IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3606 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

GOKULESH PETROLIUM PVT LTD

Versus

HIMALAYA R SHAH

Appearance:

MR NALIN K THAKKER for Petitioner

MR RV DESAI for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 26/02/99

ORAL JUDGEMENT

#. Rule. Service of rule is waived by learned counsel for the respondent.

#. Heard learned counsel for the parties.

#. The facts briefly stated are that the petitioner is the owner of Gokulesh Petrol Pump and had employed

respondent Himalay R. Shah. His services were terminated with effect from 9.7.94 without complying with the provisions of the Industrial Disputes Act as to the retrenchment. His services were continuous for a period of more than one year. This dispute was referred to the Labour Court, Ahmedabad. At the time of hearing it was urged by the petitioner employer that by written compromise dated 25.7.97 the dispute has been settled out of court. The workman had accepted in full and final settlement of his claim a sum of Rs.7301/- which was paid to him and therefore no dispute survives. A compromise deed executed on stamp of Rs.20/- which was purchased on 24.7.95 signed by the workmen and one Pankaj R. Muravala authorised representative of the employer and an affidavit on Rs.10/- stamp of the same date sworn by the workman before the notary acknowledging the fact of compromise and receipt of payment was filed. Compromise deed was also verified by Notary. The fact that these documents contained the signatures of the workmen were not denied. However it was asserted that the signatures were obtained under duress and it was not a compromise with the free will of the workman therefore not binding on him. He also denied to have received any consideration stated in the document. The Labour Court found that the document in question was executed under duress and was not in proper form inasmuch as it was not attested by two witnesses and it has not been arrived at before the court but outside the court is not binding. On examining the case of the workman on the merit of termination order, finding it to be a case of illegal retrenchment, the Labour Court ordered reinstatement with 50% backwages by his award dated 3.12.97. That award is under challenge in this petition.

#. In arriving at the conclusion, that the signature of the employee has been obtained under duress, primary consideration that weighed with the Labour Court is that at no place, the employer's signature appears on any document but only representative of the employer who is an advocate has signed the proceedings before the conciliation officer as well as on the document of compromise, and that the fact that no responsible person from employer's establishment has been present before the conciliation officer.

#. The fact that Pankaj Murawala was authorised representative of the employer before the labour court is not in dispute. Authority of agent of authorised representative to enter the compromise and the fact of compromise under signature of such agent is not disputed by the employer, the party on whose behalf the agents

acts. Thus its binding nature for the employer cannot be doubted. Law envisage compromise signed by agent of the party to be as much binding as signed by the principal unless dispute is between the principal and agent or dispute is as to authority of agent to sign. Both the contingencies are not present. Neither the authority of Mr. Muravala to enter into compromise has been challenged nor the principal has denied the compromise. Such document cannot be invalidated on the ground of want of signature of principal at the behest of other party to agreement, if it is otherwise valid. The objection to such compromise has only been as to form, if the plea as to want of free consent is not upheld.

#. So is the question whether employer has appeared in person before conciliation officer is wholly irrelevant to consider the validity of plea of consent under coercion or of free will, during the course of pending proceeding before labour court. If it is found that a compromise has been arrived at by free consent, which is lawful, it cannot be challenged by a party signing the same on the ground that other party has only represented through agent and not personally. It may be open for a party not to agree with any compromise with agent of another party. But once he settles with the dispute with agent, he cannot denounce on the ground that settlement is not with principal.

#. From the record of the Labour court it appears that the workman has filed along with his list of documents on which he relies a copy of his own affidavit dated 2.8.95 the original copy of which has been placed on record by learned counsel for the workman during the course of hearing of this petition. The application bears the date of 21.8.95 corrected to 12.9.1995 and bears the endorsement of giving a copy to the employer on 4.2.97. Apart from this an affidavit was filed on 16.1.1996. The written arguments were also submitted by the workman in which he raised question about the binding nature of the compromise dated 25.7.95 alleging the signature to have been obtained under duress, no payment having been received by him as alleged in the said documents and also defects as to the form of settlement envisaged under Section 2(p) of the Industrial Disputes Act. The Tribunal has noticed that the two stamp papers on which settlement and affidavit of the workman have been executed and notarised were purchased by the clerk of the agent of the employer, for drawing inference against the employer and in favour of the workman about the dubious nature of the two documents.

#. In this connection perusal of the award and record goes to show that vital and relevant material has not been considered by the court. No reference has been made to affidavit dated 2.8.95 filed by the workman himself. That document which is a statement of the workman himself goes to show that in no uncertain terms that in the first instance there was settlement between the agent of the workman and the employer through some Pankaj R. Muravala for a sum of Rs.20000/-. However that did not come through finally. Thereafter in the graphic detail it has been stated that on 6.5.95 a person who was working at the establishment of employer named Dat Bahadur with three other persons cornered him, took the workman to Pankaj R. Murawala on the knife point and revolver point and there he was made to sign on a compromise deed and some blank papers, and he was asked to leave Ahmedabad. In this atmosphere he left Ahmedabad on 8.5.95. At this juncture it becomes relevant to recall that the two documents relied on by the employer are executed on 25.7.95, within ten days before the execution of this affidavit. Stamps on which those documents have bee executed have been purchased only on 24.7.95. Both the documents bear the signature of the workman one of which viz., the affidavit is on the back of stamp paper itself which has been notarised on 25.7.95. The workman now in his written arguments, in 1997 denounce the agreement executed in 24th July 1995 on the like assertions in which he denounced the alleged compromise which he signed on 6.5.95. Strangely, no reference to incident of July 1995 has been made in an affidavit sworn in on 2.8.95 while details have been stated about incident which has taken place in May 1995 concerning the same dispute and no reference whatsoever to this has been made in the affidavit dated 16.1.1996. The document dated 2.8.95 which was the document of the workman himself, and unequivocally told about process of compromise going on between the parties at that stage voluntarily through their agents and the chronology of events which has a vital bearing on considering the question of the compromise having been arrived at voluntarily or involuntarily, on the basis of facts alleged in written arguments. The Labour Court has failed to notice this fact which cannot be disputed and denied by the workman. Particularly it may be noticed that no complaint has been made to any authority about the incident of threat to the workman by use of knife and revolver in May 1995 or in July 1995. In these circumstances, could any court arrive at the conclusion to which the labour court has arrived at without giving consideration to these facts speaking from the record and remain unexplained is open to serious doubt.

#. It may be further noticed that in affidavit dated 2.8.95 the workman asserts that on 6.5.95 he was made to sign papers of compromise and settlement and and four five plain papers. These assertions about threat and conduct of Muravala in affidavit dated 2.8.85 obviously even if assumed to be correct cannot have reference to the document executed in July 1995 on stamp papers purchased on 24th July 1995. In his statement also he has categorically stated that he left Ahmedabad on or around 8.5.95 and thereafter he has returned in January 1997 after about a gap of one year and two months. This statement also falsifies his contention about use of duress in July 1995 inasmuch as once the workman admits his signature on two documents on stamp papers purchased in July 1995 and notarised in July 1995 his presence in July 1995 and execution of the document in July 1995 before notary stand proved. In his statement recorded on 7.2.97 he admits his signatures on compromise Exh. 12/1 and asserts that he has entered this compromise with lawyer of management and he has engaged lawyer thereafter. He admits his signatures on affidavit 12/2 in his cross examination but neither denies its contents or his having not signed the same before notary public who has verified the same. The photo copies of the compromise deed as well as affidavit prepared on 25.7.95 has been produced in court on 11.3.96 after delivering copy to the representative of the workman. Yet, no attempt was made denying the validity of these two documents until he was examined. In these circumstances the finding as to execution of compromise on 25.7.95 and affidavit dated 25.7.95 has been executed under threat and duress stand vitiated.

##. Another contention that the compromise does not conform to the form of settlement under Section 2(p) of the Industrial Disputes Act in the context of the present controversy is also not sustainable. One objection that has been raised to the validity of the compromise is that it has not been signed by two witnesses, though placed has been indicated in the document. It is not the requirement of law that an agreement of compromise should be attested by witnesses. The fact that it may be desirable to do so cannot be raised to the status of being a mandatory statutory condition for the validity of document itself. So also distinction has to be made between the settlement between an employer and employee in settling the dispute providing terms of employment from a compromise in pending dispute by which one party may agree to withdraw from the dispute on receiving certain consideration, particularly in the case where the

dispute is not that between workmen as a body and the employer but the dispute which is of individual character and has been made subject matter of reference because of the special provisions of Section 2A. But for section 2A such sort of individual disputes would not have been governed by the provisions of the Industrial disputes Act at all what has been considered industrial dispute and referable to the Labour court or industrial Tribunal for adjudication. The concept of settlement inherent in Section 2(p) as it was introduced at the time of commencement of the Act in 1947 itself in the very scheme of things related to the disputes relating to body of workmen and not the individual disputes and to process of collective bargaining between the workmen through their representative and the employer so as to bind all the workmen whether they are party to such settlement or not. As the same were given importance as a means of enforcing industrial peace through collective bargaining and strives for what is best in the interest of workmen in terms of employment. Section 2(p) read with Section 18 makes this scheme abundantly clear, that the same cannot be placed at par with resolution of individual disputes through negotiations between parties to the dispute.

##. Section 2(k), which defines industrial dispute and remained unchanged since its enactment, had used expression employees and workmen in plural form. It does not encompass within it a dispute which is of individual workman and does not evolve interest of other workman, properly termed as community of interest.

##. Supreme Court in Central Provinces Transport Service Limited v. R.C. Patwardhan AIR 1957 SC 104 and Newspapers Limited v. Industrial Tribunal AIR 1957 SC 532 and Workman v. Dharampal Premchand (1963) 3 SCR 394 ruled that dispute between an employer and a single workman cannot be per se an industrial dispute. It may become one if it is taken up by a trade union or a number of workmen. Community of interest of the workmen of the establishment was held to be essential ingredient of an `industrial dispute' under the Act.

##. Term `settlement' that found expression in Section 2(p) had direct nexus in the context to agreements or settlements arrived at between an employer and its workman with the agreement relating to an industrial dispute falling within the meaning of Section 2(k) and referrable to agreement resulting from collective bargaining in settling such industrial dispute where plurality of workmen were involved or community of interest in such dispute was there where it related to an

individual workmen. It may be noticed that at its inception `settlement' was defined to mean a settlement arrived at in the course of a conciliation proceeding. Settlement arrived at otherwise than during the conciliation proceeding were not covered until under Central Act No. 36 of 1956 clause 2(p) was substituted with the following:

"2(p) "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such 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 authorised in this behalf by the appropriate Government and the conciliation officer"

##. One can discern that again as in Section 2(k) the plural expression `workmen' was used. This spoke of agreement during the course of conciliation proceedings or otherwise between parties. This clearly indicated that definition was directly referrable to settlement or agreements between parties to an industrial dispute, which was to be resolved by such settlement. Obviously this could have reference to settlement of dispute in which large number of workmen were involved or interest of large number of workmen was there even in individual dispute by collective bargaining.

##. Section 18 declared the binding nature of settlements and awards. Under Subsection (1) again binding nature of settlement arrived at between plurality of workmen otherwise than in conciliation proceeding was made binding on parties to agreement and under subsection (3) settlement arrived at in the course of conciliation proceedings is made binding not only on parties to settlement, but parties to industrial disputes including all those who have participated in proceedings on being summoned before the concerned authority as parties thereto as well as it binds, where one of the party is workmen, to all the workmen, who are parties to settlement as well as those who are though not parties to settlement but were employed in the establishment as on the date to which dispute relates and also to those who are employed thereafter. Thus in the scheme of Act, which primarily related to settle the industrial disputes, either through adjudication or settlement, made provision as to define `industrial dispute', `settlement' and declared binding nature of settlement or agreements

between parties to such industrial dispute, settlement of disputes was relatable to protecting community interest through collective bargaining.

##. The scheme of Industrial Disputes Act underlines the policy of collective bargaining in the economic field to achieve the object of labour welfare by providing protection against uneven strengths of individual workman and the employer. Ludwing Teller in his work `Labour Disputes and Collective Bargaining' has cleared that it envisages plurality of employees on one side of the line of dispute. He broadly defines collective bargaining as an agreement between a single employer or an association of employers on one hand and a labour union upon the other which regulates the terms and condition of employment. The term `collective' as applied to collective bargaining agreement will be seen to reflect plurality not of the employers who may be parties thereto but the employees therein involved. Again the term collective bargaining is reserved to mean bargaining between an employer or group of employer and a bona fide labour union. In this context use of expression `workmen' in plurality in the definition of industrial dispute in Section 2(k) and of settlement in Section 2(p) is significant. The definition of `industrial dispute' since its enactment in 1947 has remained unchanged. Keeping in view the object of the Act and the use of plural expression of `workmen' as one of parties to dispute while defining the term `industrial dispute', the interpretation it received through courts established that the policy behind the Act is to protect workmen as a class against unfair labour practices. What imparts to the dispute of a workman the character of an industrial dispute is that it affects the right of workmen as a class. Reference may be made to Indian Cable Co. Ltd. v. Workman (1962) 1 LLJ 409.

##. Griffith, C.J. in Federated Saw Mill Timber Yard and General Wood Workers Employees Associations v. James Moore & Sons Proprietary Ltd. 8 CLR 465 opined:

> "The word industrial ..... as used to the nature of quality of disputes ..... denotes two qualities which distinguish them from ordinary private disputes between individuals namely (i) that the dispute relates to industrial matters and (ii) that on one side at least of the dispute the disputant are a body of men acting collectively and not individually.

##. Supreme Court speaking through Gajendragadkar, J in

Associated Cement Companies Limited vs. Their Workmen AIR 1960 SC 777 said an element of collective bargaining which is the essential feature of modern trade union movement is necessarily involved in industrial adjudication.

##. In this connection opinion of Isaac, J in George Hudson Ltd. v. Australian Timber Workers Union 32 CLR 413 may be usefully referred to:

> "The very nature of an industrial dispute as distinguished from an individual dispute is to obtain new industrial conditions, not merely for specific individuals then working from the specific individuals then employing then and not for the moment only, but for the class of employees from the class of employees. It is a battle of claimants not for themselves alone"

##. It is in the context of the object and applicability of provision the requirement of signing settlement in prescribed form and sending the copy thereof to an officer authorised in this behalf by the appropriate Government was envisaged under Section 2(p) and rules were framed to given effect to that provision viz., to provide for necessary procedural safeguards to protect settlements or agreement arrived at through collective bargaining to be binding and not to be punctured by individual dissents at the same time providing the safety measures to ensure that settlement is bona fide arrived at through collective bargaining. These provisions as enacted did not encompass within its scope individual dispute of a single workman or resolving such individual dispute by the parties to dispute, without recourse to collective bargaining.

##. It is pertinent to recall that Supreme Court in Newspapers Ltd. v. State Industrial Tribunal AIR 1957 SC 532 held while considering like provision under U.P. Industrial Disputes Act:

> "The object of the Act is the prevention of industrial strife, strikes and locks out and the promotion of industrial peace and not to take the place of the ordinary tribunals of the land for the enforcement of contracts between an employer and an individual workman. Thus viewed the provision of the Act lead to the conclusion that its applicability to an individual dispute as opposed to dispute involving a group of workmen is excluded unless it acquires the general

characteristics of an industrial dispute, viz., the workmen as a body or a considerable section of them make common cause with individual workman and thus create conditions contemplated by Section 3 of the Uttar Pradesh Act which is the foundation of State Governmental action under that Act. The other provisions which follow that section only subserve the carrying out the objects of the Act specified therein"

The court further said:

"The use of words workmen and workman in Rule 26 is indicative of the intention of the Act being applicable to collective disputes and not to individual ones and this is fortified by the finality and the binding effect to awards by Rule 28 and more specially by Section 18 of the Contract Act which makes the awards binding not only on the individuals present or represented but on all the workman employed in the establishment and even on future entrants."

##. In this background of existing scheme of provisions relating to industrial disputes, and settlements, under the Industrial Disputes Act by Central Act No. 35 of 1965 Section 2A was inserted in Industrial Disputes Act in 1965 with effect from 1.12.65. By this insertion individual dispute about termination of employment of work could also be brought within resolution process by himself without involving community of interest. Thus Section 2A envisaged consideration of individual dispute of a workman with his employer as to discharge, dismissal or retrenchment or otherwise termination of services which could be agitated and considered under the scheme of Industrial Disputes Act, but without involving community interest of workmen as a class. The object of new insertion was obviously not to declare the individual dispute as common cause of a class of workmen but to extent the benefit of machinery to protect the individual workman in case of termination of service. Applicability of machinery provision particularly of procedures must be viewed in this context, while considering individual disputes. In this context, I am of the opinion that where a dispute does not involve community interest and lacks element of settlement through collective bargaining, the rigors of provision relating to settlement through collective bargaining envisaged under Section 2(p) cannot be extended.

##. In the context of Section 2A where the dispute is

individual the right of an individual to withdraw from the dispute at his free will by negotiating the terms which is best suited to him in individual capacity obviously cannot be put to same stress to which settlement arrived at between the union representing all or majority of workmen and employer to safeguard the interest of a body of workmen which requires greater amount of caution and sanctity of procedure so as to make it a fair process making it binding on to those also who may not have participated in the proceedings and who may not have agreed to such process. This fact is apart from the consideration that in a pending dispute compromise to withdraw from the suit cannot be equated with settlement between the parties governing their relationship. The settlement governing the relationship ordinarily means applicability of settlement as terms of employment that govern the employer employee relationship. In such event such settlement partakes the character of the terms of settlement. Such form may include condition under which employment is terminated. Where a person voluntarily withdraws from such relationship and put an end to it, it cannot be considered a settlement prescribing terms for continued existence of relationship of employer and employed.

##. Therefore, in my opinion, the non-recognition of the compromise between the disputing parties to an individual dispute under which one may agree to withdraw from the dispute recognising that no dispute exist between them that need adjudication, as incompetent is not warranted. Agreement in the present case if otherwise found to be voluntary and not contrary to law, merely is, not to seek adjudication of dispute to resurrect the employer employee relationship which is already put to an end in 1994. Construed in proper prospective such agreement or compromise does not fall within the purview of settlement envisaged under Section 2(p) of Industrial Disputes Act, to invite applicability of rules as to form and procedure of communication.

##. Learned counsel for the respondent workman urged that in view of aforesaid, the matter may be sent back, to the labour court for deciding the issue of obtaining th consent of the petitioner workman under duress or his agreement for withdrawing the dispute was voluntary by considering the entire material on record and give a chance to the workman to explain the material which has not been considered by labour court. To this course learned counsel for the petitioner has also no objection.

##. In the circumstance, the impugned award of the

labour court is set aside. The labour court is directed to decide the dispute afresh in accordance with law keeping in view the observations made above. If so required by the parties the parties may be permitted to lead further evidence subject to the condition that party leading evidence shall, whether producing oral evidence by documentary, tender such evidence simultaneously with the request for taking further evidence, about the question of voluntary nature of the compromise deed and affidavit, which has been executed by the workmen and the representative of the employer on 25.7.95 with right of the other side to produce evidence. The award shall be made within a period of six months.

##. Before parting with the case, it may further be observed that during the course of hearing both parties have tried for further negotiation. The petitioner offered Rs.20000/- in lump sum in full and final settlement in addition to what has allegedly already been paid to the workman where as the workman has demanded Rs.50000/-, which ultimately failed.

Rule is made absolute with the aforesaid observations. There shall no no order as to costs.

(Rajesh Balia, J)