

i.M. Patel and ors. Vs. Chairman, Oil and Natural Gas Commission and ors.

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Court : Gujarat

Decided On : Aug-28-2001

Reported in : (2002)IIILLJ826Guj

Judge : Dharmadhikari, C.J. and; Ravi R. Tripathi, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 2

Appeal No. : S.C.A. No. 5166/1982

Appellant : i.M. Patel and ors.

Respondent : Chairman, Oil and Natural Gas Commission and ors.

Advocate for Def. : Rajni Mehta, Adv.

Advocate for Pet/Ap. : S.K. Bukhari, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

1. The present petition is filed challenging the memorandum of agreement arrived at between the representative union, that is, respondent No. 7, and ONGC under Section 18(1) read with Section 2(p) of the [Industrial Disputes Act, 1947](#) and Rule 58(4) of the Industrial Disputes (Central) Rules, 1957. The grievance is that the petitioners, who were serving as Assistants, Grade-III, with the ONGC and were

thereafter, promoted to the post of Assistants, Grade-II, with effect from various dates and then, came to be promoted to the post of Assistants, Grade-I, from different dates, are getting less pay. The contention raised by the petitioner is that other set of employees under the aforesaid agreement were given allowance to their basic pay and thus, they are getting higher pay than the present petitioners though the present petitioners are senior to these employees.

2. An affidavit in reply is filed on behalf of respondents Nos. 1 and 2 wherein contentions raised by the petitioners are replied. It is stated that the present petition is not maintainable in view of the fact that the payment made to other employees is on the basis of the Memorandum of Settlement arrived at between the parties under Section 2(p) of the Industrial Disputes Act. It has a statutory force and it is binding on all employees, therefore, it cannot be challenged by the petitioners. More particularly, when the parties have already acted upon the same and have implemented it.

3. It is further stated in affidavit in reply that there are justifiable grounds for the payment in question. It is stated in paragraph 3 of the affidavit in reply that the employees working in Central Workshop are required to work for 8 hours per day while the petitioners, who are working at other offices, are required to work only for 6 hours per day. It is also set out that earlier in the year 1967, a memorandum of Settlement was arrived at between the representative union and the ONGC for the technical staff working in Baroda Central Workshop, to grant allowance known as 'Baroda Central Workshop Allowance'. Thereafter, in the year 1976, a Memorandum of Settlement was arrived at between the parties under Section 2(p) of the I.D. Act. Thereafter, at the time of revision of pay scale in the year 1975, the workshop allowance was decided to be abolished, but, with a view to see that the existing employees are not deprived of the said benefit, it was decided that an amount equivalent to the workshop allowance be merged in the pay of the employees in the revised pay scale so that none of the employees, who were getting the said allowance, are at disadvantage on account of the abolition of the workshop allowance. It is also stated in the affidavit in reply that thereafter, there was a demand from the representative union that non-technical staff working in the Central Workshop should also be given the benefit of workshop allowance and in

the year 1980, a Memorandum of Settlement was arrived at between the representative union, that is, Oil and Natural Gas Commission Employees Mazdoor Sabha, and the ONGC. The said settlement was also under Section 2(p) of the I.D. Act. The non-technical staff were also allowed the benefit of merger of an amount equivalent to the workshop allowance in the pay on the same terms. It was pointed out that under the same settlement, it was agreed, by one of the terms which was at serial No. 4, that because of the merger of the workshop allowance in the pay under that settlement, no step up of pay of any employee will be allowed, as a result of the fixation of the pay. It is the case of ONGC that the said settlement is still binding and operative and it has not been terminated as provided under the provisions of the I.D. Act, 1947.

4. It is also stated in the affidavit in reply that the petitioners have never worked in Baroda Central Workshop at any point of time and therefore, they are not entitled to get the benefit of the aforesaid settlement. It is also submitted that as they are not governed by the said settlement, they are not entitled for the benefits of the same. It is submitted that on that ground alone, the case of the petitioners and respondents Nos. 3 to 6 is not comparable at all. It is also submitted that respondents Nos. 3 to 6 are forming a different class on account of their working conditions and on account of their place of work. It is also submitted that the settlement is not contrary to the Oil and Natural Gas Commission (Pay and Allowances) Regulations, 1972 as they both operate in different fields.

5. The affidavit in reply also explained as to why the benefit of Clause 7(vii-a) of the Oil and Natural Gas Commission (Pay and Allowances) Regulations 1972 is not available to the present petitioners. Lastly, it was submitted that in case, the Court comes to the conclusion that the Memorandum of Settlement, a copy of which is produced at Annexure-D is illegal or ultra vires, then the effect of the same would be that the persons who had got the benefit of merger of workshop allowance in pay so far under the said Memorandum of Settlement will be required to pay back to ONGC the monetary benefit taken by them to which ONGC will be legally entitled to, which will result into a monetary loss to large number of employees at the instance of few petitioners who are not similarly situated.

6. Having given a thoughtful consideration to the submissions made in the affidavit in reply, the present petition is required to be dismissed because the petitioners are not able to establish that the petitioners and respondents Nos. 3 to 6 are similarly situated; that the petitioners are entitled to get the benefits under the Memorandum of Settlement under Section 2(p) of the I.D. Act; and it will not be in the interest of industrial peace to disturb the settlement, which is otherwise legal and proper and has remained operative so far.

7. In the result, the petition fails and the same is dismissed. Rule is discharged. No order as to costs.

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