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GENERAL MANAGER, SECURITY PAPER MILL,
HOSHANGABAD

v.
R.S. SHARMA & ORS.

FEBRUARY 14, 1986

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[E.S. VENKATARAMIAH AND M.P. THAKKAR, JJ.]

Industrial Disputes Act, 1947 section 2(p) - "Settlement", meaning of - Settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceedings, whom it binds, explained - Burden of Proof that a "Settlement" arrived at by agreement between the employer and the workman binds every workman being parties to the settlement and that the agreement was fair and just, is upon the employer.

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In the course of conciliation proceedings under the provisions of the Industrial Disputes Act, 1947, a settlement was arrived at on June 29, 1973 between the management of the Security Paper Mill, Hoshangabad, the appellant and the SPM Employees Union, Hoshangabad. One of the terms of the settlement related to the incentive benefit entered into on behalf of the workmen and other non-operative officers and staff of the Security Paper Mill at Hoshangabad. When the above Settlement was in force the Government of India by its letter dated December 29, 1975 reduced the rate of group incentive benefit payable by restricting the entitlements of the non-operative officers and staff with effect from 1.1.76 to 25% of the rate applicable to industrial workmen for gazetted officers and to 50% in respect of non-gazetted industrial staff. When the said order was challenged, the Central Government Industrial Tribunal-cum-Labour Court held that the modification of the incentive benefit made by the Government of India was illegal. After that the management entered into an agreement with one of the trade unions named SPM Employees Union on April 11, 1979 reducing the rate of incentive benefit to 50% to the non-operative employees that is administrative staff, accounts staff, estate employees and dispensary staff, and paid the benefit accordingly. The said agreement was not entered into during the course of any

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conciliation proceedings and in fact there were no conciliation proceedings pending at the time when the agreement was entered into. The respondents who belonged to the non-operative staff and who were not the members of the Union and parties to the agreement challenged the validity of the agreement before the Authority under the Payment of Wages Act on the basis of the Settlement of the year 1973. While allowing the claim for Rs. 1,93,357.85 and cost at the rate of Rs. 10 per worker, it did not, however, allow any compensation. In appeal, the Industrial Court affirmed the decision of the authority under the Payment of Wages Act but disallowed the costs at the rate of Rs. 10 per worker. Hence the appeal by special leave by the management alone.

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Dismissing the appeal, the Court,

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HELD: 1. The expression "settlement" defined in section 2(p) of the Industrial Disputes Act, 1947 means a settlement arrived at in the course of conciliation proceeding and also includes a written agreement between employer and workmen arrived at otherwise than in 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. [286 G-H; 287 A]

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A distinction is made in the Industrial Disputes Act, 1947 between a settlement arrived at in the course of conciliation proceeding and a settlement arrived at by agreement between the employer and workman otherwise than in conciliation proceeding both as regards the procedure to be followed in the cases and as regards the persons on whom they are binding. If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceeding the Conciliation Officer shall send a report thereof to the appropriate Government or an officer authorised in that behalf by the appropriate Government together with a Memorandum of Settlement signed by the parties. Even though a Conciliation Officer is not competent to adjudicate upon the disputes between the management and its workmen he is expected to assist them to arrive at a fair and just settlement. He has to play the role of an adviser and friend of both the parties and should see that neither party takes undue

advantage of the situation. Any settlement arrived at should be a just and fair one. It is on account of this special feature of the settlement sub-section 3 of section 18 of the Industrial Disputes Act, 1947 provides that a settlement arrived at in the course of conciliation proceedings under that Act shall be binding on (i) all parties to the industrial dispute, (ii) where a party referred to in clause (i) is an employer, his heirs, successors, or assigns in respect of the establishment to which the dispute relates and (iii) where a party referred to in clause (i) is comprised of workmen, all persons who were employed in the establishment of part. Law thus attaches importance and sanctity to a settlement arrived at in the course of a conciliation proceeding since it carries a presumption that it is just and fair and makes it binding on all the parties as well as the other workmen in the establishment or the part of it to which it relates. But in the case of a settlement not arrived at in the course of the conciliation proceedings it has to be in writing and signed by the parties in the prescribed manner and a copy thereof should be sent to the officer authorised by the appropriate government in this behalf and to the Conciliation Officer. Such a settlement arrived at by agreement between the employer and workmen otherwise than in the course of conciliation proceedings is binding only on the parties to the agreement as provided in section 18(1) of the Industrial Disputes Act, 1947. Such a settlement is not binding on the other workmen who are not parties to the settlement. [287 A-H; 288 A-D]

In the instant case, the agreement entered into on April 11, 1979 between the Management and SPM Employees Union is not binding on the respondents and therefore, cannot have the effect of depriving them of their right under the settlement dated June 29, 1983 as long as it is in operation since, (a) it is not shown that the SPM Employees Union which had entered into an agreement could represent the respondents and that the respondents were parties to it; (b) no plea of termination or bringing to an end in some manner known to law of the earlier agreement under section 19(2) was taken by the management; and (c) apart from the bare assertion that the agreement dated April 11, 1979 reducing the incentive benefit was fair and just and therefore it should not be interferred with, no material was placed by the management before the Authority under the Payment of Wages Act or the Industrial Court to show that the said agreement was fair and just. [288 E; 289 A-B]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2696 (NL) of 1984.

From the Judgment and Order dated 10.11.1983 of the Madhya Pradesh High Court in Appeal No. 25/PWA of 1981.

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C.V. Subba Rao for the Appellant.

M.N. Shroff for the Respondents.

The Judgment of the Court was delivered by

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VENKATARAMIAH, J. This appeal by special leave is filed against the judgment and order dated November 10, 1983 passed by the Industrial Court, Madhya Pradesh at Indore in Appeal No. 25/PWA/81 modifying the order dated April 29, 1981 passed by the Authority under the Payment of Wages Act (Labour Court No.2), Bhopal in case No. 1/PWA/81. The facts of the case are

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briefly these in the course of conciliation proceedings under the provisions of the Industrial Disputes Act, 1947 a settlement was arrived at on June 29, 1973 between the management of the Security Paper Mill, Hoshangabad, the appellant herein, and the S.P.M. Employees Union, Hoshangabad. In the Memorandum of Settlement arrived at as per section 12(3) of that Act one of the terms related to the incentive benefit. Clause 2(c) and (d) of the Memorandum of Settlement which relates to incentive benefit reads as follows :

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"2.(c) The settlement on revised group incentive base of 6 M.T. a day will be treated as ad hoc regardless of merits of the case and will remain close and localised to S.P.M. and will not serve as precedent for norms of production in other departmental industrial undertakings.

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(d) The revised base of 6 M.T. a day and the existing norms of the processing sections will be temporary and remain valid till Government take final decision on the basis of the revision and recommendations of the Expert Review Committee set up under letter No.F8(6)/73 Cy dated 5th April, 1973."

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The above settlement was entered into on behalf of all the workmen and other non-operative officers and staff of the Security Paper Mill at Hoshangabad. When the above Settlement was in force the Government of India by its letter dated December 29, 1975 reduced the rate of incentive benefit payable by ordering that the entitlements of the non-operative officers and staff to the group incentive benefit shall be as under :

(i) All Gazetted Officers incharge of non-operative Section (like Administrative and Chief Accounts Officers, Accounts Officers, Medical Officer and Junior Medical Officer) will be entitled to Group Incentive at 25 per cent of the rate applicable to industrial workmen.

(ii) All non-gazetted non-industrial staff and supervisor officers in non-operative section such as office (Accounts, Establishment, Administration and General Sections), Dispensary, Estate etc. will be entitled to group Incentive at 50 per cent of the rate applicable to industrial workmen.

It was directed that the above order dated December 29, 1975 would be effective on the incentives to be drawn from January 1, 1976. The above order dated December 29, 1975 was challenged before the Central Government Industrial Tribunal-cum-Labour Court and that authority held that the modification of the incentive benefit made by the Government of India was illegal. After that the management entered into an agreement with one of the trade unions named S.P.M. Employees Union on April 11, 1979 reducing the rate of incentive benefit to 50 per cent to the non-operative employees i.e. administrative staff, accounts staff, estate employees and dispensary staff. After that the appellant paid the benefit at the reduced rates as per that agreement to the non-operative employees. The said agreement was not entered into during the course of any conciliation proceedings and in fact there were no conciliation proceedings pending at the time when the agreement was entered into. The respondents who were the non-operative staff and were not the members of the Union and parties to the agreement challenged the validity of the agreement before the Authority under the payment of Wages Act on the basis of the Settlement of the year 1973. The claim

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before that Authority was in respect of the period between May 1, 1979 to April 30, 1980 and the total amount claimed was Rs.1,93,357.85. The management filed a statement of objections before the Authority under the payment of Wages Act stating that the S.P.M. Employees Union was the representative Union and the agreement entered into by that Union was binding on all the workers including the respondents. The Authority under the Payment of Wages Act recorded the evidence and thereafter allowed the claim of the respondents regarding deducted wages of Rs.1,93,357.85. It did not, however, allow any compensation but allowed the costs at the rate of Rs.10 per worker. Aggrieved by the order of the Authority under the Payment of Wages Act, the management preferred an appeal to the Industrial Court, Indore. Before the Industrial Court the management raised several contentions. The Industrial Court affirmed the decision of the Authority under the Payment of Wages Act but disallowed the costs at the rate of Rs.10 per worker which had been awarded by the Authority under the Payment of Wages Act after rejecting all other contentions. This appeal by special leave is filed against the decision of the Industrial Tribunal.

E The only point urged before us by the management in this appeal is that the S.P.M. Employees Union which had entered into the agreement dated April 11, 1979 was entitled to represent all the workers including the respondents herein and it was binding on the respondents (who were neither members of the said Union nor parties to the agreement) also. On behalf of the respondents it is pleaded that they were not members of the said Union and an agreement not entered into in the course of the conciliation proceedings had not the effect of taking away their rights under the Settlement arrived at in the year 1973. It is also contended that the said Union had no authority to enter into an agreement binding the respondents who were not its members.

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The expression 'settlement' is defined in section 2(p) of the Industrial Disputes Act, 1947. It means a settlement arrived at in the course of conciliation proceeding and also includes a written agreement between employer and workmen arrived at otherwise than in 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

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to an officer authorised in this behalf by the appropriate Govt. and the Conciliation Officer. A distinction is made in the Industrial Disputes Act, 1947 between a settlement arrived at in the course of conciliation proceeding and a settlement arrived at by agreement between the employer and workmen otherwise than in conciliation proceeding both as regards the procedure to be followed in the two cases and as regards the persons on whom they are binding. Section 12 of the Industrial Disputes Act, 1947 lays down the duties of Conciliation Officer. Under sub-section (1) of section 12 where any industrial dispute exists or is apprehended, the Conciliation Officer is required to hold conciliation proceedings in the prescribed manner. By sub-section (2) thereof he is charged with the duty of promptly investigating the dispute and all matters affecting the merits and the right settlement thereof for the purpose of bringing about the settlement of the dispute and he is required to do all necessary things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute. If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation Officer shall send a report thereof to the appropriate Government or an officer authorised in that behalf by the appropriate Government together with a Memorandum of Settlement signed by the parties. Even though a Conciliation Officer is not competent to adjudicate upon the disputes between the management and its workmen he is expected to assist them to arrive at a fair and just settlement. He has to play the role of an adviser and friend of both the parties and should see that neither party takes undue advantage of the situation. Any settlement arrived at should be a just and fair one. It is on account of this special feature of the settlement sub-section (3) of section 18 of the Industrial Disputes Act, 1947 provides that a settlement arrived at in the course of conciliation proceeding under that Act shall be binding on (i) all parties to the industrial dispute, (ii) where a party referred to in clause (i) is an employer, his heirs, successors, or assigns in respect of the establishment to which the dispute relates and (iii) where a party referred to in clause (i) is comprised of workmen, all persons who were employed in the establishment or part of the establishment as the case may be to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part. Law thus attaches importance and sanctity

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A to a settlement arrived at in the course of a conciliation proceeding since it carries a presumption that it is just and fair and makes it binding on all the parties as well as the other workmen in the establishment or the part of it to which it relates as stated above. But in the case of a settlement not arrived at in the course of the conciliation proceeding it has to be in writing and signed by the parties in the prescribed manner and a copy thereof should be sent to the officer authorised by the appropriate Government in this behalf and to the conciliation Officer. Such a settlement arrived at by agreement between the employer and workmen otherwise than in the course of conciliation proceedings is binding only on the parties to the agreement as provided in section 18(1) of the Industrial Disputes Act, 1947. Such a settlement is not binding on the other workmen who are not parties to the settlement.

D It is seen from the material placed before us that there were three Unions and there was no evidence to show that the respondents were the members of the S.P.M. Employees Union which had entered into the agreement dated April 11, 1979. Since it is not shown that S.P.M. Employees Union which had entered into the agreement could represent the respondents herein and that the respondents were parties to it, the agreement was not binding on them.

E The settlement arrived at in the course of conciliation proceeding on June 29, 1973 which was binding on the appellant and the respondents herein would remain in operation until it is terminated or brought to an end in some manner known to law. Section 19(2) of the Industrial Disputes Act, 1947 provides that a settlement shall be binding on the persons on whom it is binding for such period as is agreed upon by the parties and if no such period is agreed upon for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute and shall continue to be binding on the parties after the expiry of the period aforesaid until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement. No notice given under section 19(2) shall have effect unless it is given by a party representing the majority of papers bound by the settlement in view of the provisions contained in sub-section (7) of section

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19 of the Industrial Disputes Act, 1947. No such plea of termination under section 19(2) is taken in this case by the management. The agreement entered into on April 11, 1979 between the management and the S.P.M. Employees Union which is not binding on the respondents cannot have the effect of depriving them of their right under the settlement dated June 29, 1973 as long as it is in operation. The first contention, therefore, fails.

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It was, however, alternatively argued on behalf of the management that the agreement dated April 11, 1979 reducing the incentive benefit was fair and just and therefore it should not be interfered with. Apart from this bare assertion no material was placed by the management before the Authority under the Payment of Wages Act or the Industrial Court to show that the said agreement was fair and just. A reduction of incentive benefit in the circumstances of the case cannot be considered as either fair or just.

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The Authority under the Payment of Wages Act and the Industrial Court were, therefore, right in rejecting the defence of the management. The appeal, therefore, fails and it is dismissed with costs.

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S.R.

Appeal dismissed.

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