IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on 11.06.2024

Order delivered on 28.06.2024

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU
and
THE HONOURABLE Mr.JUSTICE.P.DHANABAL

W.A.No.1119 of 2024

1. M.Thangadurai(PC/2/2607)
   S/o Muthusamy

2. T.Mannangatti (PC/2/3079)
   S/o Dhanakodi

3. S.Nagappan (PC/2/1721)
   S/o Subrayan

4. G.Vijayarangan, (PC/2/2068)
   S/o Govindasamy

5. M.Arikrishnan (PC/2/2828)
   S/o Murugesan

6. M.Ramamoorthy, (PC/2/2699)
   S/o Munirajulu

7. S.Arokiaraja, (PC/2/2913)
   S/o Selvaraj

8. S.Ramasundaram, (PC/2/2665)
   S/o A.Subrayapillai

9. N.Pugazhenthi, (PC/2/2790)
S/o Nagarajan

10. K.Kaliamoorthy, (PC/2/2070)
S/o Kannan

11. P.Adhimoolam, (PC/2/2078)
S/o Ponnusamy

12. G.Devanathan, ((PC/2/2632)
S/o Govindaraj

13. D.Jagadeesan, (PC/2/2894)
S/o Devaraj

14. D.Karunagaran, (PC/2/2005)
S/o Deivanayagam

15. P.Gnanasegaran, (PC/2/2244)
S/o V.Perumal

16. A.Palaniappan, (PC/2/2057)
S/o Arumugam

17. T.Durairaju, (PC/2/2575)
S/o Thangavel

18. M.Radha Krishnan, (PC/2/2016)
S.o Murugesa Pillai

19. N.Varadha Rajan, (PC/2/3132)
S/o Neelamegam

20. R.Sundaresan, (PC/2/3136)
S/o G.S.Ramachandiran

21. R.Devadass,(PC/2/2612)
S/o Raju

22. R.Packirisamy, (PC/2/3239)
    S/o Rajamanickam

23. S.Mogane, (PC/2/5454)
    S/o Sundaram

24. G.Jayabal, (PC/2/3095)
    S/o Govinthasami

25. L.Krishnamurthy, (PC/2/2611)
    S/o Lakshmanan

26. E.Thuruvan, (PC/2/2582)
    S/o Elumalai

27. R.Veerappan, (PC/2/2560)
    S/o Rathinam

28. R.Damodaran, (PC/2/2537)
    S/o Rajamanickam

29. K.Vasanthakumari, (PC/2/2962)
    W/o Kannan

30. D.Dhansu, (PC/2/2543)
    S/o Danapal

31. N.Jeevanandam, (PC/2/2007)
    S/o Nadesan ....Appellants

Vs

1. Union of India represented by
   The Chief Secretary to Government,
   Government of Puducherry,
   Chief Secretariat, Puducherry - 605 001.

2. The Secretary to Government,
   Department of Industrial Development
   (Industrial & Commerce),
   Government of Puducherry,
   Chief Secretariat,
   Puducherry - 605 001.

3. The Managing Director,
   Sri Swadeshee - Bharathee Textiles Mills Ltd.,
   A Government of Puducherry Undertaking,
   Puducherry-Cuddalore Main Road,
   Mudaliarpet,
   Puducherry - 605 004.

4. Officer in Charge,
   Sri Swadeshee - Bharathee Textiles Mills Ltd.,
   A Government of Puducherry Undertaking,
   Puducherry-Cuddalore Main Road,
   Mudaliarpet,
   Puducherry - 605 004.

5. K.Kesavan,
   S/o Krishnan Pillai.

6. M.K.Subramanian
   S/o Kuppusamy,

7. A.Marimuthu,
   S/o Azhagar Samy ...Respondents

Prayer: Writ Appeal filed under Clause 15 of Letter Patent as against the order passed in W.P.No.4964/2021 dated 20.12.2023 on the file of this Court.

For Appellants : Mr.Prakash Adiapadam

For Respondents : Mr.S.Raveekumar
Government Pleader (Pondy)

JUDGMENT

(The judgment of this Court was delivered by J.Nisha Banu,J.)

This Writ Appeal has been filed challenging the order passed in W.P.No.4964 of 2021, in which, the prayer sought for in the writ petition to set aside the order passed by the General Secretary of Panchalai Tozhirsanga Congress/4th respondent therein and to direct the respondents to grant Industrial Dearness Allowance (IDA) increments to the appellants/petitioners from the month January 2016 to till the date of their retirement prevailed at that time by strictly following the order dated 01.03.2016 passed by this Court in W.P.No.13121 of 2016 which was confirmed by the Division Bench of this Court in W.A.No.899 of 2016 dated 12.07.2017, was dismissed as not maintainable since 12(3) Settlement arrived between the Management and the Trade Union is not challenged by the petitioner.

2. The brief facts of the case of the appellants are as follows:

(i) The appellants are retired employees of Sri Bharathi Mills, which is a Unit of Swadeshi-Bharathi Textiles Mills Limited (A Government of India Undertaking). Initially, they entered into service as labourer and thereafter, they were promoted to various cadres and finally, after rendering between 32 to 43 years of unblemished record of service, they retired on various dates from 14.01.2016 to 23.03.2017 on completion of 60 years as per Standing Order 22-A.

(ii) During the course of employment from 01.10.2010 onwards, the employees were granted Industrial Dearness Allowance (IDA) and it has been gradually increased to manifold under various G.Os. While so, all of a sudden, on 09.04.2013, the Under Secretary to Government, Department of Industrial Development (Industries & Commerce), Government of Puducherry had issued Notification vide G.O.Ms.No.1/2013-Ind.B dated 09.04.2013, whereby, freezing Industrial Dearness Allowance (IDA) increments granted to the employees of both Anglo French Textiles Limited of Puducherry Textile Corporation Limited as well as Swadeshi Cotton Mills and the said Notification was valid only upto 31.12.2014.

(iii) Challenging the validity of the said G.O.Ms.No.2/2013 dated 09.04.2013, issued by the 2nd respondent herein, the Trade Union, namely, Panchalai Tozhirsangam had fled a writ petition in W.P.No.13121/2013 before this Court. This Court, vide order dated 01.03.2016, directed the authorities concern to pay Industrial Dearness Allowance (IDA) increments to all employees of the Mill irrespective of whether they are affiliated with members of the petitioner's Trade Union or not from the month of January, 2016 as applicable from time to time within a period of eight weeks.

(iv) As against the aforesaid order dated 01.03.2016, passed in the said writ petition, the Management preferred intra court Writ Appeal before the Division Bench in W.A.No.899 of 2016. The Division Bench vide order dated 12.07.2017, disposed of the writ appeal conforming the order passed in the writ petition and directed the authorities concern to implement the order dated 01.03.2016 passed in the writ petition within six weeks based on the undertaking given by the learned counsel for the appellant.

(v) In the meantime, the appellants retired from service on various dates on account of superannuation from 14.01.2016 to 23.03.2017. While so, on 03.11.2017, there was a settlement under section 12(3) of the Industrial Disputes Act, 1947 between the Trade Unions and the Management of Swadeshi-Bharathi Textiles Mills Limited in the presence of Conciliation Officer, Industrial department with regard to settlement of Industrial dearness Allowance (IDA) increments. Since the appellants retired from service, they were not party to the said 12(3) settlement dated 03.11.2017. The appellants submitted detailed representation before the respondents Management requesting to grant Industrial Dearness Allowance (IDA) increments from the month of January 2016 to till the date of their respective date of retirement. But the 4th respondent had passed a common impugned order on 19.2.2020 rejecting their claim. Therefore, challenging the said common impugned order, the appellants filed writ petition in W.P.No.4964 of 2021.

(vi) In the said writ petition, the learned single Judge on 18.06.2021 granted liberty to the appellants/petitioners to file contempt petition against both the Management as well as Trade Union. The same was not challenged by the respondents and it attains finality. The appellants filed contempt petition in Cont.P.No.1763/2023. The learned single Judge, by common judgment dated 20.12.2023, dismissed both the writ petition as well as the contempt petition by holding that the writ petition is not maintainable since 12(3) settlement arrived between the Management and the Trade Union is not challenged by the appellants. Hence, the present writ appeal.

3. (i) The learned counsel for the appellants would state that the order

passed by the learned single Judge is cryptic in nature and not supported by valid reasons. The respondents have entered into the Settlement under Section 12(3) of the Industrial Dispute Act. The appellants are not parties to the said 12(3) Settlement. The respondents have arbitrarily fixed a cut off dated i.e., 01.04.2017 to exclude the appellants and other employees those who retired from service in between 01.01.2016 to 31.03.2017. Since the appellants retired from service in the interregnum period between 14.01.2016 and 23.03.2017, they were excluded from getting the benefit of increased Industrial Dearness Allowance (IDA). The interim order granted by the Writ Court in M.P.No.1 of 2015 in W.P.No.13121/2013 clearly states that IDA increments has to be paid to all employees of the Mill irrespective of whether they are affiliated with members of the appellant's Trade Union or not, from the month of January, 2016 as applicable from time to time.

(ii) Learned counsel for the appellants relying on the judgment of the Hon'ble Supreme Court reported in ITC Ltd. Workers Welfare Association and another v. Management of ITC Ltd. and another (2022(3) SCC 411) would state that the Hon'ble Supreme Court has held that the settlement can be ignored in the exceptional circumstances viz., if it is demonstrably unjust, unfair or the result of malafides such as corrupt motives on the part of those who were instrumental in effecting the settlement. It is further held that the settlement has to be judged as a whole. While applying the aforesaid principles in the present case, the 12(3) settlement entered between the Trade unions and the respondents Management is demonstrably unjust, unfair or the result of malafides such as corrupt motives on the part of those who were instrumental in effecting the settlement as artificial cut off date was fixed deliberately to exclude the other employees, those who were retired from service in between 0101.2016 to 31.03.2017 from getting the benefit of increased IDA as per the aforesaid interim order dated 01.03.2016 passed by this Court. However, in the very same 12(3) Settlement, they agreed to grant increased IDA to retired employees only those who retired between 11.04.2017 and 30.09.2017. Hence the 12(3) settlement does not bind the appellants and the appellants need not challenge the same since they are not party to the 12(3) settlement.

4. (i) Per contra, the learned Government Pleader (Pondicherry) appearing for the respondents would state that the appellants are seeking the benefits that were beyond 12(3) Settlement arrived between the

employees/Unions. The appellants have also suppressed that they are members of associations which had entered into an agreement under Section 12(3) of the ID Act. The said settlement and the subsequent notification of the settlement as per the provisions of the ID Act have not been challenged by the appellants. He would further state that the Company is incorporated under the Companies Act and it is separate legal entity and an autonomous body.

(ii) Learned Government Pleader would further state that the purpose of the agreement is to ensure harmony and peaceful atmosphere in the industry. 17 Unions have participated in the conciliation proceedings and entered into a 12(3) settlement dated 03.11.2017 with the management after negotiations. After the settlement, the associations which filed W.P.No13120 & 13121 of 2013 have also withdrawn the writ petitions in view of the settlement. Therefore, the interim order granted earlier has subsequently merged with the final order of dismissal as withdrawn. The settlement under Section 12(3) of the I.D. Act is binding on the appellants. The appellants are members of the association. As per the terms of the agreement, the IDA has been waived by the Unions for the period till 01.04.2017 with regard to all the workmen, irrespective of whether they are in service or not.

(iii) Learned Government Pleader would also state that totally 358 persons have not been paid IDA for the particular period covered under the Settlement and only 34 persons have approached this Court. When the other employees have agreed, the appellants are not entitled to seek IDA. The agreement signifies consensus between the parties. The terms or validity of the agreement cannot be tested before the Court and the remedy available is only under the I.D. Act.

(iv) Learned Government Pleader would state that one of the appellants namely M.Thangadurai, while he was in service was a member and office bearer of one of the Trade Union and that Trade Union has also signed in the 12(3) settlement and therefore, it binds on all the appellants also. He would further state that the Swadeshi-Bharathi Textiles Mills Limited has incurred heavy loss and therefore, due to financial implication it was closed down and not only the appellants were denied increased IDA but also 24 employees who served at the time of entering into 12(3) settlement were denied IDA. Hence, he would pray to dismiss the appeal.

5. Heard the learned counsel for the appellants, the learned Government Pleader appearing for the respondents and perused the materials available on record.

6. The appellants are retired employees of Sri Bharathi Mills, which is a Unit of Swadeshi Bharathi Textiles Mills Limited (A Government of India Indertaking). Initially, they entered into service as Labourers and thereafter, they were promoted to various cadres and finally, after rendering between 32 to 43 years of unblemished record of service, they were retired from service on various dates from 14.01.2016 to 23.03.2017 on account of superannuation on completion of 60 years of age as per Standing Order 22-A. During the course of employment from 01.10.2010 onwards, the employees were granted Industrial Dearness Allowances (IDA) and it has been gradually increased to manifold under various GOs. But all of a sudden on 09.04.2013, the Government issued Notification vide G.O.Ms.No.1/2013-Ind.B dated 09.04.2013 whereby freezing the IDA increments granted to the employees of both Anglo French Textiles Limited of Puducherry Textile Corporation Limited as well as Swadeshi Cotton Mills and the said notification was valid only upto 31.12.2014.

7. Challenging the validity of the aforesaid G.O, writ petition in W.P.No.13121/2013 was filed before this Court and this Court, vide order dated 01.03.2016 passed an order directing the authorities concern to pay IDA increments to all employees of the Mill irrespective of whether they are affiliated with member of the petitioners' Trade Union or not from the month of January 2016 as applicable from time to time with eight weeks.

8. Aggrieved by the aforesaid order dated 01.03.2016, the Government of Puducherry filed a writ appeal in W.A.No.899 of 2016 and the Hon'ble Division Bench disposed of the writ appeal by directing the authorities concern to implement the order dated 01.03.2016 passed in W.P.No.13121/2013. In the meantime, the appellants retired from service on various dates from 14.01.2016 to 23.03.2017 on account of superannuation on completion of 60 years of age. While so, on 03.11.2017, there was a settlement entered under 12(3) of Industrial Disputes Act, 1947 between the Trade Unions and the Management of Swadeshi Bharathi Textiles Mills Limited in the presence of Conciliation Officer, Industrial department with regard to settlement of IDA increments.

9. In the said settlement, it has been stated that the total number of beneficiaries of settlement is 340. Since the appellants retired from service on various dates from 14.01.2016 to 23.03.2017 itself and that the appellants are not party to the said 12(3) settlement dated 03.11.2017 and that the 12(3) settlement dated 03.11.2017 entered between the Trade Unions and Management of Swadeshi-Bharathi Textiles Mills Limited does not bind on the appellants. The said settlement does not speak about the employees who retired from service during the period 01.03.2016 to 31.03.2017.

10. The main issues to be decided in this appeal is 'Whether the 12(3) settlement dated 03.11.2017 entered between 17 Trade Unions and the Management of Swadeshi-Bharathi Textiles Mills Limited is binding on the appellants, when it specifically excludes the appellants and other employees who retired from service upto 31.03.207 from getting increased IDA in violation of the order passed by this Court in M.P.No.1 of 2015 in W.P.No.13121/2013 dated 01.03.2016 which was confirmed by the Division Bench of this Court in W.A.No.899 of 2016 dated 12.07.2017' and 'Whether the appellants need to challenge the 12(3) Settlement dated 03.11.2017 entered

between 17 Trade Unions and the Management of Swadeshi-Bharathi Textiles Mills Limited.'

11. It is pertinent to point out that as per the order dated 01.03.2016 passed by this Court in W.P.No.13121/2016 and later confirmed by the Division Bench of this Court, the appellants are entitled to get Industrial Dearness Allowance (IDA) increments. The said order states that "Industrial Dearness Allowance (IDA) should be granted to all employees of the Mill irrespective of whether they are affiliated with members of the petitioner Trade Union or not from the month of January 2016 as applicable from time to time. Therefore, the appellants sent individual representation before the respondents on 13.10.2018 from grant of IDA increments following the order passed in w.P.No.13121/2016 and the order passed by the Division Bench of this Court in W.A.No.899 of 2016. But without considering the representations, common order dated 19.12.2020 was passed rejecting their claim stating that in pursuant to the order dated 12.07.2017 passed by the Division Bench in W.A.No.899 /2016, 12(3) settlement was entered between Trade Unions and the Management of Swadeshi-Bharati Textiles Mills Limited and as per the said 12(3) settlement, the Trade Union agreed to

withdraw the case and agreed not to claim for increased IDA from 01.01.2015 to 31.03.2017. It is further stated in the order dated 19.12.2020 that in this connection G.O.No.15/DI &C (SW)/S1/2017 dated 15.03.2018 and Gazette Notification was also published to this effect on 15.03.2018 and therefore, the representation of the appellants cannot be acceded to and their claim is not on merits.

12. As per the order passed in W.P.No.13121/2016, the Management was directed to pay IDA increments to all employees of the Mill irrespective of whether they are affiliated with members of the petitioners' Trade Union or not, from the month of January, 2016 as applicable from time to time within a period of eight weeks. The 12(3) settlement dated 03.11.2017 was entered between the Trade Union and Management of Swadeshi Bharathi Textiles Mills Limited and that does not bind on the appellants as they were not parties to the said 12(3) settlement dated 03.11.2017 and they retired from service on various dates between 14.01.2016 to 23.03.2017 itself on account of superannuation on completion of 60 years of age as per the Standing Order 22-A of the Mill. Thus, there is no necessity for the appellants to challenge the 12(3) Settlement dated 03.11.2017 entered between 17 Trade Unions and the

Management of Swadeshi-Bharathi Textiles Mills Limited. The 12(3) settlement entered on 03.11.2017 agreeing to grant IDA increments to those who retired from service during the period from 01.04.2017 to 30.09.2017, ignoring those who retired from service before 01.04.2017 is arbitrary and discriminative in nature.

13. Further, the contention of the learned Government Pleader that one of the appellants namely M.Thangadurai, while he was in service was a member and office bearer of one of the Trade Union and that Trade Union has also signed in the 12(3) settlement and therefore, it binds on all the appellants also cannot be countenanced for the reason that he already retired from service much prior to signing the 12(3) settlement and after retirement the relationship between the workman and Trade comes to an end. Further, the contention of the learned Government Pleader that the Mill has incurred heavy loss and hence, the appellants were denied increased IDA, cannot be countenanced for the reason that the financial implication cannot be ground for non-implementation of the Court order particularly, when it was implemented with regard to other employees are concerned.

14. In view of the above, we are of the opinion that the order passed in W.P.No.4964/2021 dated 20.12.2023 is liable to be set aside and accordingly, the same is set aside insofar as the appellants are concerned. Consequently, the rejection order dated 19.12.2020 passed by the 4th respondent is also set aside. The respondents are directed to grant Industrial Dearness Allowance (IDA) increments to the appellants from the month of January 2016 to till the date of their retirement prevailed at that time by following the interim order passed by this Court in W.P.No.13121/2016 dated 01.03.2016 as confirmed by the judgment passed by the Division Bench of this Court in W.A.No.899 of 2016 dated 12.07.2017. Accordingly, the Writ Appeal stands allowed. No costs.

(J.N.B.,J.) (P.D.B.,J.)
28.06.2024

vsi
Index : Yes / No
Internet : Yes / No

Note: Issue order copy on 3.7.2024

To

1. Union of India represented by
The Chief Secretary to Government,
Government of Puducherry,
Chief Secretariat, Puducherry - 605 001.

2. The Secretary to Government,
   Department of Industrial Development
   (Industrial & Commerce),
   Government of Puducherry,
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J. NISHA BANU, J.
and
P.DHANABAL,J.

vsi

Pre-delivery order in
W.A.No.1119 of 2024

28.06. 2024