaid consideration is that the Industrial Court in its original order dated 20th February, 2021 committed no error in declining to dismiss the complaint on account of the settlement signed between the employer and the recognized union. It would suffice to note that the finding of the learned Member, Industrial Court, that no ground for review of the original order was made out is factually correct and

legally sound. Resultantly, no interference is warranted in exercise of writ jurisdiction.

43. Hence, the following order:

: O R D E R :

- (i) The petition stands dismissed.
- (ii) Rule stands discharged.
- (iii) In the circumstances, there shall be no order as to costs.

[N. J. JAMADAR, J.]