SUPREME COURT OF INDIA

Maharashtra State Road Transport Corporation

Vs.

Premlal

C.A.No.1046 of 2007

(S.H.Kapadia and B.S.Reddy,JJ.,)

27.02.2007

JUDGMENT

S.H.Kapadia, J.,

SLP(Civil)No.24066 of 2003

1. Leave granted.

2. A short question which arises for determination in these civil appeals filed by the employer is : whether Clause 49 of 1956 Settlement stood replaced by Clause 19 of 1985 Settlement and by Resolution No.8856 dated 31.8.78 passed by the appellant-Corporation.

3. Appellant-Corporation is a State Road Transport Undertaking incorporated under Road Transport Corporation Act, 1950. Apart from State Transport Employees Service Regulations framed under Section 45 of Road Transport Corporation Act, 1950, the service conditions of the employees are also regulated by Industrial Settlement signed between the Corporation and various trade Unions representing employees. Several demands were raised in 1956 on behalf of the workmen. One such demand was under Item No.49 of the Demand Notice for abolition of Daily Wage System. It appears that large number of workmen were continued for several years in the Corporation on ad-hoc basis. They were paid daily-wages. Therefore, there were unwarranted interruptions and breaks in their service which ultimately resulted in Unions' raising the above demand. Under 1956 Settlement all employees working for 180 days including weekly offs and other holidays continuously, were to be brought on the time scale of pay and they were to be given all the benefits available to the time scale workers. This Settlement was arrived at on 25.4.56. Even after 1956 various settlements were arrived at between the Corporation and its employees. According to the appellant, Clause 49 of 1956 Settlement was cancelled and revised in the Joint Committee Meeting held on 15.4.1978. According to the Corporation, the Joint Committee was empowered to do so by virtue of Clause 9 of 1968 Settlement. According to the appellant-Corporation, in any event the decision of the Joint Committee dated 15.4.78 stood approved by Resolution No.8856 of the Corporation dated 31.8.1978 under which persons in employment of daily-wages as on

31.7.78 and those who were to be employed on daily- wages thereafter were to be appointed on temporary basis in ephemeral vacancies in time scale of pay as from 31.7.78 or thereafter provided they completed aggregate service of 180 days in any one financial year commencing from 1.4.73 onwards. According to the appellant- Corporation, in 1985 a new settlement was arrived at under which absorption of daily rated workmen after completion of 180 days continuous service vide Clause 19 stood included. According to the appellant-Corporation, Clause 49 of 1956 Settlement stood superseded by Clause 19 of 1985 Settlement. On behalf of the workmen the argument put forward was that Clause 49 of 1956 Settlement and Clause 19 of 1985 Settlement operated in different fields and, therefore, there was no question of Clause 49 of 1956 being superseded by Clause 19 of 1985 Settlement. It was also submitted that Joint Committee was not authorized to cancel and revise Clause 49 of 1956 Settlement. It was submitted that Joint Committee was constituted to implement Clause 49 of 1956 Settlement and not to cancel or revise the said clause and, therefore, the Corporation was not entitled to replace Clause 49 of 1956 by Clause 19 of 1985 Settlement.

4. The basic controversy in the present matter, therefore, is the true scope and extent of the above two Clauses, namely, Clause 49 of 1956 Settlement and Clause 19 of 1985 Settlement.

5. Before examining the above two Clauses it may be mentioned that in the present case we are concerned with employees who have been appointed after 31.8.78. This aspect is important because one of the argument advanced on behalf of the Corporation is that Clause 49 of 1956 stood deleted on 15.4.78 pursuant to the decision of the Joint Committee which decision was approved by the Corporation vide Resolution No.8856 dated 31.8.78 and, therefore, in any event Clause 49 of 1956 did not operate after 15.4.78. On the other hand, the workmen contended that even assuming for the sake of argument that the Joint Committee had the authority to revise Clause 49 of 1956 Settlement even then when the Joint Committee cancelled Clause 49 of 1956 Settlement the said clause was replaced by a new clause, accepted by the Corporation under Resolution No.8856, under which it was agreed that persons in employment, casual or on daily-wages, as on the date of the said Resolution, shall be appointed temporarily in ephemeral vacancies in time scale of pay with effect from the date of the Resolution or from the date of their completion of 180 days aggregate service in a financial year; they shall be entitled to the benefits admissible to regular employees on time scale of pay provided they satisfy the conditions prescribed for their entitlement.

6. As stated above the basic controversy in the present civil appeals is : whether Clause 49 of 1956 Settlement stood superseded by Clause 19 of 1985 settlement and whether in any event Clause 49 of 1956 Settlement stood terminated vide Resolution No.8856 of the Corporation dated 31.8.78. At this stage, it may be noted that the controversy arose because a complaint was filed before the Industrial Court at Nagpur Bench in Complaint (ULPN) No.8 of 1992 by one of the employees of the Corporation stating that he was appointed as a daily rated workman on 11.2.88 at the rate of Rs.11.76 per day; that he has been continuously working with the Corporation without any break; that though he was working as a regular employee he was paid wages which had no parity with regular employee; that he was not made permanent in order to deprive him all the benefits of permanency and that he was entitled to be appointed on time scale of pay on completion of 180 days of continuous service in terms

of Clause 49 of 1956 Settlement. In the said complaint after noting the aforestated submissions advanced on behalf of the Corporation, the Industrial Court held, that, as per Clause 49 of 1956 Settlement the workman who was a daily rated workman had put continuous service of 180 days and, therefore, in terms of Clause 49 of 1956 Settlement the complainant was entitled to be appointed on time scale of pay and he was also entitled for all the benefits available to the time scale worker. The Industrial Court gave a declaration vide order dated 27.2.97 that the Corporation had engaged in unfair labour practice under Item No.9 of Schedule IV of MRTU and PULP Act 1971 by not brining the complainant on time scale of pay in terms of Clause 49 of 1956 Settlement. By the said order the Corporation was directed to fix the pay of the complainant in the time scale not from the date of appointment but from 6.1.92 (the date on which the complaint was filed).

7. In order to resolve the dispute we quote hereinbelow Clause 49 of 1956 Settlement, Resolution No.8856 of the Corporation dated 31.8.78 and clause 19 of 1985 Settlement: "Clause 49 of the 1956 Settlement - 49. All employees working for 180 days including weekly off and other holidays continuously will be brought on the time scale of pay and will get all the benefits available to time scale workers. Any absence on account of authorized leave will not be treated as break for the above purpose and will not also count for service.

Resolution No.8856 dated 31.8.1978 Item No.17:

Absorption on time scale of employees working on daily-wages from 1st April 1973 onwards.

Item No.18:

Working hours and wage structure of daily rated employees. (Items 17 and 18 were considered together).

Resolution 8856:

I. Item 17 (regarding absorption on time scale of employees working on daily-wages from 1st Aril 1973 onwards) and item 18 (regarding giving retrospective effect from 1st January 1977 to the decision of the Joint committee regarding the revision of the daily rate of wages taken at its meeting held on 5th August 1978) being disagreed items of the Joint Committee, the Corporation gave a personal hearing to Sarvashri Bhau Phatak, Bhingardeve and Choube, General Secretaries the Maharashtra S.T. Kamgar Sanghatana, Maharashtra S.T. Workers' Federation and Maharashtra Motor Kamgar Federation, respectively, in these matters. They explained in regard to item No.17 that the persons working on daily-wages are denied certain essential and reasonable facilities provided to the employees on time scale and it was necessary to do justice to them.

II-A. Thereafter the Corporation considered the two demands and decided as under:-

(1) The present Clause No.49 in the Settlement dated 28th May 1956 shall stand cancelled.

(2) The persons in employment casually or on daily-wages as on the date of this Resolution as also those who may this be employed thereafter shall, if they have already completed or will complete an aggregate service of 180 days in any one financial year commencing from 1st April 1973, be appointed temporarily in ephemeral vacancies in time scale of pay of the post in which they were appointed with effect from the date of this Resolution or from the date of their completion of 180 days aggregate service in a financial year as the case may be, and shall also be entitled from the relevant date to the following benefits admissible to regular employees on time scale of pay provided they satisfy all the conditions prescribed for their entitlement:-

(i) Uniforms,

(ii) Washing allowances,

(iii) Medical facilities,

(iv) Family free pass, and

(v) Periodical increments

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(3) The Corporation made it clear that the absorption of such persons who are granted the above benefits, in regular vacancies will be strictly according to their turn and will be subject to the normal rules and orders in this respect.

(The above decision being in modification of the settlement would need the approval of Government).

II.B. The Corporation directed that the pros and cons of the question of paying the persons engaged on work-charged establishment/nominal muster roll according to the time scale rate of pay and extending the other benefits (as mentioned in II.A(2)) to them should be examined with reference to the working conditions, existing rate of payment, etc. and a detailed note in the matter should be submitted to the Corporation, preferably at its next meeting.

III. The revised rate of daily-wages as worked out on the basis of 24 working days should be given effect to from 1st January 1977 i.e. the date from while the Second and the Fourth Saturdays in a month were observed as non-working days for the employees in the Central Office and the Regional Offices.

Clause 19 of 1985 Settlement

19. Absorption of day-rated working after completed service of 180 days –

(i) The absorption of such workmen be made as at present, i.e., subject their selection at least once by competent selection committee and availability of clear vacancies;

(ii) As far as possible no appointment except in the category of driver will be made in future without selection of a workmen by the Committee.

(iii) All past cases of daily wagers who are eligible for absorption will be reviewed on the merits of each individual case and as per the laws on the subject.

(iv) As regards surplus staff viz., Watchmen, the information will be called for from the divisions and the cases after examination will be put up to the Corporation Board for its directives."

8. According to the impugned judgment Clause 49 of 1956 Settlement and Clause 19 of 1985 Settlement operated in different fields and consequently Clause 19 of 1985 Settlement did not supersede Clause 49 of 1956 Settlement. Broadly, we agree with the decision of the High Court. In our view, there is a difference between the status of an employee on one hand and the benefits accruing to the workmen on the other hand. As stated above, in 1956 the Union presented to the Corporation various demands. One of the demands was abolition of the daily-wage system. Under Clause 49 of 1956 the Corporation agreed to give to the workmen all the benefits available to a time scale worker. On the other hand, under Clause 19 of 1985 Settlement, subject to a worker fulfilling the eligibility criteria, the Corporation agreed to absorb daily rated workmen who completed 180 days of service. Therefore, the High Court was right in holding that the above two Clauses operated in different fields and, therefore, there was no question of Clause 19 of 1985 Settlement superseding Clause 49 of 1956 Settlement. Under Clause 49 of 1956 Settlement, the Corporation agreed to provide benefits to employees working for 180 days continuously to be given all benefits available to time scale workers.

9. The grievance of the workmen in the present case is that till today the Corporation has not given to them the benefits available to time scale workers. In the present case, they are not seeking absorption. In the present case, they are seeking wages payable to time scale workers. The topic of absorption is covered by Clause 19 of 1985 Settlement. It states that in all past cases all daily wagers who are eligible for absorption will be given absorption subject to their selection by the competent Select Committee and subject to existence of clear vacancies. This aspect was not there in Clause 49 of 1956 Settlement. Therefore, the High Court was right in holding that the two clauses operated in different fields. We agree with this conclusion of the High Court in the impugned judgment. In the circumstances, in the present case we are not required to examine the authority of the Joint Committee to cancel Clause 49 of 1956 Settlement. In the circumstances, in the present case we are not required to

examine the question as to whether the workmen herein are entitled to be absorbed under Clause 19 of 1985 Settlement. These two aspects shall be a matter of separate adjudication. We do not wish to go into these aspects. Suffice it to state that Clause 19 of 1985 Settlement and Clause 49 of 1956 Settlement operate in different fields and, therefore, there is no question of Clause 19 of 1985 superseding Clause 49 of 1956 Settlement.

10. However, as stated above, we are required also to consider the effect of Resolution no.8856 dated 31.8.78 passed by the Corporation under which Clause 49 of 1956 Settlement stood cancelled. It is true that the Union had agreed to the cancellation of Clause 49. However, the Union had also placed their demand for substitution of Clause 49 and the Corporation agreed to that substitution vide Resolution No.8856 passed by the Corporation under which persons in employment casually or on daily-wages as on the date of the Resolution as also those who were to be employed thereafter, were entitled to be appointed temporarily in ephemeral vacancies in the time scale of pay on completion of 180 days aggregate service in a financial year. Under the said Resolution they were entitled to the benefits admissible to regular employees on time scale of pay subject to their satisfying the conditions prescribed for the entitlement. As stated above, in the present case the workmen are not seeking absorption. They are seeking benefits admissible to regular employees on time scale of pay. In the present case, the workmen seek benefits admissible to those employees on time scale of pay. In the present case, the respondent-workmen are in service after 31.8.78. In the circumstances, notwithstanding cancellation of Clause 49 of 1956 Settlement the workmen herein would be entitled to all benefits admissible to regular employees working in the Corporation on time scale of pay provided they satisfy the eligibility criteria of having worked for aggregate service of 180 days and subject to their satisfying all the conditions prescribed for their entitlement in terms of the above Resolution No.8856 read with Clause 19 of 1985 Settlement.

11. In the present case, as stated above, the workmen are not seeking absorption. The workmen have reserved their rights to seek adjudication in that regard in a separate forum. Similarly, in the present case, we are not required to go into the question of validity of Resolution No.8856 dated 31.8.78 since in our view Clause 49 of 1956 Settlement and Clause 19 of 1985 operated in two different fields. The question of validity of Resolution No.8856 is a matter of separate challenge before a different forum. We express no opinion in that regard. In the present case, we are also not required to quantify the liability of the Corporation. We are deciding this matter only on interpretation of above two Clauses. Accordingly, the civil appeals filed by the Corporation are dismissed with no order as to costs.