

IN THE SUPREME COURT OF INDIA**CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO. 4460 OF 2008****[Arising out of SLP(C) No.9243/2006]**

WORKMEN THROUGH HINDUSTANAPPELLANT(S)
LEVER MAZDOOR SABHA

Versus

HINDUSTAN LEVERS LTD.RESPONDENT(S)

ORDER

Delay condoned. Leave granted. Heard learned counsel for appellant and respondent.

2. Appellant is one of the Unions representing the workmen of respondent company. The workmen of the respondent company were receiving dearness allowance without any ceiling upto 1974. On 31.12.1974, a settlement was entered between the respondent and the another workers' Union (Lever's Karamchari Union) inter alia, providing for imposition of a ceiling on the dearness allowance. On 5.12.1977, another settlement was entered between the respondent company and the appellant Union, which ratified the settlement dated 31.12.1974. According to the respondent company, both the settlements dated 31.12.1974 and 5.12.1977 were duly registered.

3. Thereafter, the appellant Union went on agitating over the issue of ceiling on

dearness allowance contending that the settlement dated 5.12.1977 was signed by persons who did not have authorisation on behalf of the appellant Union and, therefore, not binding on them. Ultimately, the appellant Union approached the High Court of Allahabad in Civil Misc. W.P. No.24313/1989 seeking a direction to the State Government to exercise its powers under Section 4(Ka) of the U.P. Industrial Disputes Act and refer the dispute arising out of the 'imposition of ceiling on dearness allowance payable to the workmen' for adjudication. The High Court, by its order dated 30.7.1998, allowed the said petition and consequently dispute was referred to the Industrial Tribunal(V), Meerut and the reference was registered as Adjudication Case No.42 of 1998.

4. The respondent filed an application before the Tribunal in the said Adj. Case No.42/1998 referring to some subsequent events and prayed for a declaration that no dispute survived between the respondent and its workmen and to answer the reference accordingly. The respondent alleged that all its employees had voluntarily retired under the Voluntary Retirement Scheme announced by the company on 7.3.2000 and had received compensation amount in full and final settlement of all their claims and had confirmed in writing that they had no pending or outstanding claims. The said application was rejected by the Tribunal by an order dated 8.8.2003. The Tribunal held that the question that had to be examined was whether the settlements dated 31.12.1974 and 5.12.1977 were binding on the workmen or not, that the parties had already filed pleadings and documents and the case was ripe for evidence in regard to a complex question of fact and law; and that, therefore, the appropriate course was to permit the parties to lead evidence and decide the dispute on merits. It was of the view that it was not possible to express any opinion as to whether the dispute survived or not, at that premature stage.

5. The respondent challenged the said order dated 8.8.2003 before the Allahabad High Court in C.M.W.P. No.51129 of 2003. The High Court allowed the said writ petition by order dated 28.5.2004. The High Court referred to the fact that the Ghaziabad unit of the respondent was closed in 2000 and all workmen had opted for voluntary retirement under respondent's Voluntary Retirement Scheme of 2000 and had been paid all dues. The High Court held that in view of the said Voluntary Retirement Scheme of 2000 opted by all workmen, the matter pending adjudication before the Industrial Tribunal in Adj. Case No.42/1998 had become stale and that in the changed circumstances, it was inexpedient to allow the said proceedings to drag on. The High Court also referred to the fact that the dispute regarding dearness allowance had been pending for thirty years, and the Ghaziabad unit was lying closed for five years and the unit had no workmen in its employment. The High Court held that there was no industrial undertaking nor workmen and, therefore, there was no industrial dispute and the appellant Union had lost its right to represent the workmen of the unit. Consequently, the High Court quashed the order dated 8.8.2003 and directed the Industrial Tribunal to dispose of the application filed by the employer in the light of its observations. In other words, the High Court virtually directed the Industrial Tribunal to close the pending dispute in Adj. Case No.42/1998. The said order is challenged in this appeal by special leave.

6. At the outset, it should be noticed that the mere fact that the unit was closed or that all the workmen had taken voluntary retirement will not put an end to a validly pending industrial dispute in regard to a past grievance unless the employer is able to show that such grievance was also settled.

7. In this case, though all the workmen might have taken voluntary retirement under the scheme introduced in 2000, the settlement entered (in a standard form) between the respondent company and retiring workmen specifically excluded the pending dispute relating to ceiling on dearness allowance from the settlement. The said clause is extracted below.

“5. On receipt of the above compensation, the workman will have no other claim whatsoever from the company and the payment shall be considered to be his full and final settlement of all dues. *However, this agreement is without prejudice to the claim of the workman for the benefits in the Adj. Case No.42/98 pending before Industrial Tribunal V Meerut regarding dearness allowance. The workman will be entitled to receive all benefits, if any as applicable, on the final decision of the case in the appropriate court, i.e. Tribunal, High Court or Supreme Court as the case may be.*”

(emphasis supplied)

It is, thus, clear that the retirement of the workmen under the Voluntary Retirement Scheme of 7.3.2000 and payment of compensation in full and final settlement thereunder excluded the pending dispute relating to ceiling on D.A. Therefore, the retirement under the Voluntary Retirement Scheme did not result in settlement of the dispute pending in Adj. Case No.42/1998. Unfortunately, the High Court lost sight of the said saving clause in the Voluntary Retirement Scheme in regard to the pending dispute in Adj. Case No.42/1998 and proceeded on the erroneous assumption that all pending claims of the workmen including the subject matter of Adj. Case No.42/1998 were settled on their retirement under the Voluntary Retirement Scheme of 7.3.2000. The order of the High Court cannot, therefore, be sustained.

8. The employer submitted that in the context of certain disputes relating to an

earlier voluntary separation scheme, the Industrial Tribunal, Kanpur had made final award dated 30.10.1998 (in Case No.38 to 80/2003) wherein the Tribunal had held the settlements dated 31.12.1974 and 5.12.1977 were valid settlements, as they were registered settlements. It is also pointed out that when the said award dated 30.10.1998 was challenged before the High Court in W.P. No. 15533 of 1999, the High Court in its judgment dated 17.4.2000, did not disturb the finding regarding validity of those settlements, even though on merits, it had interfered with the said award of the Tribunal. Learned counsel submitted that in view of the categorical finding of the Tribunal at Kanpur that the settlement dated 5.12.1977 was valid (affirmed by the High Court on 17.4.2000) subsequent to the reference of the dispute relating to ceiling on D.A. in Adj. Case No.42/1998, the very basis for the dispute in Adj. Case No.42/1998 disappeared and consequently the pending dispute in Adj. Case No. 42/1998 should be considered as having been finally settled by the award dated 30.10.1998 in Cases No.38 to 80/2003.

9. A careful examination of the Award of the Kanpur Industrial Tribunal shows the contention of respondent is without merit. The final award dated 30.10.1998 relied on by the respondent company makes it clear that the Tribunal was of the view that the registered settlements dated 31.12.1974 and 5.12.1977 were valid as the said settlements had not been challenged by the Union. It is apparent that the award dated 30.10.1998 assumed that the settlements had not been challenged while in fact a reference in regard to the dispute relating to the challenge had been made a few days earlier. It cannot be said that either the award dated 30.10.1998 or the order of the High Court dated 17.4.2000 had unconditionally upheld the validity of the settlements dated 31.12.1974 and 5.12.1977. In fact, that was not the subject matter of the dispute that was being considered by the Tribunal at Kanpur (or the High Court in the writ petition challenging its award). The settlements were observed to be valid subject to challenge of such

settlements.

10. In view of the above, we allow this appeal, set aside the order of the High Court and restore the order of the Tribunal. We would only like to add that in view of the long pendency, the Tribunal shall endeavour to dispose of Adj. Case No.42/1998 expeditiously.

.....J.
(R.V. RAVEENDRAN)

New Delhi;
July 16, 2008.

.....J.
(LOKESHWAR SINGH PANTA)