M/s. Swadeshi Cotton Mills Co., Ltd., Kanpur

Vs

Rajeshwar Prashad and Ors.

Civil Appeal No. 53 of 1958

(P.B. Gajendragadkar, A.K. Sarkar, K.N. Wanchoo JJ)

14.11.1960

JUDGMENT

GAJENDRAGADKAR, J. -

This appeal by special leave arises from an industrial dispute between the appellant Messrs. Swadeshi Cotton Mills and the respondents, its employees, and the short preliminary question which is raised for our decision is whether an order should not be passed in this appeal in terms of the compromise agreement alleged to have been reached between the appellant and the respondents. It appears that on December 28, 1955, an industrial dispute between the parties was referred by the Government of Uttar Pradesh to the Industrial Tribunal, U.P., Allahabad, for adjudication under sections 3, 4 and 8 of the U.P. Industrial Disputes Act, 1947 (U.P. Act XXVIII of 1947) and in pursuance of the provisions of cl. 11 of G.O. No. U-464(LL) /XXXVI-B-257 (LL) /1954 issued on July 14, 1954. The dispute thus referred was whether the existing rates of wages of jobbers mentioned in the annexure employed in the weaving department of the appellant need any revision; if so, with what details and from what date ? The Tribunal tried this issue and came to the conclusion that no case for revision had been made out by the respondents. Against this decision of the Tribunal the respondents preferred an appeal before the Labour Appellate Tribunal. Their appeal succeeded and the Appellate Tribunal directed that the award of the original Tribunal should be set aside, and that the appellant "shall introduce from the date of reference a uniform rate of two annas in both the old and new sheds irrespective of the number of looms assigned to the line jobbers". It would be noticed that as a result of this decision the existing rates have been revised and the revision has been ordered to take effect retrospectively from the date of reference. It is against this decision of the Labour Appellate Tribunal that the appellant has preferred the present appeal by special leave.

Pending this appeal in this Court the appellant purported to enter into a compromise with the respondents and the terms of the compromise were reduced to writing, and in pursuance of the said compromise an application was made to this Court on February 26, 1958, signed by Mr. Bagla, on behalf of the appellant in his capacity as a Director of the appellant, and Mr. Maqbool Ahmad Khan, for the respondents, in his capacity as the General Secretary of the Suti Mill Mazdoor Sabha, Kanpur. This application set out the material terms of the compromise. One of the terms of the compromise is that the revised rate should take effect not from December 28, 1955, which is the date of reference but from July 1, 1957. Certain other modifications have also been made in the decision under appeal.

Before the appeal could be placed on the Board for passing orders in terms of this compromise an application was made on behalf of some of the respondents alleging that the General Secretary Mr.

Khan had no authority or power to enter into any compromise as a representative of the respondents, and that the compromise alleged to have been entered into by him with the appellant was not acceptable to the respondents. In support of this case the application referred to a resolution passed by the General Council of the Mazdoor Sabha whereby it was declared that no office bearer could conclude an agreement with an employer about an industrial dispute without the consent of the General Council, and reliance was also placed on the relevant provisions in the constitution of the Mazdoor Sabha.

Thereafter the petition for compromise was placed before this Court for hearing on April 10, 1960, and the Court directed that the application for recording compromise as well as the appeal itself should both be placed together for hearing before the Court as soon as the parties file their respective statements of the case. After the statements were filed the appeal and the petition were placed before this Court on May 5, 1960, and the Court by an interlocutory judgment sent two issues to the Tribunal with a direction that the Tribunal should hear the parties on those issues and make its findings thereon. The two issues were : (1) Has the compromise set up by the appellant taken place between the parties; (2) If yes, is the compromise valid ? In pursuance of this order the Tribunal has recorded evidence, heard the parties and made its findings. It has found that the compromise in fact has taken place as alleged in the petition made before this Court in that behalf, and that the said compromise is valid. In dealing with the first question of fact the Tribunal has considered the evidence exhaustively in the light of the background of the dispute between the parties; it has found that negotiations went on between the parties for a fairly long time during which period the parties discussed the pros and cons of the compromise, that during these negotiations Mr. Khan was watchful of the interests of the respondents, that the compromise had been approved by the workmen concerned, that on the whole it is to their advantage and does not at all militate against the accepted principles of industrial adjudication, and what is more it has been acted upon and has not remained a mere paper transaction. It has explained that the opposition to the compromise proceeded substantially from the dispute between Mr. Khan, the Secretary, and Mr. Bajpai, the President, and the Tribunal felt no doubt that the compromise was the result of bona fide attempt on the part of both the parties to settle the dispute amicably in order to create goodwill and co-operation amongst the employer and the employees.

On the question of law raised by the second issue the Tribunal has held that the compromise is perfectly valid. It has considered the relevant provisions of the constitution of this Sabha, the practice prevailing in regard to such compromises and to several agreements of compromise entered into consistently with the said practice. It was urged before the Tribunal that the compromise is invalid under section 6-B of the U.P. Industrial Disputes Act, 1947, as well as section 2(vi)(c) of the Payment of Wages Act, 1936 (Act 4 of 1936). These contentions have been rejected by the Tribunal. In the result the findings recorded on both the issues are in favour of the compromise.

After these findings were received in this Court, the appeal and the compromise petition have now come before us for final disposal. The finding of fact recorded by the Tribunal on the first issue has not been and cannot be challenged before us. It must therefore be taken to have been established that at the relevant time Mr. Khan was the General Secretary of the respondents' Sabha, and as such was entitled to represent them and did represent them during the course of the present adjudication proceedings, and that the compromise reached between him and the appellant is the result of mutual discussions carried on for some time and its terms on the whole are beneficial to the respondents. The practice prevailing in this Sabha and a large number of precedents which are consistent with the said practice indicate clearly that the Secretary of the Union who represents the workmen in industrial disputes has always been authorised and has exercised his authority to settle such disputes

when it was thought reasonable and proper to do so. As we have often indicated it is always desirable that industrial disputes should be amicably settled because such settlement conduces to happy industrial relationship and encourages co-operation between the parties. That is why when industrial disputes are brought before this Court under Art. 136 of the Constitutional this Court generally appreciates attempts made to settle disputes amicably, and in proper cases encourages such settlements. Mr. Jha, for the respondents, however, contends that though amicable settlement of industrial disputes may otherwise be desirable, in law such settlement or compromise is illegal. If we come to the conclusion that compromise of industrial disputes pending an appeal is prohibited by law, or is otherwise inconsistent with such provisions it may be necessary to hold that the present compromise is bad in law however much amicable settlement of industrial disputes may otherwise be desirable. Therefore the question which arises for our decision on the present compromise petition is : Is the contention raised by Mr. Jha correct that the compromise is invalid in law ?

The first point urged by Mr. Jha in support of this argument is that the present compromise is prohibited by section 23 of the Payment of Wages Act. This Act has been passed to regulate the payment of wages to certain classes of persons employed in industry, and there is no doubt that the wages as revised by the Labour Appellate Tribunal in the present case would constitute wages under section 2(vi) of this Act. Section 23 provides that any contract or agreement, whether made before or after the commencement of this Act, whereby an employed person relinquishes any right conferred by this Act shall be null and void in so far as it purports to deprive him of such right. The relevant provisions of this Act require the fixation of wage periods, provide for the time of payment of wages, authorises certain deductions, and permits the imposition of fines only subject to the conditions specified in that behalf. Section 15 of the Act provides for the determination of claims arising out of deduction of wages or delay in payment of wages and penalty for malicious or vexatious claims. Section Prescribes for the making of an application in which such claims can be set up; and section 18 provides for the powers for the authorities appointed under the Act. Mr. Jha contends that the revised wage structure directed by the Labour Appellate Tribunal entitles the respondents to claim the respective amounts there indicated as their wages, and the effect of the impugned compromise is that the respondents are relinquishing a part of their right in that behalf. Mr. Jha contends that in giving up their claim for the retrospective operation of the decision of the Labour Appellate Tribunal for a substantial part of the period the respondents are required to contract themselves out of their legal rights conferred by the award and therefore referable to this Act, and that makes the compromise invalid. This argument is misconceived because it fallaciously assumes that the decision under appeal has become final and that the rights accruing under the said decision would not be and cannot be affected by any compromise. The most significant fact to remember in this connection is that the decision on which the alleged rights are based is itself subject to an appeal before this Court, and in that sense it is not a final decision at all; it is liable to be reversed or modified, and that being so the rights claimable under the said decision are also liable to be defeated or materially affected. In such a case the industrial dispute would undoubtedly be pending before this Court, and it would be idle for Mr. Jha to contend that an attempt to settle such a dispute and not to invite a decision of this Court contravenes the provisions of section 23 of this Act. Just as an industrial dispute could have been settled between the parties either before it was referred for adjudication to the Industrial Tribunal, or after it was referred and before the award was pronounced by the Tribunal, so would it be open to the parties to settle the dispute so long as it was pending either before the Labour Appellate Tribunal or before this Court. The provisions of section 23 of this Act postulate certain definite rights which are not likely or liable to be modified or reversed in any pending judicial proceedings, and since this factor is absent in cases where an appeal is pending before this Court it would not be reasonable to rely on the said provisions and contend

that they in substance prevent or prohibit amicable settlement of disputes.

The other argument urged against the validity of the compromise is based on the provisions of section 6-C of the U.P. Industrial Disputes Act, 1947. This section corresponds substantially to section 19 of the Industrial Disputes Act XIV of 1947. It provides, inter alia, that an award shall in the first instance remain in operation for the period of one year or such shorter period as may be specified therein, and gives the State Government, either on its own motion or on the application of any party bound by the award, shorten the period of its operation, if it is shown that there has been a material change in the circumstances on which the award was based. The argument is that any modification in the award can only be made by adopting the procedure prescribed by section 6-C. In our opinion there is no substance in this argument. Section 6-C undoubtedly confers upon the State Government certain powers to fix the duration of the operation of the award, but there can be no doubt that the section can have no bearing on the powers of this Court in dealing with an industrial dispute brought before it under Art. 136 of the Constitution. The award to which section 6-C refers is an award which has become final in the sense that it is no longer subject to consideration by any Tribunal or Court. So long as an award is pending before a Tribunal or a Court the jurisdiction of the Tribunal or the Court to deal with it in accordance with law is not affected by section 6-C, and the competence of the parties to settle their dispute pending before the Tribunal or the Court is also not affected or impaired by the said section. In other words, what we have said about the argument based on the provisions of section 23 of the Payment of Wages Act applies with equal force to the present argument as well.

Then it is contended that the impugned compromise is a settlement within the meaning of section 2(t) of the U.P. Act and as such it can be executed only in the manner prescribed by the Act. Section 2(t) defines a settlement as one which is arrived at in the course of conciliation proceedings and as including a written agreement between the employer and the workmen arrived at otherwise than in the course of conciliation proceedings when such an agreement has been signed between the parties thereto in such manner as may be prescribed and a copy thereof has been sent to the State Government and the conciliation officer. Rule 5(1) of the U.P. Industrial Disputes Rules, 1957, prescribes the procedure for recording a settlement as defined by section 2(t). It is true that this procedure has not been followed, but it is difficult to understand how section 2(t) or the procedure prescribed by r. 5(1) can have any application to a compromise agreement which has been entered into between the parties pending the appeal in this Court. The compromise in question is intended to be filed in this Court for the purpose of enabling the parties to request this Court to pass an order in terms of the said compromise. The procedure for obtaining such an order which has to be followed is the procedure prescribed by the rules of this Court, just as if a compromise was reached before the Tribunal the procedure to be followed before it would be the procedure prescribed by its rules. Therefore we have no doubt that the compromise in question cannot attract the procedure prescribed by r. 5(1).

The result is that the finding recorded by the Tribunal that the compromise in question is valid is obviously right and must be confirmed. Since it is found that the compromise in fact has taken place and is otherwise valid, we have no hesitation in directing that an order should be drawn in terms of the said compromise in the present appeal.

Order accordingly.

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