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Court : Mumbai

Decided On : Apr-04-1996

Reported in : 1996(3)BomCR643; (1998)IIILLJ910Bom

Judge : G.R. Majithia and ;J.K. Chandrashekhara Das, JJ.

Acts : Industrial Disputes Act, 1947 - Sections 9A and 33C(2)

Appeal No. : Writ Petition No. 80 of 1994

Appellant : Tata Consulting Engineers and Associates Staff Union

Respondent : Tata Consulting Engineers and ors.

Judgement :

ChandraShekhara Das, J.

1. The order of the 12th Labour Court Bombay, dated 26.2.1993 is under challenge in this petition.

2. The petitioner-Union filed an application under Section 33-C(2) of the Industrial Disputes Act, 1947 claiming overtime wages which has been rejected by the Labour Court. The facts emerging in this dispute are stated by the Industrial Court in para 7 of its judgment as under :-

'7. In the present case admittedly, it is undisputed that on 27.2.1985 Tata Consulting Employees Union, i.e., the majority union entered into an agreement with the opponent inter alia providing for 5 days' week with 38 3/4 hours working in a week and the said agreement has been ratified by majority of the workmen by signing the Memorandum of Settlement, and in pursuance of the said settlement working hours in the opponent company have been changed from '9 a.m. to 5 p.m. to 9 a.m. to 5.15 p.m.' with effect from 1.3.1983. The applicant has challenged the change in the working hours and the settlement in the present application...'. The petitioner's main grievance before the Industrial Court was that the settlement arrived at between the 1st respondent and the Tata Consulting Employees Union by virtue of which a 5-days-a-week working was introduced, which was prevailing in company till 1968, and consequently, without enhancing the total number of working hours of a week, the hours of working of a day has been modified as stated in the statement of facts extracted above. The petitioner contended that that settlement was not binding on it even though the advantage of reduced working days in week could be enjoyed and therefor the extra 15 minutes of work which they are made to work in a day attracts the over-time allowance under the existing rules and therefore the denial of over-time allowance gives a cause of action for a petition under Section 33-C(2) of the Act.

3. Mr. Deshmukh, learned counsel for the petitioner, submits that even though a union is not accepting a settlement entered into between the employer and another union and though deriving some benefits under that settlement, it is entitled to challenge that settlement. He further submits that the change of working hours in a day without changing total hour of work is a change in the conditions of service which cannot be done without, issuing the notice under Section 9A of the Industrial Disputes Act and, therefore, the non-issuance of such a notice under Section 9A is illegal. Further he submits that the settlement arrived at changing the service conditions without issuing the notice under Section 9A will not be a settlement at all in the eye of law. Therefore, the settlement is not binding on the petitioner-union. Another contention raised by the learned counsel is that as per the service conditions, over-time allowance is admissible and if an employee is made to work over and above the prescribed number of hours in a day by implementing the settlement as aforesaid, it contravenes the right of the members

of the a petitioner-union. He further submits that a supervening factor has been introduced by a settlement over the existing rights of claim for the over-time allowance. He submits that in these circumstances, and application under Section 33-C(2) of the Industrial Disputes Act is maintainable to enforce the right.

4. A very elaborate order has been passed by the Industrial Court meeting all the arguments of the petitioner-Union. We find no error in the order warranting interference by this Court. There can be no quarrel with the propositions argued by Mr. Deshmukh in this case that the settlement which is entered into between the respondent and the other union is not binding on the petitioner-union and that the respondent cannot thrust upon the conditions of the settlement on the Union which is not a party to the settlement. All these propositions argued by learned counsel for the petitioner have no relevance to the controversy which has arisen in this case. The only question that arises in this case is, as is rightly pointed out by the Industrial Court, that as to whether petition under Section 33-C(2) is maintainable on any of the legal grounds as agitated and argued by the learned counsel for the petitioner. None of the grounds urged is relevant in this case. Even though the petitioner-Union has got various rights to question the validity of the settlement, the claim put forward by the petitioner-Union before the Industrial Court under Section 33-C(2) of the Act is not germane. The petitioner has tried to persuade us by citing various decisions of the Supreme Court, viz. : (1978)IILLJ22SC and AIR 1991 S.C. 1554 but none of them applies to the context. He also invited our attention to the various provisions of the Industrial Disputes Act. As stated earlier, none of the arguments and the decision cited is germane to the actual question involved in this case. The Industrial Court also did not question the right of the petitioner to challenge the settlement. The Industrial Court also confined itself, according to us very rightly, only took the jurisdiction of the Court to entertain the petition under section 33-C(2).

5. Learned counsel for the respondent has submitted that the petitioner cannot, on the one hand, enjoy the fruits of the settlement and, on the other, assail the settlement. For this proposition, the learned counsel has cited a decision of this Court reported in 1994 2 CLR 203 Tata Press Ltd. v. Tata Press Employees' Union and Ors. Where this Court has held in para 4 that -

'There cannot be debate about the correctness of the claim, but the employees cannot insist that they will sign the undertaking as provided by the settlement under protest and should get only benefits thereunder.'

The arguments of the learned counsel for the petitioner is that the members of the petitioner-Union are not bound to work 15 minutes more after 5 O'clock but for the settlement in question. As we have pointed out earlier, if they are not legally bound to work 15 minutes more beyond 5 O'clock, they can certainly challenge that clause but we are at a loss to understand how and over-time allowance claim under Section 33-C(2) is maintainable, in such circumstances. As is will settled, Section 33-C(2) is only for computing the dues that an employee is entitled in law. Jurisdiction under Section 33-C(2), as has been repeatedly held by the Apex Court, does not extend to the adjudication of any right which is claimed by the employee.

6. For the reasons stated above, we find no reason to interfere with the order passed by the Court below. The petition fails and is dismissed. Rule is discharged.

7. In the circumstances of the case, there will be no order as to costs.