



W.P.No.5832 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

ORDER RESERVED ON : 26.02.2024

ORDER PRONOUNCED ON : **05.04.2024**

CORAM

THE HON'BLE MRs. JUSTICE N.MALA

W.P.No.5832 of 2020

and

WMP.Nos.6836 and 20300 of 2020

The Management,
DHL Expres (India) Pvt. Ltd.,
Formerly Known as
DHL World wide Express India Pvt. Ltd.,
12 south Phase,
Guindy Industrial Estate,
Chennai-600 032
Rep. by : The Regional HR.Manager-south India

...Petitioner

Vs.

1.The secretary,
DHL World wide Express India Pvt. Ltd.,
Employees Union,
No.34, 2nd Line Beach Road,
Chennai 600 001.

2.The Government of Tamil Nadu,
Rep. by the Principal secretary,
Labour and Employment (A1) Department,
Fort st.George,
Chennai-600 009.

...Respondents



W.P.No.5832 of 2020

Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st Additional Labour Court, Chennai in I.A.No.1/2019 in I.D.No.180/2018, quash its order dated 30.12.2019 consequently reject the reference made by the 2nd respondent in G.O.(D).No.669 dated 29.11.2018.

For Petitioner : Mr.G.Anand Gopalan
for Agam Legal Advocates
For Respondents : Mr.K.M.Ramesh,
senior Counsel for Mr.s.Apunu
for R1
Mr.P.sanjay Gandhi, Government Advocate
for R2

ORDER

Writ petition is filed challenging the order passed in I.A.No. 1 of 2019 in I.D.No.180 of 2018. The Industrial Dispute was raised by the respondent. Pending dispute the petitioner filed application under section 11(3) of the Industrial Disputes Act, 1947 (herein after called as I.D. Act) to pass an Award in terms of settlement dated 27.09.2017 or reject the reference.

2. The petitioner is an international express courier company having operations in over 220 countries. The petitioner is in the business of sending shipment across the globe. The petitioner maintained hierarchy of officials, starting with senior Management Level (Grade A to E), followed



W.P.No.5832 of 2020

by Middle Management Level (Grade F to L) and Junior Management Level (Hay Grade 10 to 5, Hay Grade 5 being the lowest) and followed by “S-Grade”. It is stated that the respondent union raised dispute before the Labour officer protesting against the unfair labour practice indulged by the management in adopting a policy of divide and rule against its members. As the parties could not arrive at an amicable settlement, the conciliation officer submitted his report to the Government on 12.09.2016. Thereafter, based on the failure report, the Government vide G.O(D).No.669 Labour and Employment Department dated 29.11.2018 referred the issue for adjudication before the Labour Court, Chennai. The reference stated was whether “the unfair labour practice of the petitioner management with regard to difference in provident fund, medical claim policy, night shift allowance, death policy for “S Grade and Hay Grade” workers while doing the same nature of job was justified or not”. According to the petitioner on 27.09.2017, the petitioner entered into 18(1) settlement with the respondent union, unfortunately the Government without appreciating the 18(1) settlement referred the dispute. The Labour Court to which the dispute was referred entertained the same in I.D.No.180 of 2018. The petitioner during the pendency of the I.D.No.180



W.P.No.5832 of 2020

of 2018 filed the Interlocutory Application in I.A.No.1 of 2019 under section 11(3) of the I.D. Act to pass an Award in terms of settlement dated 27.09.2017 or rejecting the reference.

3. The 1st respondent filed counter stating that the petitioner management was trying to evade contest on merits. According to the respondent, the issue involved in the case was whether the petitioner was guilty of unfair labour practice which is violative of sections 2(s), 25(T) and Fifth schedule of the I.D. Act merely because it forced superfluous clause in a wage revision agreement entered for s grade and whether the petitioner could be exempted from a full fledged trial on technical grounds. The respondent denied the petitioner's contention that the respondent had deliberated and thought of withdrawing its claim or demands about Hay grade employees. The respondent on the aforesaid contentions and other contentions raised in the counter submitted that the application was without merit and deserved to be rejected.



W.P.No.5832 of 2020

4. The Labour Court on an appreciation of the entire evidence on record rejected the application. Aggrieved by the rejection of the application, the petitioner has filed the above writ petition.

5. The learned counsel for the petitioner submitted that the respondent had entered into 18(1) settlement on 27.09.2017, much before the reference was made by the Government and therefore, the Labour Court ought to have passed an award in terms of the settlement. Relying on clauses 23 and 29 of the aforesaid settlement, the learned submitted that the reference ought to have rejected by the Labour Court.

6. The learned counsel for the 1st respondent on the other hand submitted that clause 23 of the settlement dated 27.09.2017 provided for wage revision for s grade workman and therefore clause 23 of the settlement should be confined to the s grade workman only. The learned counsel submitted that the petitioner wanted to thwart and stall the adjudication process and therefore filed the interlocutory application. The



W.P.No.5832 of 2020

learned counsel relying on the Judgment in the case of *D.P.Maheswari Vs.*

Delhi Admn. and others reported in 1983 II LLJ 425 contended that Hon'ble supreme Court deprecated the practice of filing interim applications.

7. The learned Government Advocate relying on the counter filed by the 2nd respondent submitted that the reference was validly made, neither the petitioner nor the respondent union informed the respondent about the 18(1) settlement entered into on 27.09.2017. The Learned Government Advocate further submitted that as the petitioner did not write to the 2nd respondent on the closure of the dispute by referring to the 18(1) settlement, the reference order was passed. The counsel therefore submitted that there was no merit in the writ petition and the same deserved to be dismissed.

8. I have heard both the learned counsels and I have gone through the entire materials placed on record.



W.P.No.5832 of 2020

9.The main contention of the learned counsel for the petitioner is that the respondent union having entered into 18(1) settlement was bound by Clauses 23 and 29 of the settlement. It is seen that the respondent raised a dispute and the said dispute was referred to the labour Court by the Government vide G.O.(D).No.669, dated 29.11.2018. The dispute which was referred for adjudication is as follows:

“whether the demand of the Union seeking abolition of different grades of workmen doing same set of jobs divided into two grades such as “S Grade” and “Hay Grade” giving different pay scale for the same set of work, by following divide and rule policy, by imposing different provident fund, medical claim policy, night shift allowance, life policy, which is unfair labour practice as justified and has passed appropriate orders.”

10.Even before the dispute was referred to the labour Court, the petitioner and the respondent entered into 18(1) settlement on 27.09.2017. The petitioner therefore filed an application under Section 11(3) of the ID Act for passing an award in terms of the settlement dated 27.09.2017 or to reject the reference. The petitioner relied on Clauses 23 and 29 of the said



settlement and contended that the respondent was bound by the said clauses and therefore, the labour Court ought to have allowed the application. Clauses 23 and 29 of the settlement read as follows:

"23.Finality:

a) This settlement represents a package deal in full and final settlements of all the financial demands of the Union/Workmen. Any demand, which has not been specifically mentioned/covered by this settlement, shall also be deemed to have been settled and withdrawn....

29.

Consequent to signing upon this settlement parties agree that all claims pending before Conciliation with regard to all issues shall be deemed to have been withdrawn. The union shall take steps to withdraw the disputes in this regard and provide the necessary documents relating to the withdrawal of the above said cases against the management."

11.The question to be determined here is whether the respondent is bound by the aforesaid clauses and whether the rejection of the application of the petitioner was justified. The entire case hinges on the interpretation



W.P.No.5832 of 2020

of clauses 23 and 29 and its effect on the reference before the labour Court.

The reference has been extracted above and from a reading of the reference, it is clear that the reference was in relation to the unfair labour practice of the petitioner in adopting a policy of divide and rule with respect to Hay Grade and S-Grade employees who are said to be equally placed in terms of the duties and responsibilities.

12.The background of facts leading to 12(3) settlement may be relevant to determine whether the interpretation sought to be put on clauses 23 and 29 of the settlement by the petitioner is sustainable. It is seen that it has been the consistent stand of the petitioner that it would not entertain the respondent union on the demands of Hay grade employees, as according to the petitioner Hay grade employees did not fall under the workmen category. Even in the counter statement filed by the petitioner before the conciliation officer on 08.08.2016, it was clearly stated that the petitioner was open to discussions with the union on the following understanding:



W.P.No.5832 of 2020

“1. The settlement in Chennai have been only in respect of s grade workmen working in Chennai establishments. Hay grade employees across India have been fixed on performance and other criterion. Being so the issue of discussing the wage increase with regard to Hay grade cannot be entertained as was done in the past.

2. The settlement discussion would be only in respect of s grade workmen who are on the rolls on the Chennai establishments as on date.”

Therefore, when the petitioner had confined the 12(3) settlement to the wage increase of S-grade workmen only, the reliance on clauses 23 and 29 of the settlement to the effect that the settlement represented a package deal and that any demand not covered by the settlement was deemed to have been settled and withdrawn cannot be accepted. So also, the contention that the respondent had agreed to withdraw all the claims pending before the conciliation officer with regard to all issues cannot also be accepted. When the petitioner specifically took a stand that the 12(3) settlement would be confined to S-grade only, it is neither fair nor just to interpret the said 12(3) settlement as if the respondent had given up its right to challenge the unfair labour practice adopted by the petitioner.



W.P.No.5832 of 2020

Therefore, in my view the clauses 23 and 29 of the 12(3) settlement do not cover the dispute raised before the labour Court and therefore, the contention of the petitioner that the award should ought to be passed in terms of 12(3) settlement or the reference be rejected cannot be countenanced.

13.As rightly held by the labour Court the settlement should be read in the context of the demand for wage revision and the clauses therein should be confined to the claims arising out of such demand.

14.The labour Court in my view rightly interpreted the clauses in the settlement to hold that the claim of the petitioner that the clauses in the settlement were intended to withdraw the reference before it was unsustainable. The conclusion of the labour Court tht the settlement on wage revision did not supercede the reference before it is valid.



W.P.No.5832 of 2020

15.It would not be out of place to refer here to the judgment of the Hon'ble Supreme Court in *D.P.Maheswari Vs. Delhi Administration and others* reported in *AIR 1983 SC 153: 1983 (4) SCC 293*. The relevant portion of the said judgment is extracted hereunder:

"It is also worthwhile remembering that the nature of the jurisdiction under Article 226 is supervisory and not appellate while that under Article 136 is primarily supervisory but the court may exercise all necessary appellate powers to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction by special tribunals at interlocutory stages and on preliminary issues."

16.The Hon'ble Supreme Court in the said case deprecated the practice of approaching the High Court on interlocutory and preliminary stage. Under the facts and circumstances of the case, I am of the view that the order passed by the labour Court does not call for any interference and hence, it is confirmed.



W.P.No.5832 of 2020

WEB COPY

17. On the aforesaid discussions, I am of the view that the writ petition stands merit and hence, the same stands dismissed. No costs.

05.04.2024

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation:Yes/No

To

1. The Principal secretary,
The Government of Tamil Nadu,
Labour and Employment (A1) Department,
Fort st. George,
Chennai-600 009.

2. I-Additional Labour Court,
Chennai .



WEB COPY



W.P.No.5832 of 2020

N.MALA,J.

dsn

PRE-DELIVERY ORDER IN
W.P.No.5832 of 2020

ORDER DELIVERED ON
05.04.2024