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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

AN ANALYSIS ON THE BINDING NATURE OF SETTLEMENTS AND AWARDS UNDER INDUSTRIAL DISPUTES ACT

AUTHORED BY- BIRUNDHA.M¹

ABSTRACT:

Settlement means a written agreement between the employer and workmen which is in written form with their respective signatures and the Settlement arrived in the conciliation process abided by the prescribed manner and procedures. The Settlements of labour Disputes are intended for the best guarantee of industrial peace and cooperation and which is also the aim of all the legislations regarding the labour Disputes. This article will analyse the binding nature of settlements and award under section 18 of the Industrial Disputes Act 1947 through the judgments of various case laws.

KEYWORDS: Settlement, Award, Conciliation, Binding, Disputes.

INTRODUCTION:

The Industrial Disputes Act, 1947 deals with various aspects of labour laws which is for the benefit of both the employer and the workmen. One of the important aspect is the Settlements. Settlement is defined under section 2(p) of the Industrial Disputes Act. Under this there are two kinds of settlements, one is the agreement between the employer and the workmen other than in the process of conciliation that is without the assistance of the authority and the other is the settlements arrived at in the conciliation process. The question here is the binding nature of these settlements and the awards arrived in the Disputes. Section 18 of the Industrial Disputes Act provides that persons on whom Settlement and awards are binding. The enforceability and the extent of its binding nature is discussed in various judgements given below.

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SETTLEMENT:

According to Section 2 (p) of the Industrial Disputes Act ,1947 “settlement” means a settlement arrived at in the course of conciliation proceedings 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 authorized in this behalf by the appropriate Government and the conciliation officer.²

CASES WHICH DEFINE SETTLEMENT:

In the case of Brooke Bond of India v. Workmen³, it was held that the unless the office bearers who have signed the Memorandum without authorized either by the executive committee members of the Union or the provisions of the Constitution of That Union it will be not be a settlement defined under section 2(p) of the Act.

In the case of TELCO Ltd v. Workmen⁴, it has been observed that if a settlement is accepted by the majority of the workers, then it should be presumed to be just and fair and the Tribunal’s interfere based on the subjective view or the minority workers opposition would be unwarranted.

In the case of Fabril Gasosa v. Labour Commissioner⁵, it has been held that a settlement is a written one and it cannot be varied or modified by an oral agreement.

In the case of National Engineering Industries Ltd v. State of Rajasthan⁶, it was held that a settlement arrived on a holiday in a conciliation proceeding is not ipso facto invalid.

KINDS OF SETTLEMENTS UNDER INDUSTRIAL DISPUTES ACT:

Settlement which are arrived in the conciliation proceeding, which is with the assistance and

² Industrial Disputes Act ,1947

³ (1981) 3 SCC 493

⁴ (1981) 4 SCC 627

⁵ (1997) 3 SCC 150

⁶ (2000) 1 SCC 371

concurrence of the Conciliation officer who is duty bound to promote a fair and amicable settlement.

CONDITIONS:

- i) There should be a conciliation proceeding pending;
- ii) The settlement should arrive at in the conciliation proceeding;
- iii) The Memorandum should be signed by the parties;
- iv) The conciliation officer shall send a report to the appropriate Government or the authority in this behalf with the signed Memorandum of settlement.

A written agreement between the employer and the workmen arrived at otherwise than in the course of Conciliation proceeding.

CONDITIONS:

- i) The agreement should be signed by the parties;
- ii) The copy of the agreement should be sent to the officer authorised for it by the appropriate Government;
- iii) The copy of the agreement should be given to the Conciliation officer

DIFFERENCE BETWEEN SETTLEMENTS AND AWARDS:

SETTLEMENT	AWARD
Section 2(p) of the Industrial Disputes Act defines settlement.	Section 2 (b) of the Industrial Disputes Act defines an award.
Settlement means an Settlement arrived at in the course of conciliation proceedings and also includes a written agreement between the employer and the workmen other than in the conciliation proceeding.	Award means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under section 10 -A.
In settlement both the parties come to an conclusion by mutual agreement.	An award is a decision given by the arbitrator , Labour Court and industrial Tribunal.

Settlement is like a general agreement.	An award is similar to that of an Judgement of Court.
In settlement both the parties sign on the settlement deed.	Such sign is not needed in the award.
A settlement would become an award.	An award would not become a settlement.

PERSONS ON WHOM SETTLEMENT AND AWARDS

ARE BINDING:

SETTLEMENT OTHER THAN IN CONCILIATION PROCEEDING:

Section 18 (1) of the Act deals with the settlements which are between the employer and the workmen other than in the course of conciliation proceedings are binding between the parties. Section 18(1) was introduced in the year 1956 with a view of removing the defect in the previous existing law. Supreme Court in the case of Tata Engineering and Locomotive Co. Ltd v. Their Workmen⁷, held that if a settlement is arrived at between the company and the workmen by a vast majority of the concerned workmen with their eyes open and has also been accepted in totality it must be presumed to be just and fair and cannot be ignored just because a small number of workmen refused to accept it.

The settlement has to be taken as a package deal and cannot be scanned in “bits and pieces” to consider that Some parts are good and others are bad. The various terms and clauses of the settlement cannot be examined in piecemeal and in vacuum.

In the case of Air India Cabin Crew Association v. Yeswinee merchant and others⁸, there was an agreement between the airhostesses that they would retire at the age of 50 from the flight duties on international flights or opt for ground duties after the age of 50 and up to 58. These conditions and terms are agreed after negotiation and on the basis of that a settlement was reached which is now a part of the statutory regulation under the Air corporation Act of 1953 and the Standing Orders certified

⁷ AIR 1981 SC 2163

⁸ 2003 SCC (L&S) 840 and many other cases

under the Industrial Employment (standing orders) Act. The Supreme Court observed that only a small number of Air hostesses who are nearing the age of 50 who are now in the executive cadre who fall put of the definition “workmen” they cannot be permitted to question the agreements, settlements and awards which continue to bind them.

In the case of R. Ramamurthi others v. The Deputy Registrar of cooperative Societies others⁹, the court is of the considered opinion that once the settlement is arrived at between the parties u der section 18(1) of the Industrial Disputes Act and it has also been acted upon and revised payment has been, no question of revision of pay without notice or enquiry and if it is allowed, it would be nothing but offending the principles of Natural Justice.

In the case of Indian Bank v. Usha and another¹⁰, the Supreme Court while considering the liability of the employer u der the settlement arrived at between the parties have held that settlement under section 2(p) of the Industrial Disputes Act is a contractual liability having a binding legal force under section 18(1) of the Industrial Disputes Act.

AWARD:

Section 18(2) of the Act provides that with respect to sub section 3 of section 18 an arbitration award which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.

In the case of Bharat Petroleum Corporation Ltd. V. N.R. Vairamani and Others¹¹, the Supreme court held that once the award is made by the labour tribunal it becomes final and binding and it cannot be challenged in a civil court unless there is an error in jurisdiction or the principles of Natural justice.

SETTLEMENT IN CONCILIATION PROCEEDING:

Section18(3) of the Act deals with the settlements arrived at in the conciliation proceedings or an awarding case where a notification has been issued under section 10-A (3-A) or an award of a labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on –

⁹ WP No: 253-255 of 2006

¹⁰ (1998) 2 SCC 663

¹¹ Civil Appeals No 7467 of 2003

- A. All the parties to the Industrial Disputes;
- B. All other parties summoned to appear in the proceedings as parties to the Disputes, unless the Board, Arbitrator, Labour Court, Tribunal or National Tribunal as the case may be, recordable that they were so summoned without proper cause;
- C. Where a party referred to in clause (a) or clause (b) is an employer, his heirs, successor, or assigns in respect of the establishment to which the dispute relates;
- D. Where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relate on the date of the dispute and all persons who subsequently become employed in that establishment or part.

In the case of *Barauni Refinery Pragatisheel Sharmik Paeishad and General Secretary, Barauni Telshodhak Mazdoor Union v. Joint Chief Labour Commissioner*¹², it was observed by the Supreme Court that a settlement arrived in the course of conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected the same. This varies from the normal law of Contract because the object is to uphold the sanctity of the settlement arrived with the assistance of the Conciliation officers. This is because there is an assumption that when the settlement is arrived in the presence of authorities and officers it will be fair and reasonable so as a result it is binding not only the parties signing the settlement but on others also. So, the settlement arrived in conciliation is given equal weightage as that of the award under an adjudicatory authority.

Again, in the case of *ITC Ltd v. Workers Welfare Association and another v. Management of ITC Ltd. And another*¹³, the same was reiterated and held that an individual employee cannot seek to wriggle out of the settlement merely because it does not suit him.

In the case of *well man India Pvt. Ltd. V. ESI Corporation*¹⁴, it has been held that the settlement is binding on all the successors, assignees and the subsequently employed workmen and hence it cannot be come to an end by unilateral decisions.

¹² AIR 1990 SC 1801

¹³ 2002 SCC (L&S) 399

¹⁴ (1994) I LLJ 545 SC

As from the above provisions it is clear that the written agreements will become settlements after following the relevant procedural provisions. All settlements are necessarily to be binding but not all the agreements are settlements so as to have binding effect as provided under Section 18(1) or (3) if the necessary procedures are not followed.

CONCLUSION:

As per Preamble of the Industrial Disputes Act, it is enacted i for the investigation and settlement of the dispute and certain other purposes such as recovery of money from the employer in terms of Settlement or Award by making an application to the appropriate government. The purpose and aim of the Industrial Disputes Act 1947 are to minimize the conflict between labour and management and to ensure, as far as possible, Economic and Social Justice. The act has made comprehensive provisions both for this settlement of disputes and prevention of disputes in certain Industries. The settlements under section 18(1) have a limited application that it binds only the parties to the agreement but the settlements under conciliation has an extended application. So, one should be very careful in interpreting the provisions of section 18(3). The major difference between the settlement and award is through which way it is arrived.

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