Keltron Controls Vs. the Workmen of Keltron Controls

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Court : Kerala

Decided On : Sep-04-2003

Reported in : [2004(101)FLR49]; 2004(1)KLT509; (2004)IILLJ167Ker

Judge : R. Rajendra Babu, J.

Acts : Industrial Disputes Act, 1947 - Sections 2A

Appeal No. : O.P. Nos. 2331/98 and 31857/99

Appellant : Keltron Controls

Respondent : The Workmen of Keltron Controls

Advocate for Def. : P. Ramakrishnan,; M.V. Joseph and; M.J. Rajasree, Ad

Advocate for Pet/Ap. : T.P. Kelu Nambiar, Sr. Adv. and; M. Gopikrishnan, Adv.

Judgement :

R. Rajendra Babu, J.

1. The common question that had arisen for consideration was whether a settlement entered into between the employer and the employees represented by the unions otherwise than in the course of a conciliation proceedings and where a copy of the settlement had not been forwarded to the Government and the Conciliation Officer was enforceable under law.

2. A settlement was entered into between the Keltron Controls, Aroor, with the unions on 5th December, 1989. The above settlement provided for the regularisation of 11 workmen with J.T.I., qualifications who were taken for training on completion of their training period and 3 expeditor trainees. Further it provided for absorption of certain canteen workers to the regular service of the company as and when vacancies arose. As the management did not comply with the above terms of settlement, the following industrial disputes were raised and were referred to the Industrial Tribunal, Alappuzha as I.D. 13/93 for adjudication:

'1. Whether the eleven I.T.I., qualified employees and 3 expeditor trainees were entitled to regularisation.

2. Whether the canteen workers and construction workers are entitled for recruitment as per agreement, dated 5th December, 1989.'

The Tribunal after considering the entire evidence and circumstances held that the settlement was not enforceable under the law, but it directed the management to regularise them in their employment but without backwages. The relevant portion of the award reads:

'This Tribunal cannot hold that ail the workmen concerned are legally entitled for regularisation in service. But the management should find some retribution for the sin committed by them. They can very well seek required permission or relaxation from the Government in order to regularise the services of these workmen concerned in the appropriate places. And they will have to do this as a special case because they are bound to compensate for the irregularity committed by them while entering into agreement the terms of which are not at all enforceable in the eye of law. The top functionary in the KELTRON who was instrumental in committing these types of irregularities could continue in service. Only the future of the workmen concerned was in stake. With these observations I pass this award directing the management to take appropriate steps for the regularisation of workmen concerned in this dispute within three months from the date of publication of the Award by the Government. On account of such regularisation for no monetary benefits of the past period, the workmen concerned will be eligible. But they will be entitled for all kinds of service benefits including fixation of pay

from the respective date on which they were agreed to be absorbed in Ext.W1.'

Both the employer as well as the employee were aggrieved by the above finding. The employer KELTRON Controls filed O.P. 23313/98 whereas the unions challenged the same by filing O.P. 30857/99.

3. Heard the learned Counsel appearing for both sides and also the learned Government Pleader.

4. The learned Counsel appearing for the employer argued that the settlement between the management and the unions was not enforceable in law as a copy of the settlement was not forwarded to the Government and to the Conciliation Officer as contemplated by law and as such the above settlement would not come within the definition of 'settlement' under Section 2(p) of the Industrial Disputes Act. The definition of 'settlement' under Section 2(p) of the Industrial Disputes Act reads:

''Settlement' means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such a manner as may be prescribed and a copy thereof has been sent to an Officer authorised in this behalf by the appropriate Government and the Conciliation Officer.'

Admittedly the settlement, dated 5th December, 1989 was not arrived at in the course of a conciliation before the Conciliation Officer. There was no case for either party that a copy of the above settlement was forwarded to the Government and the Conciliation Officer as contemplated by law. In order to be a settlement as defined under Section 2(p) of the Act, a copy of the above settlement should have been forwarded to the Government and the Conciliation Officer and due to the non-compliance of the above statutory requirement, the settlement cannot have the binding force of a settlement under the Act. The learned Counsel for the company further submitted that in view of Rule 59(4) of the Kerala Industrial Disputes Rules, a settlement will have to be in the prescribed form and it has to be forwarded to the Government and the Conciliation Officer by the employer and the

employee jointly. Rule 59(4) of the Kerala Rules corresponds to Rule 58(4) of the Central Rules. The Supreme Court in Workmen of Delhi Cloth and General Mills Ltd. v. The Management of Delhi Cloth and General Mills Ltd. (1969 (3) SCC 302) held that for being a valid and binding settlement, the provisions of the statute and the rules are to be strictly adhered. It was held:

'This sub-section for its proper construction must be read with the other sub-sections and the relevant rules, in the light of the definition of 'settlement' as contained in Section 2(p) of the Industrial Disputes Act. 'Settlement' as defined therein means settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to the appropriate Government and the Conciliation Officer.'

It was further held:

'These rules thus appear to us to have full force of law of which judicial notice has to be taken. It was therefore incumbent on the Tribunal to satisfy itself that the settlement relied upon by the respondent in support of the plea of legality of the reference, which vitally affected its jurisdiction, was in accordance with the provisions of both Industrial Disputes Act and the relevant statutory rules.'

The learned Single Judge of the Delhi High Court in The Management, The Co-operative Store Ltd. v. Ved Prakash Bhambri (1989 Lab. IC 289) held:

'R.58 of the Industrial Disputes (Central) Rules (1957), and Form 'H' have to be strictly followed before a settlement which has been arrived at between the employer and the workman otherwise than in the 'course of conciliation proceeding could be considered valid.'

The above decisions would reveal that in order to be a settlements defined under Section 2(p) of the Industrial Disputes Act, the settlement should have been in Form H and a copy of the same should have been sent to the Government and to

the Conciliation Officer jointly by the employer and the employee and the non-compliance of the statutory requirements would render the above settlement unenforceable by law. The Tribunal also had found that the copy of the settlement was not forwarded to the Government and the Conciliation Officer and it was not in the proper form also. Hence the above settlement was not enforceable under law.

5. Even after entering such a finding that the settlement was not enforceable under law, the Tribunal directed the management to comply with the terms of the settlement which was not enforceable by law. The above approach made by the Tribunal was totally inappropriate and without any jurisdiction. Hence the direction issued to the management for regularisation of the employees in pursuance to an unenforceable settlement is liable to be set aside.

6. The learned Counsel for the unions submitted that the settlement was arrived at between the management and the unions, though the statutory formalities had not been complied with, yet it was enforceable under law being a continuation of the earlier settlement. The above terms regarding the regularisation of the employees was a new settlement and it was not part of an earlier settlement and as such the above argument cannot be accepted. Being an independent settlement not complying with the statutory formalities, it cannot be enforced under the provisions of the Industrial Disputes Act. Hence the employees are not entitled to the protection of the above settlement and O.P. 30857/99 was liable to be dismissed.

In the result O.P. 23313/98 is allowed. The order of the Industrial Tribunal in I.D.13/93 directing the management to regularise the employees is set aside and the employees are found not entitled to enforce the terms of the above agreement dated 5th December, 1989. O.P.30857/99 shall stand dismissed.