R.N.R.

Before Augustine George Masih, J.

M/S BHARTIYA CUTTER HAMMER LTD.—*Petitioner*

versus

P.O. LABOUR COURT II, FARIDABAD AND OTHERS—*Respondents*

CWP No. 9478 of 2009

30th June, 2010

Constitution of India, 1950—Art. 226—Industrial Disputes Act, 1947—Ss. 33-C(2)—Settlement between Company and workmen—Company failing to grant benefits to workmen as per settlement—Labour Court ordering computation of amount in terms of settlement—Plea of Company that production had gone down so workmen not entitled to claim made on basis of settlement—Company failing to prove assertions before Labour Court by producing any cogent or convincing evidence—Findings of Labour Court based on proper appreciation of evidence—Petition dismissed.

Held, that a perusal of the finding recorded by the Labour Court does not leave any doubt that the Labour Court has rightly appreciated the pleadings and the evidence led by the parties and has come to a correct conclusion. The findings, so recorded, are based on proper appreciation of the evidence led by the parties which do not call for any interference by this Court as the same are based on well settled and recognized principles of

law. Hence, no error has been committed by the Labour Court while passing order dated 26th March, 2009, which has been impugned in the present writ petition by the petitioner-Company.

(Paras 11& 12)

P. K. Mutneja, Advocate, *for the petitioner.*

A. P. Bhandari, Advocate, *for the respondents.*

AUGUSTINE GEORGE MASIH, J. :

(1) Through this writ petition, the challenge has been posed by the petitioner—Company to the order dated 26th March, 2009 (Annexure P-21) passed by the Labour Court-II, Faridabad,—*vide* which respondents No. 3 to 327 have been held entitled to computation of amount at the rate of Rs. 7680 per applicant (total applicants 325) against the petitioner-Company. The applicants have also been held entitled to interest at the rate of 8% per annum from the date the amount becomes due till its payment. Cost is assessed at Rs. 20,000, on an application preferred by the respondents under Section 33-C (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act').

(2) Counsel for the petitioner contents that a settlement dated 18th December, 1995 (Annexure P-1) was executed under Section 12 (3) of the Act between the petitioner-Company and its workmen. This settlement came into force on 1st October, 1995 and was to remain in force till 30th September, 1998 as per clauses of the settlement. The purpose of the settlement was to provide orderly, effective and harmonious industrial relations through collective bargaining and maintaining cordial, meaningful relations between the management and the workmen to maintain fair service conditions, to prevent strikes, lock out and go slow, to improve workman discipline in the premises of the Company, to sustain and improve working efficiency. As per the terms of settlement, all benefits accruing under this settlement were based on increasing the production from Rs. 473 lacs to Rs. 710 lacs per month in the third year. In this regard, he refers to Clause 6 of the said settlement. The workers gave production in the 1st year only and the benefits, as stipulated under the settlement, were given to them. In the 2nd year of the settlement, the workmen failed to achieve the

production target, which fact was pointed out to the workmen but still the Management gave the benefits to the workmen as per the settlement. In the 3rd year, again the production was below the norms fixed as per the settlement. Accordingly, the benefits under the settlement were not paid to the workers. A second settlement dated 22nd June, 1998 (Annexure P-2) was entered into between the petitioner Company and the workers union, which was valid from 1st April, 1998 till 31st March, 1999. It was agreed that the earlier settlement dated 18th December, 1995 (Annexure P-1) would be over. This second settlement was also arrived at by mutual consent by means of another settlement dated 31st July, 1998 (Annexure P-3). By this settlement, the position of the earlier settlement dated 18th December, 1995 (Annexure P-1) was restored. During the integrrum, the workers union preferred a complaint (Annexure P-4) before the Deputy Labour Commissioner, in which it was alleged that the petitioner-Company is not taking production from the workers nor are they giving raw materials to the workers, as a result, production is suffering and, therefore, it was prayed that they be granted the benefits as per the settlement entered into between the parties. On 15th June, 1998, a show cause notice was served by the Labour Commissioner, Haryana on the petitioner-Company. In reply thereto, the Company pointed out that since the targeted figures, as per the settlement, were not met by the workers of the petitioner-Company and, therefore, there was a shortfall in the production as per the requirement of the settlement thus disentitling the workers the claim under the settlement. No action was taken on the said complaint or the show cause notice, which was served by the Labour Commissioner, Haryana, the petitioner-Company was facing problems and as such brought about two Voluntary Retirement Schemes (VRS) so that the workers do not suffer. A number of workers availed of the said scheme. Some applicants under Section 33-C (2) of the Act also accepted the said scheme and ceased to be the workers of the petitioner-Company. He, therefore, contents that the application qua these workers under Section 33-C (2) of the Act was not maintainable before the Labour Court. He further contended that the application is highly belated as the claim period put forth in the application was from 1st October, 1997 to 30th September, 1998 whereas the application was preferred in May, 2002, therefore, there is a delay of four years in submission of the said application. He contends that the application

under Section 33-C (2) of the Act has been signed by only nine persons and the remaining applicants have not signed the application nor were they ever tried to prefer the application on their behalf. Although a list of the workmen and the amount claimed by them has been annexed with the application but there are no signatures of the other workmen whose list was attached with the application. He, on this basis, contends that the application itself was not maintainable before the Labour Court. While challenging the order dated 26th March, 2009 (Annexure P-21), he contends that the respondents—workers having failed to achieve the production target as stipulated in the settlement, they were not entitled to any claim under the said settlement. There was an express clause in the settlement and the entire package deal of monetary benefits is based on the returnability concept and the benefits accruing under the settlement shall stand automatically and simultaneously stopped in the event of not achieving the production targets stipulated in the agreement as per the relevant terms of settlement dated 18th December, 1995. He, accordingly, prays for quashing of the impugned order and allowing the writ petition.

(3) On the other hand, counsel for the respondents—workmen submits that the facts, as pleaded in the written statement before the Court, are to be proved by leading cogent and convincing evidence. No records pertaining to the assertions that the production during the period 1995 to 1998 had gone down, have been produced by the petitioner-Company. Despite orders dated 29th July, 2005 passed by the Labour Court, an applicaton moved by the respondents-workmen for summoring of the official of the Company as a witness with documents and the undertaking of the Authorized Representative of the Management, no records were produced by the Management which shows that the figures, as mentioned in the written statement, were manipulated with an intention to deprive the workmen of their legitimate claim as per the settlement. As a matter of fact, the production has gone up and the evidence was produced by the workmen that prior to the settlement in December, 1995, there were 700-750 permanent workers in the year 1995, 300 permanent workers were removed in the year 1996-97 and 100-50 casual workers engaged. Despite this, production continued to increase from 1995 to 1998. He admits that for the first two years i.e. 1996-1997, the workers were paid the benefits but in the third year i.e. 1998, they were not paid the benefits. He supppots

the Award passed by the Labour Court and submits that the Award is in accordance with law which does not call for any interference by this Court.

(4) As regards the maintainability of the application under Section 33-C (2) of the Act, he contends that due to paucity of space, the application was signed by 9 respondents whereas list of other applicants giving their names, worker number and signatures were attached with the said application. The contention of the counsel for the petitioner that the application was not signed by the other workmen or there was no authorization on their behalf, is against the records. He contends that no period of limitation is prescribed under the Industrial Disputes Act for submitting an application under Section 33-C(2) Act and the application was preferred only after a period of about 3 years and 8 months. When no limitation is prescribed under the Act itself, the Court cannot itself impose or import the concept of the Limitation Act or apply Article 137 of the Limitation Act, 1963. He, on this basis, contends that the order passed by the Labour Court deserves to be upheld and the writ petition dismissed.

(5) I have heard the counsel for the parties and have gone through the records of the case.

(6) As there was a serious dispute on the question as to whether the list of applicants attached along with the original application contained signatures of the remaining applicants except the 9 who had signed the applicaton, records of the Labour Court were summoned by this Court and on their receipt, the same have been perused by me.

(7) The application under Section 33-C(2) of the Act was preferred by the respondents-applicants on 21st May, 2002. The list of the applicants attached with the application does contain the names of the applicants, token number as also their signatures. In this view of the fact, the contention of the counsel for the petitioner that the application does not contain the signatures of the applicants except the 9, who had signed the application itself, cannot be sustained and is hereby rejected. As the application has been duly signed, the question of the authorization to file the said application on their behalf by the 9 applicants, who had signed the application, does not arise.

(8) As regards the contention of the counsel for the petitioner that the application under Section 33-C(2) of the Act is belated, is also not acceptable as there is no limitation provided under the Industrial Disputes Act for preferring an application under Section 33-C(2) of the Act. The Hon'ble Supreme Court in the case of **East India Coal Co. Ltd.** *Versus* **Rameshwar and others, (1),** in para-6 at page 221 has held as follows :—

> "6. These applications were made in 1962 though they related to claims for the years commencing from 1948 and onwards. The contention therefore was that part of these claims, at any rate must be held to be barred either by limitation or by reason of laches on the part of the workmen. The answer to this contention is clearly provided in the case of Bombay Gas Co., 1964-3 SCR 709= (AIR 1964 SC 752) *(supra)* where a distinction was drawn between consideration which would prevail in an Industrial adjudication and those which must prevail in a case filed under a statutory provision such as Section 33-C(2). This Court pointed out there that whereas an industrial dispute is entertained on grounds of social justice and therefore a tribunal would in such a case take into consideration factors such as delay or laches, such considerations are irrelevant to claims made under a statutory provision unless such provision lays down any period of limitation. The Court held that there is no justification in inducting a period of limitation provided in the Limitation Act into the provisions of Section 33-C(2) which do not lay down any limitation and that such a provision can only be made by legislature if it thought fit and not by the Court on an analogy or any other such consideration. It is matter of some significance that though the legislation amended Section 33-C by Act 36 of 1964 and introduced limitation in the section, it did so by means of a proviso only in respect of claims made under sub-section (1) but did not provide any limitation for claims under sub-section (2). In view of this fact and decision in Bombay Gas Company's case, 1964-3 SCR 709=(AIR 1964 SC 752) *(supra)* Mr. Gokhale conceded that he could not press the contention that the present claims were barred by limitation or laches."

(1) AIR 1968 S.C. 218

(9) Thereafter the Hon'ble Supreme Court in the case of **Town Municipal Council** *versus* **Presiding Officer, Labour Court, Hubli and others, (2)** after elaborating reference to the corresponding provisions in the Limitation Act and after having due reference to the Scheme 1963 has held that Article 137 of the Act does not apply to application under Section 33-C(2) of the Act and that no limitation is prescribed for such applications. This decision was approved by the Hon'ble Supreme Court in the case of **the Management of State Bank of Hyderabed** *versus* **V. Vasudev Anant Bhinde and others, (3)** Accordingly, it is held that application under Section 33-C(2) of the Act was maintainable before the Labour Court by the respondents-workmen.

(10) The contention of the counsel for the petitioner that the respondents workmen were not entitled to the claim made on the basis of the settlement as the production had gone down and they had not achieved the productivity level which would entitle them to the claim under the settlement, also cannot be accepted in the light of the fact that the petitioner-Company had failed to prove the assertions made by it in its written statement before the Labour Court by producing any cogent or convincing evidence and that too, despite opportunity given by the Labour Court to do so. Reference to paras 25 and 26 of the impugned order would be beneficial at this stage, which read as follows :—

> "25. It was argued on behalf of the Management that the claimants failed to give the targeted production as per settlement Ex. M-1 and even the claimants failed to achieve the target of second year as per settlement and even then the management paid incentives of settlement for the first two years and production given by the claimants has already been given in written statement as well as in the affidavit of MW-1 Ashwani Kumar Nagpal, Senior Manager filed as Ex. MX. This argument raised on behalf of the management is not sustainable reason being the facts pleaded in written statement are to be proved before this court by congent and convincing evidence. MW-1 Ashwani Kumar Nagpal, Senior Manager of the Company filed affidavit Ex. MX in

(2) AIR 1969 S.C. 1335
(3) AIR 1970 S.C. 196

the same form as pleaded the facts in written statement. The production figure deposed in para No. 6 of this affidavit Ex. MX are not corroborated by any documentary evidence becouse no record pertaining to the production during the period 1995 to 1998 have been produced by management. If the statement of MW-1 Ashwani Kumar Nagpal is appreciated in totality, he has not deposed any fact regarding sale and purchase of the products, total production given by the workers and tried to justify that record being old was not traceable. He has also deposed in his statement that he was not working in the production department at that time and hence he has no knowledge about the production given by workers during the disputed period. It has come in evidence of both the parties that the workers used to give production in form of pieces on daily as well as monthly basis and workers have claimed that they gave the desired targets as per settlement Ex. W-1 but their benefits were withheld and targets were given by the workers despite the fact that strength of permanent workers were reduced by the management with *mala fide* motive during this period. In such circumstances, it was necessary for the management to produce the entire record pertaining to the production of the company with three years of settlement period and non-production of this record draws adverse inference against the management because the management had only domain over the production record and workers have nothing to do with this record. Even no officer or incharge of production section has been examined by the management to depose before this court that in which particular month, the workers failed to achieve the targets. When no record has been produced before this Court, then production figures given in para No. 6 of the affidavit Ex- MX are not genuine because these are the fictitious figures have been submitted before this Court and statement of MW-1 Ashwani Kumar Nagpal, Senior Manager cannot be believed that these production figures have been prepared in accordance with the production record.

26. The *mala-fide* intention of the management can be appreciated regarding non-production of record before this Court. As per perusal or order dated 29th July, 2005 passed by my learned predecessor on the application moved by the applicants for summoning of the official of the Management as a witness with documents i.e. Sale Price List, balance sheet, sale figures, attendance register, bonus register, name of selling agents and dealers etc. Reply of this application was filed by the Management stated before the Court that Management is ready to produce the production record pertaining to this period as well as record of wages paid to the workers employed in the factory for HAV production target of the workers. Despite order of the Court dated 29th July, 2005 and undertaking of the AR for the Management, still this production record was not produced by the Management. Hence, non-production of material records by the Management clearly reflects that the Management has failed to prove its pleas taken in written statement as well as in afidavit Ex MX. Hence, the benefits to the claimants pertaining to third year w.e.f. 1st October, 1997 cannot be declined by this Court."

(11) A perusal of the above finding recorded by the Labour Court does not leave any doubt that the Labour Court has rightly appreciated the pleadings and the evidence led by the parties and has come to a correct conclusion. The findings, so recorded, are based on proper appreciation of the evidence led by the parties which do not call for any interference by this Court as the same are based on well settled and recognized principles of law. The jurisdiction of this Court under Article 226 of the Constitution has been elaborated by the Hon'ble Supreme Court in the case of **Syed Yakoob** *versus* **K. S. Radhakrishnan, (4)** in para 7, which reads as follows :—

"7. The question about the limits of the jurisdiction of the High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be

(4) AIR 1964 S.C. 477

issued for correcting errors of jurisdiction committed by the inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that finding of facts reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of Law which is apparent on the face of the record can by corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said findings are within the exclusive jurisdiction of the Tribunal and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (*vide* **Hari Vishnu Kamath**

versus **Ahmad Ishaque,** 1955-1 SCR 1104: (S) AIR 1955 SC 233) : **Nagendra Nath** *versus* **Commr. of Hills Division,** 1958 SCR 1240: (AIR 1958 SC 398) and **Kaushalya Devi** *versus* **Bachittar Singh,** AIR 1960 SC 1168."

(12) In view of the above, no error has been committed by the Labour Court while passing order dated 26th March, 2009 (Annexure P-21), which has been impugned in the present writ petition by the petitioner—Company. Accordingly, the said order is upheld. Consequently, the present writ petition stands dismissed.