SUPREME COURT OF INDIA

Vijay Kumar

Vs.

Whirlpool of India Ltd.

C.A.No.5787 of 2000

(Arijit Pasayat and P.Sathasivam JJ.)

22.11.2007

JUDGMENT:

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the judgment of the Division Bench of the Punjab and Haryana High Court dismissing the Letters Patent Appeal filed by the appellants questioning the legality of the judgment rendered by a learned Single Judge dismissing the writ petition.

2. The controversy lies within a very narrow compass. The appellants were employees of respondent No.1 (hereinafter referred to as the employer). A voluntary retirement scheme was floated by the employer on 26.5.1995. Undisputedly, appellants and 125 others opted to be covered by the scheme. They were paid the amounts required to be paid under the scheme. Subsequently, a settlement was arrived at between the management and the workmen through the registered Union on 13.10.1995. The settlement was in terms of Section 12(3) of the Industrial Disputes Act, 1947 (in short the Act). 143 persons including the present appellants raised a dispute on two issues; one relating to the age of retirement and the other relating to monetary benefits. According to them, the settlement arrived at on 13.10.1995 also covered their cases and they were entitled to higher amounts. The claim was made by an application under Section 33-C(2) of the Act. The Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Faridabad (hereinafter referred to as the Tribunal) held that the claimants were entitled to the benefits flowing from the settlement and that the claimants were entitled to be continued in service by treating age of retirement to be 58 years. The employer filed a writ petition before the High Court. Learned Single Judge held that the view of the Tribunal is unsustainable. It was held that Section 33-C(2) of the Act does not apply to the facts of the case and

no benefit was available under the settlement. The essential conclusions of the learned Single Judge are as follows:

What is the position herein? A settlement was arrived at. At best, the Labour Court could interpret the said settlement and if there was anything more due, the benefit could be given to the workmen but the Labour Court could not interpret or go into the controversy of fraud, if any, because on basis of fraud in execution the decree cannot be modified. Similarly, when there was a basic controversy about the age of retirement, it was not pertaining to a pre-existing right. The award of the Labour Court in this regard, therefore, cannot be sustained.

3. Eighteen persons i.e. the present appellants filed Letters Patent Appeal which was dismissed as noted above.

4. In support of the appeal, learned counsel for the appellants submitted that stress in the settlement was on permanent workmen on the rolls of specified divisions on 30.6.1995. According to the appellants all of them continued to be on rolls beyond 30.6.1995 and, therefore, they are entitled to be benefits.

5. In response, learned counsel for the respondent No.1- employer submitted that at the point of time the settlement was arrived at, the appellants were not existing workmen. In addition, the benefits are relatable to future production targets and the instalments of financial benefits are given only on attainment of specified production target. The stand of the appellants of continuance beyond 30.6.1995 is also disputed on the ground that learned Single Judge has referred to various documents to conclude that none of the appellants were in fact on the rolls of the employer as on 30.6.1995. The illustrative case of one Jeet Singh as noted by the High Court was referred to. It was also submitted that in order to get over the factual position the basic case before the Tribunal was alleged fraud purported to have been practiced by the employer. The High Court has categorically found that there was no element of fraud. Reference is made to para 7 of the application filed under Section 33-C(2) of the Act.

6. Learned counsel for the appellants submitted that the plea relating to age and the alleged fraud are not pressed. The only plea is relatable to the claim flowing from the settlement.

7. Few portions of the settlement which throw considerable light on the controversy need to be noted:

0.1 Coverage

All paras of this Settlement shall cover all permanent workmen, except casuals, of Kelvinator of India Ltd., Faridabad and Ballabgarh on the rolls of (its various specified divisions) as on 30.6.1995, (hereinafter called eligible workmen).

0.6 Financial Benefits

The parties decided to grant the undernoted financial benefits to the workmen:

Increase in Basic Wage

Period Amount

1.7.95 Rs.800/-

1.7.96 Rs.400/-

1.7.97 Rs.300/-.

The amount of financial benefit shall be added to the concerned workmans basic wage as on 30th June, 1995 and the total thereof would be the revised basic wage of that workman. The second and third instalments of the financial benefits shall be given only on attainment the specified production target and the current 15 per cent special worker allowance shall be added to the workmens basic wage from 1.10.1995.

8. A bare reading of the above quoted portion clearly shows that the settlement covered only cases of existing employees. The question of any erstwhile workman attaining specified production target does not arise.

9. At this juncture, it would also be appropriate to take note of what has been stated by this Court in some cases.

10. In A.K. Bindal v. Union of India (2003 (5) SCC 163) it has been stated as under:

34. This shows that a considerable amount is to be paid to an employee ex gratia besides the terminal benefits in case he opts for voluntary retirement under the scheme and the option is accepted. The amount is paid not for doing any work or rendering any service. It is paid in lieu of the employee himself leaving the services of the company or the industrial establishment and foregoing all his claims or rights in the same. It is a package deal of give and take. That is why in the business world it is known as golden handshake. The main purpose of paying this amount is to bring about a complete cessation of the jural relationship between the employer and the employee. After the amount is paid and the employee ceases to be under the employment of the company or the undertaking, he leaves with all his rights and there is no question of his again agitating for any kind of his past rights with his erstwhile employer including making any claim with regard to enhancement of pay scale for an earlier period. If the employee is still permitted to raise a grievance regarding enhancement of pay scale from a retrospective date, even after he has opted for Voluntary Retirement Scheme and has accepted the amount paid to him, the whole purpose of introducing the scheme would be totally frustrated.

11. In CEAT Ltd. V. Anand Abasaheb Hawaldar and Ors. (2006 (3) SCC 56) it has been held as under:

10. According to learned counsel for the appellant, a complaint of unfair labour practice can be made only by the existing employees. Under clause (5) of Section 3 of the Act the expression employee only covers those who are workmen under clause (s) of Section 2 of the Industrial Disputes Act, 1947 (in short the ID Act). The expression workman as defined in clause (s) of Section 2 of the ID Act relates to those who are existing employees. The only addition to existing employees, statutorily provided under Section 2(s) refers to dismissed, discharged and retrenched employees and their grievances can be looked into by the forums created under the Act. In the

instant case, the complainants had resigned from service by voluntary retirement and, therefore, their cases are not covered by the expression workman. On the factual scenario, it is submitted that after the 337 employees had accepted VRS-I, others had raised disputes and had gone to Court. Order was passed for paying them the existing salary and other emoluments. This went on nearly two years and, therefore, with a view to curtail litigation a Memorandum of Understanding was arrived at in 1994. This basic difference in the factual background was not noticed by either the Industrial Court or the High Court.

12. In U.P. State Road Transport Corporation v. Birendra Bhandari (2006 (10) SCC 211) it has been stated as under:

7. The benefit which can be enforced under Section 33-C(2) is a pre-existing benefit or one flowing from a pre-existing right.

8. In the case of State Bank of India v. Ram Chandra Dubey & Ors. (2001 (1) SCC 73), this Court held as under:

"7. When a reference is made to an Industrial Tribunal to adjudicate the question not only as to whether the termination of a workman is justified or not but to grant appropriate relief, it would consist of examination of the question whether the reinstatement should be with full or partial back wages or none. Such a question is one of fact depending upon the evidence to be produced before the Tribunal. If after the termination of the employment, the workman is gainfully employed elsewhere it is one of the factors to be considered in determining whether or not reinstatement should be with full back wages or with continuity of employment. Such questions can be appropriately examined only in a reference. When a reference is made under Section 10 of the Act, all incidental questions arising thereto can be determined by the Tribunal and in this particular case, a specific question has been referred to the Tribunal as to the nature of relief to be granted to the workmen.

8. The principles enunciated in the decisions referred by either side can be summed up as follows:

Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33-C(2) of the Act. The benefit sought to be enforced under Section 33-C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33-C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner.

Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made. To state that merely upon

reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages."

13. Looked at from any angle, this appeal is without merit, deserves dismissal which we direct. Costs made easy.