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HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

HON'BLE MR. JUSTICE ARUN BHANSALI

S.B. Civil Writ Petition No. 4535/2021; 30/03/2022

Laxman v. State of Rajasthan

Industrial Disputes Act, 1947; Section 18(1) - Rajasthan Industrial Disputes Rules, 1958; Rule 2(p), 58, 75 - Settlement between employer and workmen must be sent to the Prescribed Authorities for scrutiny and entered in the register of settlement maintained by the conciliation officer. In the absence of compliance of this condition, the settlement cannot be said to be binding on the parties.

For Petitioner(s): Mr. M.A.Siddiqui. Mr. Kanish Singhvi.

For Respondent(s): Ms. Abhilasha Kumbhat. Mr. Ravi Panwar.

ORDER

These writ petitions have been filed by the petitioners on 9/3/2021 except Writ Petition No. 2602/2021 which has been filed on 8/2/2021, seeking direction to the respondents to revise pay of the petitioners while considering their date of initial appointment and provide them semi-permanent and permanent status w.e.f. completing 02 years and 10 years from the date of initial appointment, grant consequential benefits w.e.f. the date they are made semi-permanent and permanent and grant benefit of selection grade at the end of 9, 18 and 27 years of service by considering their date of initial appointment along with arrears and consequential benefits.

The petitioners, who are very low paid employees working on the post of Beldar/Coolie with the Mahi project, were appointed in the 1980s. However, their services came to be terminated by the respondents, which resulted in the petitioners approaching the authorities under the provisions of Industrial Disputes Act, 1947 ('the Act, 1947'). On a reference being made to the Labour Court, the same came to be answered in favour of the petitioners - workmen by award dated 22/3/1999, wherein, they were directed to be reinstated with 50% back wages. Further direction was given to consider the services of the workmen as continuous.

The Award dated 22/3/1999 was challenged before this Court, whereby, the Award came to be modified to the extent that 106 workmen shall be entitled for 50% of back wages from the date of reference till the date of Award along with interest from the date of reference.

Against the said judgment of learned Single Judge, cross appeals were filed before the Division Bench, wherein, the Division Bench affirmed the judgment of learned Single Judge modifying the award to the extent that 106 workmen shall be entitled to 50% of back wages from the date of reference till the date of Award together with interest.

Against the Division Bench judgment dated 19/7/2000, Special Leave Petition filed by the State before the Hon'ble Supreme Court came to be dismissed on 29/10/2001.

In the meanwhile, in a writ petition being CWP No. 1921/1999 filed seeking implementation of the Award passed by the Tribunal, on 20/7/2000 a learned Single Judge directed implementation of the Award on or before 30/11/2000.

On 29/8/2005 (Annex.5), the Executive Engineer, Mahi Dam Division - I, Mahi Project, Banswara passed an order based on the Award as upheld by this Court and an agreement dated 17/5/2005 entered into between the Chief Engineer, Mahi Project and President, Mahi Shramik Sangh, declaring the workmen as semipermanent w.e.f. 1/8/2002 and granting them pay scale of Rs.2550 – 3200. It was also directed that the workmen would be entitled to cash benefit w.e.f. 1/1/2005. The order was accompanied by the Schedule indicating the names of workmen and considering their date of initial appointment they were reinstated w.e.f. 1/8/2000 and thereafter, were shown as semipermanent w.e.f. 1/8/2002. It appears that, whereafter, at the end of 10 years from the date of reinstatement they were conferred permanent status. While few of the employees have since retired, the petitioners are almost at the fag end of their service i.e. they are nearing the age of 60 years.

Submissions have been made that the respondent department against the settled principles of law entered into an agreement with the Labour Union shifting the date of reinstatement, which has affected the conferment of semipermanent and permanent status.

It is indicated in the writ petitions that one Smt. Balmandi wife of one of the deceased workman preferred S.B.Civil Writ Petition No. 19029/2018, which came to be decided on 3/12/2020, wherein, the respondents were directed to give semi-permanent and permanent status to the said petitioner's husband in accordance with the law while reckoning the period from 1/10/1979 (the date of initial appointment) and accord family pension to the petitioner therein.

The petitioners, apparently, based on the judgment in the case of Balmandi (supra) sought semi-permanent and permanent status from the date of their initial appointment. However, as the same has not been granted, the present writ petitions have been filed seeking the reliefs as noticed hereinbefore.

A reply to the writ petition has been filed by the respondents *inter alia* admitting the date of initial appointment of the petitioners and subsequent events pertaining to retrenchment, Award of the Labour court, modification by learned Single Judge, dismissal of appeals by the Division Bench & SLP by Hon'ble Supreme Court and a claim has been made that as the petitioners, who are members of the Labour Union, which entered into an agreement with the respondents, the date of reinstatement was taken as 1/8/2000 and semi-permanent status w.e.f. 1/8/2002 and, therefore, the petitioners are not entitled to the benefit of selection grade from the date of initial appointment. The order in the case of Balmandi (supra) was distinguished on account of the fact that the husband of Smt.

Balmandi had died before the agreement was entered into between the respondents and the Labour Union.

Submissions have also been made that there is delay of over 15 years and on account of unexplained delay, the petitions are liable to be dismissed.

Learned counsel for the petitioners with reference to the Award passed by the Labour court and the fact that except for a minor modification by the learned Single Judge, the same has been upheld right upto Hon'ble Supreme Court, made submissions that action of the respondents in granting the semi-permanent and permanent status based on the purported date of reinstatement i.e. 1/8/2000 is not justified inasmuch as the labour court had specifically directed reinstatement from the date of initial appointment.

Submissions have been made that by way of entering into an agreement, the respondents could not have varied the Award passed by the competent court and upheld right upto Hon'ble Supreme Court. Submissions have also been made that entering into the agreement is of no consequence and that the respondents are not entitled to rely on the agreement with a view to violate the Award as well as directions given by the learned Single Judge of this Court directing the respondents to implement the Award.

Submissions were also made that the agreement does not answer the definition of 'settlement' under Section 2(p) of the Act, 1947 inasmuch as in terms of the said definition, a copy of the agreement has to be sent to an officer authorized in this behalf by the appropriate Government and the conciliation officer. There is no reference and/or the case of the respondents that the said requirement was complied with.

Further submissions were made that the petitioners being illiterate and belonging to lower strata of the society and that also belonging to the tribal belt were wholly unaware of the fact that the action of the respondents in depriving the petitioners of their rights arising from the Award of the labour court by way of an agreement Annex.R/1/1 was illegal and only after the issue of Smt. Balmandi came up before the Court and same was decided in favour of the petitioner therein and observations were made pertaining to the status of the agreement, which was set up by the respondents in the said case also, the petitioners became aware of their rights and as such have approached this Court soon thereafter and as such the plea raised pertaining to delay has no substance.

It was also submitted that the respondents having violated the Award of the labour court and the directions given by this Court ordering implementation of the Award, cannot seek to hide behind the agreement (Annex.R/1/1), which on its face is illegal inasmuch as the same has deprived the petitioners of their entitlement of continuity of service from the date of initial appointment, resulting in loss to them of period ranging from 15 to 20 years which would have cascading effect on their salaries as well as pensionary benefits and consequently the petitions be allowed and the reliefs as prayed be granted to them.

Reliance was placed on the judgment in the case of Smt. Balmandi (supra) and *Deetiya vs. State of Rajasthan & Ors. : S.B.Civil Writ Petition No. 2487/2006* decided on 7/7/2008.

Learned counsel for the State vehemently opposed the submissions. It was submitted that entering into the agreement by the Labour Union on behalf of the petitioners is not disputed, wherein, it was specifically agreed that the workmen would be declared semi-permanent w.e.f.1/8/2002 and would be paid actual benefits w.e.f. 1/1/2005 and that the workmen were prepared to abandon the difference of salary for the period 1/8/2002 to 31/12/2004. The benefit of selection grade at the end of 9, 18 and 27 years of service would be counted from the date of reinstatement i.e. 1/8/2000. On the part of the workmen, it was agreed that they would not raise any dispute before any court in this regard and, therefore, the reliefs sought being contrary to the said agreement are not available.

It was submitted that there is no estoppel and/or bar in law in entering into an agreement after the Award has been passed and, therefore, the plea sought to be raised has no substance. It was further emphasized that there is huge delay in approaching this Court as the agreement was entered into way back in 2005 and implemented thereafter and, therefore, on account of unexplained delay and laches the petitions are liable to be dismissed.

Reliance was placed on *Federal Mogul Bearing India Ltd. vs. State of Himachal Pradesh & Ors. : 2012(132) FLR 69*, *Working Journalists vs. Management of the "Hindu" : AIR 1961 Madras 370*, *Automotive & Allied Industries vs. Regional Provident Fund : 1994 (68) FLR 642* and *Bahulayan V. & Ors. vs. State of Kerala & Ors. : 2000 LabIC 2442*.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

The petitioners-workmen, who were initially appointed on the dates as under, as per order Annex.5, as Beldar/Coolie with the respondents came to be retrenched leading to reference dated 24/5/1995 by the appropriate Government to the Labour court, Udaipur:

Petitioner	Date of Initial Appointment
लक्ष्मण पुत्र श्री नानिया	01.11.1984
मोगा पुत्र श्री नगजी	01.10.1984
लक्ष्मी पत्नि श्री बिजिया जी	01.06.1986
शंकर पुत्र श्री खेमा जी	01.09.1984
कमुडी पुत्री श्री नानका जी	01.10.1984
सुरा पुत्री श्री धनजी	01.05.1984
कमला पुत्री श्री देवाजी	01.03.1980
प्रभु पुत्र श्री नाथुजी	01.12.1984
लक्ष्मी पुत्री श्री देवाजी	01.09.1981
काली पत्नि श्री कानाजी	01.09.1980
रामा	01.11.1984

The Labour court by its Award dated 22/3/1999 directed as under:

“पंचाट

उपरोक्त वाद बिन्दु संख्या एक व दो के विनिश्चय के आधार पर वाद बिन्दु संख्या दो में वर्णित कुल 106 श्रमिकगण जिनके नाम की सूची इसी निर्णय के पृष्ठ संख्या 19 से 22 पर अंकित है के पक्ष में इस न्यायालय पंचाट द्वारा पारित किया जाता है कि ये श्रमिकगण पुनः सेवा में बहाली के अधिकारी हैं। जहां तक बकाया वेतन का प्रश्न है इन श्रमिकगणों द्वारा न्यायालय हाजा में औद्योगिक विवाद अधिनियम की धारा 33(4)(2) के तहत वाद संख्या 8/92 दिनांक 24.02.1992 को प्रस्तुत किया गया था इस कारण यह प्रमाणित माना जाता है कि इन श्रमिकगणों द्वारा दिनांक 24.2.1992 को न्यायालय हाजा की शरण ले ली थी जहां दिनांक 24.2.1992 से पुनः सेवा में बहाली के मध्य की अवधि का आधा वेतन (50% Back wages) प्राप्त करने के अधिकारी होंगे। यदि विपक्षी नियोजक द्वारा पंचाट प्रकाशन के दो माह की अवधि में बकाया आधा वेतन (50% Back wages) का भुगतान नहीं किया जाता है तो प्रार्थी-श्रमिकगण इस राशि पर 12 प्रतिशत वार्षिक की दर से ब्याज प्राप्त करने के अधिकारी होंगे। साथ ही श्रमिकगणों की सेवाएं निरन्तर मानी जायेगी। इसके अलावा प्रार्थी-श्रमिकगणों को विपक्षी नियोजक द्वारा वाद व्यय के रूपये 5000/- अतिरिक्त अदा करेगा।”

Feeling aggrieved, the State filed writ petition before this Court, wherein, the learned Single Judge while dismissing the writ petition filed by the State, modified the Award to the extent that 106 workmen would be entitled to 50% of back wages from the date of reference till the date of Award together with interest from the date of reference.

Cross appeals were filed, which came to be decided by Division Bench *inter alia* observing as under:

“We have perused the award and the order of the learned Single Judge and also the pleadings. We are satisfied with the order of the learned Single Judge modifying the award as indicated above. There cannot be any serious objections on the part of the workmen also in regard to such modification. No new point has been raised by both the appellants in the respective appeals. In our opinion, the order of the learned Single Judge does not call for any interference. We, therefore, confirm the judgment of the learned Single Judge modifying the award to the extent that the 106 workmen shall be entitled for 50% of the backwages from the date of reference till the date of award together with the interest. It is seen from the award that the Tribunal has awarded 12% interest. The same rate of interest shall be paid from the date of reference.

With the above observations, both the appeals stand disposed of.”

Against the order of Division Bench, the State went to Hon’ble Supreme Court, which dismissed the Special Leave Petition.

In the meanwhile, S.B.Civil Writ Petition No. 1921/99 was filed seeking implementation of the Award, which came to be decided on 20/7/2000, wherein, the learned Single Judge *inter alia* observed as under:

“This petition is filed for implementation of the impugned award passed by the labour court in favour of the petitioners workmen. Against the impugned award the other side has also filed writ petition before the learned Single Judge of this court which was dismissed. The said order was challenged before the Division Bench by way of special appeal, which was also stated to have been dismissed yesterday only.

In view of the above, the respondents have no defence and they have to implement the impugned award immediately.

However, learned counsel Shri Calla states that in view of the fact that the writ petition filed by them before the learned Single Judge is dismissed and special appeal against that order is also dismissed by the Division Bench, the respondents will implement the award, but they will take at least four months time as huge amount is involved in the matter.

In view of the above, respondents are directed to implement the award on or before 30/11/2000. It is made clear that the time is given to the respondents to make payment of back wages. However, the respondents shall now reinstate the petitioners forthwith and in any case not later than 1.8.2000.

This order is pronounced in the court in the presence of Shri H.N.Calla, therefore, without any ifs and buts the respondents have to comply with this order, failing which appropriate action will be taken against them. Office is directed to give copy of this order to Mr. P.R.Mehta for the petitioner and Mr. H.N.Calla for the respondents immediately.”

It appears that even after passing of the judgment by the learned Single Judge requiring implementation of the Award, the State, unwilling to implement the award, ultimately entered into an agreement with the workmen through the Labour Union on 17/5/2005 (Annex.R/1/1) providing for the conditions for implementation of the Award, whereby, the date of reinstatement was taken as 1/8/2000 and workmen were declared semipermanent w.e.f. 1/8/2002 and actual benefits w.e.f. 1/1/2005 with further stipulation that for the purpose of selection grade at the end of 9, 18 and 27 years of service the relevant date would be 1/8/2000 (date of reinstatement). Based on which, order dated

29/8/2005 (Annex.5) was passed indicating the actual initial date of appointment, 1/8/2000 as date of reinstatement, 1/8/2002 as semi-permanent along with the pay scales etc.

A bare look at the agreement indicates that the same is titled Form H (Rule 58). It has further been indicated that the agreement has been entered into under the provisions of Section 12(4) of the Act and agreement is signed by President, Mahi Shramik Sangh, Banswara, Assistant Engineer, Executive Engineer and Chief Engineer.

The term 'settlement' has been defined under Section 2(p) of the Act, 1947 as under:

“(p) “settlement” means a settlement arrived at in the course of conciliation proceedings and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceedings where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy there of has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer;”

A perusal of the above definition would reveal that a settlement *inter alia* means a settlement arrived at between the employer and workmen otherwise than during the course of conciliation proceedings where such an agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorized in this behalf by the appropriate Government and the conciliation officer.

The manner as required by the definition and the officer authorized in this behalf has been provided for in the Rajasthan Industrial Disputes Rules, 1958 ('the Rules, 1958'), wherein, Rule 58 (4) provides as under:

“(4) Where a settlement is arrived at between an employer and his workmen otherwise than in the course of conciliation proceeding before a Board or a Conciliation Officer, the parties to the settlement shall jointly send a copy thereof to the State Government and the Labour Commissioner, Rajasthan and to the Conciliation Officer concerned.”

The provision requires that the parties to the settlement shall jointly send a copy of the agreement to the State Government & Labour Commissioner, Rajasthan and to the conciliation officer concerned.

Further, the register of settlement has been provided under Rule 75 of the Rules requiring the conciliation officers to file all settlements effected under the Act in respect of disputes in the area within his jurisdiction in a register maintained for the purpose. The form of register has been provided under 'Form O', wherein, a specific indication as to whether the settlement was affected at the intervention of the conciliation machinery or by mutual negotiations between the parties is required to be indicated.

The provisions of Rule 2(p), Rules 58 and 75 of the Rules, 1958 clearly reflect that for a settlement arrived at between the parties by mutual negotiations, the same has to be sent to the State Government, Labour Commissioner and the conciliation officer concerned.

The provisions are not without reason, inasmuch as on account of unequal bargaining power between the workmen and the management, in case a mutual settlement is arrived at the same becomes binding under the provisions of Section 18 (1) of the Act and, therefore, to ensure that the agreement arrived at is examined by the authority i.e. the Labour Commissioner and the conciliation officer, the same is required to be sent to them and entered in the register of settlement maintained by the conciliation officer.

There is no indication in the agreement and in the reply filed by the respondents that the agreement in question was ever sent to the Labour Commissioner, Rajasthan and/or to the conciliation officer and that the same is entered in the register maintained under Rule 75 of the Rules, 1958. In absence of compliance of provisions regarding sending a copy of the settlement to the concerned, the settlement arrived at between the employer and the workmen otherwise than in the course of conciliation proceedings cannot be said to be binding on the parties in terms of Section 18(1) of the Act, 1947.

The reference to Section 12(4) of the Act, 1947 in the agreement appears to be wholly baseless as the said provision deals with consequences to the failure of conciliation proceedings.

It would be seen from the sequence of events as noticed hereinbefore that the Award was passed way back in the year 1999, the Labour court directed reinstatement with continuity in service and the workmen, who were in employment prior to their illegal retrenchment since 1979/1980/1984 based on the said status were entitled to consequential benefits. However, despite dismissal of the writ petition, special appeal and Special Leave Petition, except for a minor modification pertaining to back wages, the judgment was not implemented besides a specific direction in another writ petition to implement the same by 30/11/2000 and after five years by way of an agreement, the respondents decided to deprive the petitioners of their legitimate dues in terms of the award by changing the date of their initial appointment to the date of purported reinstatement i.e. 1/8/2000 and taking the same as the basis for conferring the semi-permanent status and other consequential benefits.

The action of the respondents cannot be countenanced under any circumstance. Once the award was passed and the State by filing the writ petition got the same modified in relation to back wages and the cross appeals came to be dismissed along with Special Leave Petition filed by the State, there was no occasion whatsoever for the State then to indulge in maneuvering to deprive the petitioners of their rights under the award passed by the Labour court. In fact with the modification of the award by the learned Single Judge, the award as passed by the Labour Court merged in the order of the High Court and, therefore, the action of the respondents thereafter amounts to violation of the directions of the Court as passed in the writ petition and the special appeal, which cannot be countenanced under any circumstance.

A coordinate bench of this Court, when one Smt. Balmandi, widow of a workman, who was also beneficiary of the award dated 22/3/1999, approached this Court for her pensionary benefits and the agreement was sought to be relied on in response, it was *inter alia* observed as under:

“19.That apart, such agreement is nothing short of exploitation of poor labourers. It cannot be believed that having won till the Supreme Court, the labourers if explained properly would agree to such terms, at their free will and volition.

20. Hence, the petitioner’s rights cannot be clipped in the teeth of the agreement dated 08.09.2005.

21. It is shocking to note that the Labour Court had allowed the claim petition of the petitioner’s husband and said order with minor modification has been upheld till Supreme Court – the retrenchment of petitioner’s husband was held illegal, he was held to be in continuous service way back in the year 1999, yet the State has not implemented the award. Order dated 20.07.2000 passed by this Court has been thrown to winds. Petitioner – a tribal widow had to approach this Court.

22. The writ petition is, thus allowed; order dated 21.01.2016 is quashed.

23. The respondents are directed to give semi permanent and permanent status to the petitioner’s husband, in accordance with law while reckoning the period from 01.10.1979. They shall also abide by the recommendations made vide communication dated 25.04.2017 and 01.06.2017.

24. Formal order of declaring petitioner’s husband semi permanent and permanent and regularisation, in accordance with law, be passed within a period of three months from today.”

The observations made are self evident, wherein, the Court came to the conclusion that it cannot be believed that having won till the Supreme Court, the labourers if explained properly would agree to such terms, at their free will and volition and that the petitioner’s rights cannot be clipped by way of an agreement dated 8/9/2005.

In the case of Deetiya (supra), wherein, on account of an agreement the pensionary benefits on the ground of voluntary retirement from service were denied, another coordinate bench of this Court came to the conclusion that denial of pensionary benefits was totally contrary to law and unconstitutional.

So far as the reliance placed by learned counsel for the respondents on various judgments is concerned, none of the judgments pertain to a case where after the award was passed and was upheld upto the Supreme Court, thereafter, a purported agreement was entered into seeking to deprive the workmen of their rights under the award and, therefore, said judgments have no application to the facts of the present case.

Coming to the issue of delay on the part of petitioners, from the facts which have been narrated in the petition, it is apparent that on account of the background of the petitioners being illiterate, tribal and belonging to lower strata of the society and working as Beldar/Coolie and now in advanced age, the petitioners apparently being oblivious of the illegality on the part of the respondents and their rights under the award and only after passing of the order in the case of Smt. Balmandi becoming aware of their rights, they immediately approached this Court.

In view thereof, in the peculiar facts and circumstances of the case, the petitions cannot be thrown out on account of alleged unexplained delay and laches. However, for balancing the equities, the actual benefit available to the petitioners can be restricted for three years from before the filing of the writ petitions.

Consequently, the writ petitions filed by the petitioners are allowed. The petitioners are entitled for the benefits of their continuity in service in terms of the Award dated 22/3/1999 from the date of their respective initial date of appointment as indicated in Annex.5 to the writ petition and as indicated hereinbefore. The action of the respondents in granting benefits from the alleged date of reinstatement i.e. 1/8/2000 by order dated 29/8/2005 (Annex.5) is quashed. The petitioners would be entitled to semipermanent and permanent status from the date of their initial appointment along with the benefit of selection grade on completion of 9, 18 and 27 years of service in accordance with law, which would also be reflected in their entitlement to salary and/or pension. After calculating all the benefits available to the petitioners based on the above directions, the petitioners would be entitled to the actual monetary benefits w.e.f. three years prior to filing of the respective writ petitions.

The entire exercise be done by the respondents within a period of six weeks and the arrears of monetary benefits be accorded to the petitioners within a period of four weeks thereafter and continue to pay the benefits to the petitioners in accordance with law.

No order as to costs.

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