

PETITIONER:
AMETEEP MACHINE TOOLS

Vs.

RESPONDENT:
LABOUR COURT HARYANA & ANOTHER

DATE OF JUDGMENT 22/09/1980

BENCH:
PATHAK, R.S.
BENCH:
PATHAK, R.S.
KRISHNAIYER, V.R.

CITATION:
1980 AIR 2135 1981 SCC (1) 768

ACT:
Industrial Disputes Act, 1947, section 36, scope of.

HEADNOTE:

The appellant company manufactures machine tools at its factory in Faridabad employing 250 workmen including the second respondent, Sadhu Singh. Demands of the workmen for an improvement in the conditions of the service led to conciliation proceedings and a settlement under s. 12 was recorded on June 20, 1969 by the Conciliation officer. The settlement included a provision that the workmen would not raise any demand involving further financial burden on the appellant for a period of two years. Before the expiry of that period, however, a fresh demand was raised on August 17, 1970 by the General Labour Union asking for dearness allowance at 25 per cent. The management having refused this demand the workmen resorted to a "sit down" strike on August 26 and 27, 1970. The second respondent Sadhu Singh was charged with alleging serious misconduct. Sadhu Singh did not participate in the inquiry. Accepting the report submitted by the Inquiry officer that Sadhu Singh was guilty of instigating the workmen to go on strike the services of Sadhu Singh were terminated by the management with immediate effect by an order dated September 14, 1970. The management dismissed some other workmen also. The dismissal of all workmen formed the subject of another settlement under s. 12 of the Act dated November 21, 1970 and it was agreed that the dismissed workmen including Sadhu Singh should be regarded as retrenched from service. The remaining workmen agreed to resume work unconditionally. Sadhu Singh, took up the matter before the Labour Court stating that not being a signatory to the settlement of November 21, 1970 he was not bound by it. The Labour court accepted his plea and made its ward on September 30, 1972. It found that the domestic inquiry was not proper inasmuch as notice of the inquiry had failed to reach Sadhu Singh, thereby preventing him from participating in the domestic inquiry. Further it held that since Sadhu Singh had been ill from August 24, to September 9, 1970 he could not be said to have instigated the strike. The appellant having failed before the High Court has come in appeal after obtaining special leave from this Court.

Dismissing the appeal, the Court,

HELD: Section 36 of the Industrial Disputes Act provides for representation of the parties to a dispute. The workmen are entitled by virtue of sub-section (1) to be represented in a proceeding under the Act by a member of the executive or other office bearer of a registered trade union of which

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they are members or of a federation of trade unions to which that trade union is affiliated, and where the workmen is not a member of any trade union, he can be represented by a member of the executive or other office bearer of a trade union connected with, or by any other workman employed in the industry in which the workmen is employed. It is not obligatory, however, that a workman who is a party to a dispute must be represented by another. He may participate in the proceeding himself. Where conciliation proceedings are taken and a settlement is reached, it is a valid settlement and binding on the parties even if the workmen who are party to the dispute participate in the proceedings personally and are not represented by any of the persons mentioned in s. 36(1) of the Act. In the present case; (1) by executing a memorandum the several workmen who individually signed it on 21st August, 1970 bound themselves by the terms of the settlement, but as Sadhu Singh had not signed the memorandum nor had he authorised any of the workman to sign the memorandum on his behalf he was not bound by the settlement. (2) The settlement of 21st November, 1970 can on no account be understood as covering and concluding the demand for recalling the order dismissing Sadhu Singh, as his reinstatement was never included in the charter of demands of the workmen which led to the conciliation proceedings and those proceedings did not involve the consideration of such a demand. In the circumstances, it was open to Sadhu Singh to assail his dismissal from service and to contend that the settlement of 21st November 1970 did not bind him. (3) The Labour Court was right in adjudicating on the propriety of his dismissal and, having found that the dismissal was not justified, in granting relief. [771 F-772E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 785 of 1975.

Appeal by Special Leave from the Judgment and order dated 7-1-1973 of the Punjab and Haryana High Court in Civil Writ No. 6677/74.

A. K. Sen, S. K. Gambhir, A. K. Panda and Miss Ramrakhiani for the Appellant.

Yogeshwar Prasad, A. K. Srivastava and Miss Rani Chhabra for the Respondent No. 2.

The Judgment of the Court was delivered by

PATHAK, J.-This appeal by special leave is directed against a judgment of the High Court of Punjab and Haryana summarily dismissing a writ petition filed by the appellant.

The appellant is a private limited company which manufactures machine tools at its factory in Faridabad. It employs 250 workmen. The second respondent, Sadhu Singh, is one of them. Demands by the workmen for an improvement in the conditions of their service led to conciliation proceedings under the Industrial Disputes Act, 1947, ("the Act"), and on June 20, 1969, a settlement under s. 12 of the

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Act in satisfaction of those demands was recorded by the

Conciliation officer. The settlement included a provision that the workmen would not raise any demand involving further financial burden on the appellant for a period of two years. Before the expiry of that period, however, a fresh demand was raised on August 17, 1970 by the General Labour Union asking for dearness allowance at 25 per cent. The management demurred, and explained that having regard to the structure of wages and allowances now payable under the settlement, there was no justification for the demand. On August 26, 1970 the workmen resorted to a "sit down" strike, which continued the next day. According to the appellant, on August 27, 1970, Sadhu Singh instigated the workmen to "down" tools and go on a "sit down strike. Successive notices by the management the same day failed to dissolve the strike. Charges were framed against Sadhu Singh alleging serious misconduct and a domestic enquiry was ordered. The workman, it is said, declined to accept the charge-sheet and, although he was directed to appear before the Inquiry Officer, Sadhu Singh did not participate in the inquiry. On September 13, 1970, the Inquiry officer submitted his report to the management. According to him, the strike was illegal, and Sadhu Singh was guilty of instigating the workmen to go on strike, and besides he was guilty of loitering in the factory. The findings being accepted by the management an order followed on September 14, 1970 dismissing Sadhu Singh from service with immediate effect. The President of the General Labour Union then pressed the management to reinstate Sadhu Singh. Meanwhile the management had taken action dismissing other workmen also. The dismissal of all the workmen formed the subject of a settlement under s.12 of the Act on November 21, 1970, and it was agreed that the dismissed workmen, including Sadhu Singh, should be regarded as retrenched from service. The remaining workmen agreed to resume work unconditionally. The memorandum of settlement was signed by the management on the one hand and the individual workmen on the other. A few days after, Sadhu Singh wrote to the Labour Commissioner claiming that he was not a signatory to the settlement and that he would settle his dispute himself with the management. The State Government referred the dispute in regard to the termination of Sadhu Singh's service for adjudication to the Labour Court, Rohtak. While the management took its stand on the facts found in the domestic inquiry report and relied on the circumstance that the settlement dated November 21, 1970 was binding on Sadhu Singh, Sadhu Singh asserted that he was not guilty of any misconduct on August 27, 1970. He also contended that the charge sheet had never been served on him and therefore the exparte domestic inquiry was vitiated. The 771

Labour Court by its order dated September 20, 1972 found that Sadhu Singh was not a signatory to the settlement of November 21, 1970, and was, therefore, not bound by it. The Labour Court made its award on September 30, 1972. It found that the domestic inquiry was not proper inasmuch as notice of the inquiry had failed to reach Sadhu Singh because it had been sent to a wrong address, thereby preventing him from participating in the domestic inquiry. On the merits of the dispute the Labour Court found that Sadhu Singh had been ill from August 24 to September 9, 1970, and that was established by a medical certificate which, on inquiry from the Employees State Insurance Department, was found to be in order, and consequently it could not be believed that the workman had instigated or participated in the "tool down" and "sit down" strike. In support of its case that Sadhu Singh was present within the factory premises on August 27,

1970, the management placed reliance on a document purporting to have been signed by the workmen and setting forth the assurance that he would conduct himself properly and be of good behaviour. The Labour Court said that if the document be accepted as genuine there was sufficient reason for accepting the assurance and refraining from taking any action against the workman. The Labour Court held that the dismissal was not justified and that Sadhu Singh was entitled to reinstatement with continuity of previous service and full back wages.

The appellant filed a writ petition in the High Court against the award, but the writ petition was dismissed. And now this appeal.

The appellant challenges the findings of the Labour Court. It is contended that the settlement dated November 21, 1970 was binding on Sadhu Singh and it was not open to him to resile from it. Now Section 36 of the Act provides for representation of the parties to a dispute. The workmen are entitled by virtue of sub-section (1) to be represented in a proceeding under the Act by a member of the executive or other office bearer of a registered trade union of which they are members or of a federation of trade unions to which that trade union is affiliated, and where the workman is not a member of any trade union, he can be represented by a member of the executive or other office bearer of a trade union connected with, or by any other workman employed in, the industry in which the workman is employed. It is not obligatory, however, that a workman who is a party to a dispute must be represented by another. He may participate in the proceeding himself. Where conciliation proceedings are taken and a settlement is reached, it is a valid settlement and binding on the parties even if the workmen who are party to the dispute participate in the

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proceedings personally and are not represented by any of the persons mentioned in s. 36(1). That is what happened here. The evidence shows that the individual workmen negotiated the settlement themselves and individually signed the memorandum of settlement. By executing a memorandum they bound themselves by the terms of the settlement. In the present case, however, while several workmen signed the memorandum of settlement on 21st November, 1970, Sadhu Singh did not. It is also established that Sadhu Singh did not authorise any of the other workmen to sign the memorandum on his behalf. And what is of importance is that, as found by the Labour Court, the demand that the dismissal of Sadhu Singh be set aside and that he should be reinstated was never included in the charter of demands of the workmen which led to the conciliation proceedings, and those proceedings did not involve the consideration of such a demand. According to the Labour Court, that was the admitted position. Consequently, the settlement of 21st November, 1970 can on no account be understood as covering and concluding the demand for recalling the order dismissing Sadhu Singh. In the circumstances, it was open to Sadhu Singh to assail his dismissal from service and to contend that the settlement of 21st November, 1970 did not bind him. The Labour Court was right in adjudicating on the propriety of his dismissal and, having found that the dismissal was not justified, in granting relief.

It is submitted that notice of the domestic inquiry was duly effected on Sadhu Singh and the finding of the Labour Court to the contrary is erroneous. Plainly, the question turns on the evidence on the record and we see no reason why the finding of the Labour Court should not be accepted.

Having reached the conclusion that the domestic inquiry, in the circumstances, was improper it was open to the Labour Court to enter into the dispute on its merits and pronounce its award. The finding that Sadhu Singh was ill and could not be said to have instigated or participated in the strike on August 27, 1970 is a finding of fact which proceeds from the material on the record. We are not satisfied that the finding should be disturbed.

Considerable reliance was placed by the appellant on the document said to have been executed by the workman containing the assurance that he would be of good behaviour and, it is submitted.

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that after executing the document Sadhu Singh went back on the assurance and set the strike in motion. We see no force in the submission. The evidence led by the management attempts to show specifically that Sadhu Singh instigated the strike at 10 O'clock in the morning on August 27, 1970. It would not be unreasonable to hold that the declaration of assurance was executed subsequently. It was an assurance accepted by the management, and, therefore, there is no reason why the management should have insisted on initiating disciplinary proceedings thereafter against the workman.

In the result, the appeal is dismissed with costs to the second respondent, which we assess at Rs. 2,000. The appellant has deposited that sum pursuant to the order of this Court dated April 30, 1974, and it is open to the second respondent to withdraw the money.

V. D. K.

Appeal dismissed.

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