2023 INSC 646

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4404 of 2023
(Arising out of SLP(C) No. 14886 of 2023)

Bharatiya Kamgar Karmachari Mahasangh ...Appellant(s)

Versus

M/s. Jet Airways Ltd. ...Respondent(s)

J U D G M E N T

SANJAY KAROL, J.

1. The present appeal arises out of the judgment of the High Court of Bombay in Writ Petition No. 2657 of 2017, wherein it confirmed the award dated 30.03.2017 passed by the Central Government Industrial Tribunal (hereinafter referred to as 'CGIT') rejecting the demand of the Appellant-Union for reinstatement with full back wages.

2. The brief facts involved in the case are as follows: The respondent company operates a commercial airline, flying aircraft

for transporting passengers and cargo. The Appellant represents around 169 workmen temporarily engaged on a fixed-term contract by the Respondent in various cadres like loader-cum-cleaners, drivers and operators. The Appellant contends that the workmen were treated as temporary despite completing 240 days in service in terms of the Model Standing Order provided under the Bombay Industrial Employment (Standing Orders) Rules, 1959 (hereinafter referred to as “Bombay Model Standing Order”) and despite the nature of the work being permanent and regular. The Trade Union had raised a charter of demands which, after negotiations, resulted in a settlement dated 02.05.2002. In the said charter of demands, Bhartiya Kamgar Sena gave up the demand for the grant of permanency and a comprehensive settlement dated 02.05.2002 was signed as a package deal that conferred many benefits on the workmen who gave up the said demand. The Respondent Company claims that the workers are not entitled to permanency as per the settlement dated 02.05.2002 entered between the Union and Company. The workmen raised disputes and the matter landed up for adjudication. However, the CGIT, in its award dated 30.03.2017, while answering a reference framed the issue, whether the Union's demand for re-employment

/reinstatement with full back wages of these 169 workmen in service of that first party is just and proper and answered it in the negative. Relying upon Section 25-H of the Industrial Disputes Act, 1947 it was held that there is no retrenchment since the non-renewal of fixed term contract did not amount it to be so as provided under Section 2(oo)(bb) of the said Act. Thus, there was no question of re-employment of the concerned workmen.

OPINION OF THIS COURT

3. After hearing learned counsel of the parties at great length, the following issues arise for our consideration:

- Which is the Appropriate Authority empowered to issue the Standing Order(s) under the Industrial Employment (Standing Orders) Act, 1946 (hereinafter referred to as 'The Act')?
- Whether private agreement/settlement between the parties would override the Standing Order?

ISSUE I

4. The Act applies to every industrial establishment wherein one hundred or more workmen are employed or were employed on any day of the preceding twelve months. The expression 'appropriate

government' is defined by Section 2(b) of the Act to mean in respect of industrial establishments under the control of the Central Government or Railway Administration, or a major port, mine or oilfield, the Central Government, and in all other cases, the State Government. Section 2(e) defines the expression 'industrial establishment'. Under Section 15 of the Act, the appropriate Government is empowered to make rules for carrying out the purposes of the Act. In exercise of the powers conferred by Section 15, the then State of Bombay had issued the Bombay Industrial Employment (Standing Orders) Rules, 1959. Insofar as those establishments in respect of which the appropriate Government is the Central Government, the Industrial Employment (Standing Orders) Central Rules, 1946, stand framed.

5. Insofar as the Respondent Company is concerned, the appropriate Government is clearly not the Central, but the State Government since the Respondent is not, within the meaning of Section 2(b), under the control of the Central Government. The present case falls under the latter part of the section; thus, the appropriate Government means the State Government. The Bombay Model Standing Order would be applicable to the parties.

ISSUE II

6. For the adjudication of this issue, it is pertinent to take note of various judicial pronouncements.

7. On various occasions, this Court has observed that the certified standing orders have a statutory force. The Standing Order implies a contract between the employer and the workman. Therefore, the employer and workman cannot enter into a contract overriding the statutory contract embodied in the certified Standing Orders.

8. This Court has succinctly laid down the scope of The Act in **U.P. SEB v. Hari Shankar Jain**,[1] (3-Judge Bench) that it was specially designed to define the terms of employment of workmen in industrial establishments, to give the workmen a collective voice in determining the terms of employment and to subject the terms of employment to the scrutiny of quasi-judicial authorities by the application of the test of fairness and reasonableness. It is an Act giving recognition and form to workmen's hard-won and precious rights. We have no hesitation in saying that it is a special Act expressly and exclusively dealing with the schedule-enumerated conditions of service of workmen in industrial establishments.

[1] (1978) 4 SCC 16

9. While discussing the letter and spirit of The Act, this Court in **Sudhir Chandra Sarkar v. Tata Iron and Steel Co. Ltd.**[2] (3-Judge Bench) held that:

> "11. ...it was an act to require employers in industrial establishments to formally define conditions of employment under them. The preamble of the Act provides that it is expedient to require employers in industrial establishments to determine with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them..... The Act was a legislative response to the laissez-faire rule of hire and fire at sweet will. It was an attempt at imposing a statutory contract of service between two parties unequal to negotiate on the footing of equality.
> ....
> The intendment underlying the Act and the provisions of the Act enacted to give effect to the intendment and the scheme of the Act leave no room for doubt that the Standing Orders certified under the 1946 Act become part of the statutory terms and conditions of service between the employer and his employee and they govern the relationship between the parties."

10. In **Western India Match Co. v. Workmen**[3] (2-Judge Bench), the Court further held that:

> **"7.** The terms of employment specified in the Standing Order would prevail over the corresponding terms in the contract of service in existence on the enforcement of the Standing Order.....
> **8.** If a prior agreement inconsistent with the Standing Orders will not survive, an agreement posterior to and inconsistent with the Standing Order should also not prevail.....
> ...
> **10**. In the sunny days of the market economy theory, people sincerely believed that the economic law of demand and supply in the labour market would settle a mutually beneficial bargain between the employer

[2] (1984) 3 SCC 369
[3] (1974) 3 SCC 330 (hereinafter referred to as 'WIMCO')

> and the workmen. Such a bargain, they took it for granted, would secure fair terms and conditions of employment to the workman. This law they venerated as natural law. They had an abiding faith in the verity of this law. But the experience of the working of this law over a long period has belied their faith.
> **11**. …It plainly follows from Sections 4, 10 and 13(2) that the inconsistent part of the special agreement cannot prevail over the Standing Order. As long as the Standing Order is in force, it is binding on the Company as well as the workmen. To uphold the special agreement would mean giving a go-by to the Act's principle of three-party participation in the settlement of terms of employment. So we are of the opinion that the inconsistent part of the special agreement is ineffective and unenforceable."

11. Placing reliance on **WIMCO** (supra), this court in **Rasiklal Vaghajibhai Patel v. Ahmedabad Municipal Corpn**.[4] (2-Judge Bench) held that any condition of service, if inconsistent with certified standing orders, would not prevail, as the certified standing orders would have precedence over all such agreements. Any settlement, the employee Union enters into with the Employer would not override the Model Standing Order, unless it is more beneficial to the employees.

12. Coming to the facts of the case, the CGIT noted that the letters issued by the airlines (Respondent herein) to the workmen aimed to appoint them for a fixed term. Even though their appointment orders, issued from time to time, extended their

[4] (1985) 2 SCC 35

appointment period, however, on expiry of such period, their employment was supposed to end. It is argued that they carried out work for more than 240 days, which was of a regular and permanent nature, but since the appointment was for a fixed-term contract, it would be of no consequence even though they did work for 240 days or more. The Tribunal observed that the airlines had no option but to not renew the fixed-term contracts of the workmen due to a change in Government policy.

13. The High Court, while upholding the order of the CGIT, held that the mere completion of 240 days would not entitle the members to claim permanency under the Model Standing Order given the settlement and, more specifically, Clause 18 thereof. It further observed that the Model Standing Order is not a statutory provision but, at best, a statutorily imposed condition of service that a settlement or award can alter.

14. On all counts, we respectfully disagree with the findings of the Tribunal and the High Court.

15. Thus, it becomes pertinent to reproduce and analyse relevant Clauses of the Bombay Model Standing Order, which reads as follows:

> "Clause 4C- A *badly* or temporary workman who has put in 190 days' uninterrupted service in the aggregate in any establishment of seasonal nature or 240 days 'uninterrupted service' in the aggregate in any other establishment during a period of preceding twelve calendar months, shall be made permanent in that establishment by order in writing signed by the Manager, or any person authorised in that behalf by the Manager, irrespective of whether or not his name is on the muster roll of the establishment throughout the period of the said twelve months."
>
> "Clause 32: Nothing contained in these Standing orders shall operate in derogation of any law for the time in force or to the prejudice of any right under the contract of service, custom or usage or an agreement settlement or award applicable to the establishment."

16. A cumulative reading of aforesaid clauses reveals that a workman who has worked for 240 days in an establishment would be entitled to be made permanent, and no contract/settlement which abridges such a right can be agreed upon, let alone be binding. The Act being the beneficial legislation provides that any agreement/contract/settlement wherein the rights of the employees are waived off would not override the Standing Orders.

17. Learned counsel for the Respondent has appraised this Court of the insolvency proceedings initiated against the Respondent Company under the Insolvency and Bankruptcy Code, 2016. However, we refrain from commenting thereupon, for it does not bear any consequence to the present *lis* and neither was it a subject matter of adjudication before the courts/authorities below.

18. Given the above discussions, we allow the appeal holding the Appellant-Union entitled to all benefits per the Bombay Model Standing Order. The award dated 30.03.2017 passed by CGIT in Reference No. CGIT-2/56 of 2013 and the judgment dated 10.01.2018 passed by the High Court of Judicature at Bombay in Writ Petition No. 2657 of 2017 affirming the same are quashed and set aside.

19. No costs.

.....J.
(ABHAY S. OKA)

.....J.
(SANJAY KAROL)

DATED : JULY 25, 2023
PLACE : NEW DELHI