

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 18TH DAY OF SEPTEMBER 2012

BEFORE

THE HON'BLE MR. JUSTICE SUBHASH B. ADI

WRIT PETITION No.11596/2012(L-RES)

(R)

BETWEEN :

M/s. FALCON TYRES LTD
K.R.S. ROAD, METAGALLI,
MYSORE-570 016
R/BY ITS EXECUTIVE DIRECTOR
SRI.SUNIL BANSALI

...PETITIONER

(BY SRI. SOMASHEKAR, ADV., FOR
M/s. S N MURTHY ASSOCIATES, ADVS.,)

AND :

- 1 THE PRESIDENT
FALCON TYRES BADALI KARMIKARA
SANGHA (REG)
NO.627, IST CROSS,
NALA BEEDI, 100 FEET ROAD,
K.R.MOHALLA, MYSORE-570 024
- 2 THE DEPUTY LABOUR COMMISSIONER
CUM RECOVERY OFFICER
DIVISION-2, KARMIKA BHAVAN,
BANNERGHATTA ROAD,
BANGALORE-560 029

...RESPONDENTS

(BY SRI. D LEELAKRISHNAN, ADV., FOR C/R1;
SRI. JAGADEESH MUNDARAGI, AGA FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE ORDER DATED 2.2.2012 PASSED BY THE SECOND RESPONDENT AT ANNEXURE-M, AND DECLARE THAT BADLI WORKERS ARE NOT ENTITLED TO ADVANCE AND EXGRATIA AS PER SETTLEMENT DATED 27.9.2010 ON PAR WITH PERMANENT WORKERS & ETC.,

THIS PETITION IS COMING ON FOR FINAL DISPOSAL THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This writ petition is by the management questioning the order dated 02.02.2012 passed by respondent No.2 produced at Annexure `M` and for declaration that the badli workers are not entitled for advance and ex gratia under the terms of the settlement dated 27.09.2010 on par with the permanent workers.

2. Case of the petitioner is that, after protracted negotiations between the management and permanent employees of the petitioner company (Falcon Tyres Employees Union), a settlement was arrived between them

on 11.03.2010 for the period from 01.10.2009 to 31.12.2012. However, the 1st respondent - Union of badli workers was not part of the Union representing the permanent employees. The Union representing permanent employees also gave a letter dated 22.09.2011 inter alia stating that the badli workers are not the members of their Union.

3. The Union of permanent employees had raised a demand for 20% bonus and 20% ex gratia payment for the period from 2009 to 2010 on actual earning of the workmen during the said period. In consonance with the said demand, a settlement was arrived at between the union and the management on 27.09.2010 as per Annexure `C4` inter alia agreeing to pay hike of Rs.210/- over the previous year and an amount of Rs.9,360/- to all the workmen towards bonus and ex gratia for the accounting year 2009-2010. Further, pending adjudication / award in Reference No.43/2008 before the Industrial Tribunal, Mysore, it was agreed for payment of Rs.2,400/- (subject to attendance) as an advance

towards the difference of claim in addition to the payment shown in Point No.1 and the said amount was agreed to be continued as advance till the decision is taken by the Industrial Tribunal. In case, the Tribunal holds in favour of the Union, the said advance amount was to be treated as 20% bonus as per the Act and remaining were to be considered as ex gratia. It was further agreed that the benefit would continue for the period of three years i.e., 2009-2010, 2010-2011, 2011-2012 and 2012-2013.

4. It is contended that, the badli workers, being not the members of the said Union representing the permanent employees, the settlement arrived at between the management and the Union representing the permanent employees as such it was not applicable to badli workers. Accordingly, the management granted the bonus of Rs.6,000/- to the permanent employees and correspondingly, badli workers were also paid bonus as against the number of days they worked.

5. It was also contended that, the badli workers, being not permanent employees, they have no legal right to claim ex gratia and advance amount under the settlement arrived at between the Union of the permanent employees and the management. Hence it was contended that, there being no settlement, nor legal right, the claim under Section 33C(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as `the Act`) filed by the Badli workers is not maintainable.

6. However, it was contended that, the respondent No.2, without considering the nature of employment and also badli workers being not the members of the Union of permanent employees, the settlement being between the management and the permanent employees and the benefit under the settlement was not applicable to the badli workers, has erroneously passed the impugned order.

7. Sri Somashekar, learned counsel appearing for the

petitioner submitted that, Reference No.43/2008 is referred to the industrial Tribunal at the instance of the Union of the permanent employees. Badli workers were not the members of the said Union, this is also evident from Annexure `B`, a letter issued by the Union of the permanent employees inter alia stating that the badli workers, who are working in the petitioner - industry were not the members of the said Union. He also referred to Annexure `B1` a wage slip, wherein Rs.10/- is deducted towards union fee from the wages of a permanent employees. However, as per wage slip Annexure `B2`, no union fee is deducted in respect of badli workers. Union has sought reference as regard to the payment of 20% bonus and ex gratia payment and the said issue is still pending for adjudication. This clearly proves that the settlement did not cover the claims of the badli workers.

8. He further submitted that, respondent No.1 - union of Badli workers is a separate Union, and it has also sought for reference of dispute as per Annexure `L1` dated

19.03.2011. The demands made by respondent No.1 before the Conciliator also relate to payment of bonus to badli workers on par with the permanent employees and in pursuance of the said claim, the matter is referred to the Industrial Tribunal in Reference No.81/2011. Respondent No.1 has made a separate claim as regard to the payment of bonus and other claims, the same is pending adjudication in Reference No.81/2011. From this, it is clear that badli workers not being the members of the Union of the permanent employees and there being no settlement between the management and badli workers, they sought for separate reference. Hence their present claim under Section 33C(1) of the Act is not maintainable.

9. He also referred to Annexure `M`, the impugned order and submitted that, respondent No.2, having noticed these contentions of the management, but erroneously held that the management is liable to pay ex gratia to badli workers. Section 33C(1) of the Act can be invoked only when

there is a settlement binding on the management. In the absence of the binding settlement or legally recoverable amount, the claim under Section 33 C (1) of the Act is not maintainable. The disputed issues cannot be adjudicated under Section 33 C (1) of the Act.

10. It was further contended that, the badli employment has no permanent character and the same is only on daily wages or temporary employment. He relied on the decision of the Apex Court reported in AIR 2005 SC 1933 in the matter of **KARNATAKA STATE ROAD TRANSPORT CORPORATION AND ANOTHER Vs. S.G. KOTTURAPPA AND ANOTHER** and submitted that, badli workers are eligible for payment of wages only for the number of days during which, his or her services are utilized. A badli worker does not acquire any legal right to continue in service and he / she is not even entitled for protection under Section 25 of the Act unless he / she has completed 240 days in a year. Badli workers being positioned lower than the temporary

workers have no legal right. Hence, their claim could not have been considered by the second respondent. He also relied on the decision of this Court reported in ILR 1985 KAR 1390 in the matter of **HONNAYYA Vs. GENERAL MANAGER, KSRTC.**, and submitted that, badli worker is nothing but a substitute for the permanent employees only as and when vacancy arises on account of leave or otherwise.

11. In the alternate, he submitted that, as per Annexure `E1`, the members of the first respondent have made a claim for bonus of Rs.11,600/- irrespective of the number of days they had worked. He relied on Annexure `H` - Statement to point out that bonus was paid to badli workers considering the number of days they had worked. He further submitted that respondent No.2 has erroneously awarded Rs.19,24,877/-, whereas the actual amount payable is only Rs.10,83,013/- and submitted that, even on merit, the impugned order is erroneous.

12. Sri Leelakrishnan, learned counsel for respondent No.1 submitted that, there are 2000 workers working in the petitioner - company they are categorized under seven classes: 1. Permanent Employees; 2. Probationers; 3. Trainees; 4. Apprentices; 5. Badli workmen; 6. Contract Labour and 7. Contract Security. Badli workers are workers, who work in leave vacancies. A leave vacancy badli worker is permissible only to the extent of 10% of total permanent employees. The number of permanent employees in the petitioner - industry is 678, whereas badli workers are 334 in number. Right from 2004, the petitioner has been utilizing the services of badli workers much more than 10% of the permanent employees and it takes several years for them to become permanent. In the name of badli worker, the management is utilizing the services of these workers for several years and they are working for more than 240 days in a year. It is nothing but, an unfair labour practice.

13. As regard to the applicability of the settlement, he

submitted that the Union formed by the employees of the respondent company is a general Union. Bye-law as well as the aims and objects of the said Union refers to employees of all the grades working in the petitioner - company. The said union includes all categories of the workers. He also referred to the claim petition filed by the Union in Reference No.43/2008 and pointed out that the Union has filed the claim petition not only in respect of permanent employees of the petitioner - Company, but it is also on behalf of all the employees of the petitioner - company.

14. He further submitted that, Annexure `A` - settlement is very specific. It is a long term settlement as such, it was a settlement between the management and the permanent employees and in clause No.32 of the settlement, it is clearly mentioned that it is applicable only to the permanent workmen including probationers. Annexure 'A' is not applicable to the badli workers, but the settlement for payment of bonus and ex gratia is made applicable to all the

workers. He also relied on the terms of the demand produced at Annexure `C3` to point out that demand was not only made on behalf of the permanent employees, but it was on behalf of all the employees and the same has been understood and accepted by the management. The terms of the settlement dated 27.09.2010 as per clause Nos. 1 and 2 therein, is applicable to all the employees of the petitioner-company.

15. He further submitted that, the first respondent - Union is formed on 18.10.2010. However, settlement relates to 2009 and 2010 i.e. earlier to the formation of the 1st respondent - Union. As such, an application was filed by the 1st respondent for impleading in Reference No.43/2008, same has nothing to do with the claim made under Section 33C(1) of the Act.

16. As regard to the maintainability, he submitted that Section 33C(1) of the Act also referred to the settlement and

if under the settlement, all the workmen are entitled to certain benefits, and if it is paid to some and denied to others, same cannot be termed as a dispute. As far as the settlement is concerned, it is accepted by both the parties. He also referred to Section 21 of the Payment of Bonus Act, 1965, which is in pari materia with Section 33C(1) of the Act and submitted that, the second respondent having noticed and considered all these circumstances, has rightly granted the benefit under the settlement.

17. Having regard to the rival contentions raised by both the counsels, the point that arises for consideration in this petition is:

“ Whether the settlement dated 27.09.2010 as per Annexure `C4` also covers the claim of badli employees?”

18. The facts, which are not in dispute are that:

The workers union formed by the employees of the

petitioner - Company is a recognised Union. Schedule II Chapter I clause 3 of the bye laws refers to aims and objects of the said Union which reads as under:-

“(i) The aims and objects for which the Union is being established are to organize and unite all employees of all grades working in the Falcon Tyres Ltd., Mysore City.

(ii) To secure for all employees ever improving conditions of life and service, educationally, socially and economically by all peaceful, legitimate and constitutional methods. “

19. It was pointed out that the Union is not formed only for the permanent employees, but it covers all the employees of the petitioner - Company. The claim petition - Annexure II to the objections statement filed by the Union in Reference No.43/2008 at para 4 mentions as “All along the second party used to pay bonus to all the employees irrespective of eligibility or otherwise.” Neither in the claim petition nor otherwise, the union has confirmed the claim for

bonus and ex gratia payment only for permanent employees, in turn it's formation refers to all the employees, and its claim petition also refers to all the employees of the petitioner - Company.

20. Demands were raised by the Union as per Annexure `C3` dated 30.07.2010 and the same also does not restrict the claim only on behalf of the permanent employees. Annexure `C4` - memorandum of Settlement has been signed by the management and Union. Clauses 1 and 2 of the terms of settlement read as under:-

"1. Both the parties agreed for a hike of Rs.210/- over the previous year and an amount of Rs.9360/- will be paid to all the workmen towards Bonus and Ex-gratia for the accounting year 2009-10.

2. Pending disposal of the adjudication / award in Ref. No.43/2008 pending before the Industrial Tribunal, Mysore, both the parties have agreed for payment of Rs.2,400/- (subject to attendance)

as an advance towards the difference of claim in addition to the payment shown in Point No.1 and the said amount shall continue as advance till the decision is awarded by the Industrial Tribunal which is binding on both the parties. After the Industrial Tribunal verdict, if the order is in favour of Union, part of the amount mentioned in Point No.1 and advance amount will be treated as 20% Bonus as per Act and the remaining amount can be considered as Ex-gratia.”

These clauses of the settlement also refer to the settlement in respect of all the employees.

21. Whenever the settlement is only for permanent employees, the settlement specifically refers as for permanent employees. One such settlement is produced at Annexure `A`, which relates to settlement for long term claim. Clause 32 of the said settlement reads as under:-

“ The terms and conditions of this settlement shall be applicable to and be binding on all

permanent workmen including probationers who are on the rolls of the Company as on the date of signing of this settlement. “

This clearly shows that whenever the management decided to settle the claim for permanent employees, it has referred the same for permanent employees.

22. The management has clearly understood that the settlement dated 11.03.2010 is only in respect of the permanent employees and probationers though there are seven categories of employees in the petitioner - Company. However, settlement in so far as payment of bonus and ex gratia is concerned, it did not confine to the permanent employees, as expressly states as to all the employees. It is also not in dispute that the management has made payment of bonus in consonance with the number of days work was assigned to badli workers. The dispute is in relation to payment of ex gratia and advance amount in terms of clause 2 of the settlement dated 27.09.2010. This also shows that,

the management has honoured part of the settlement in favour of the badli workers, but has denied the part of settlement.

23. No doubt, badli workmen are different from permanent employees. Badli workmen may not have a legal character. However, if the management had entered into a settlement covering claims of the badli workmen and in consonance with the terms of the settlement, had made a payment towards bonus, it cannot be said that part of the settlement is not enforceable on the ground that they are not permanent employees.

24. If there is a dispute as regard to whether the badli employees are also entitled for payment of bonus on par with the permanent employees, which is made applicable only to the permanent employees, such dispute cannot be decided under Section 33 C(1) of the Act. However, there is no claim that the benefit under settlement be extended to the badli

workers, even through they are not covered. The dispute is only as regard to the ex gratia amount agreed under the settlement.

25. Section 33C(1) of the Act is applicable to any claim under the settlement. But, it does not include disputed questions.. Though it is argued that when there is a dispute as regard to the applicability of settlement, the second respondent should not have entertained the claim petition. In my opinion, there is no such dispute as regard to the entitlement of badli workers, as the management was clear in its mind as to who are entitled for ex gratia and bonus, accordingly it has made the payment of bonus in terms of the settlement to the badli workers also.

26. As far as the decision relied upon by the learned counsel for the petitioner reported in (2005 (104) FLR 1024) in the matter of NATIONAL TEXTILE CORPORATION (APKK & M) LTD., Vs. COMMISSIONER OF LABOUR, GOVERNMENT OF

KARNATAKA, BANGALORE AND OTHERS is concerned, no doubt, under the garb of Section 33C(1) of the Act, the dispute cannot be entertained. But, if the money is due to a workman from an employer under a settlement or under the award or under the provisions of [Chapter VA or Chapter VB], a claim petition is maintainable. The decision relied upon by the learned counsel for the petitioner reported in 1985 ILR 1390 in the matter of HONNAYYA Vs. GENERAL MANAGER, KSRTC., relates to the nature of duties of badli workers and on interpretation of regulation 16 of the KSRTC Cadre and Recruitment Regulations, 1968, it is stated that badli employee is only a substitute in case of leave vacancy of permanent employee. Even the Apex Court in the judgment reported in AIR 2005 SC 1933 in the matter of KARNATAKA STATE ROAD TRANSPORT CORPORATION AND ANOTHER VS. S.G. KOTTURAPPA AND ANOTHER has also reiterated the same principle. Hence, I have no doubt in my mind as far as the rights of badli employees are concerned. But, if the management, had agreed to make payment of bonus and ex

gratia to all the workers, which includes badli workers also and having paid them bonus, it cannot now say that it is not liable to pay ex gratia and advance in terms of other clauses of the settlement, which is paid to the other employees. In such case, if the amount has become payable under the settlement such amount could be claimed under Section 33C(1) of the Act.

27. As far as the contention of the learned counsel for the petitioner that the amount determined by the second respondent at Rs.19,24,877/- is contrary to the actual liability of the petitioner - management. He has produced the statement at Annexure `H` showing the bonus to be paid for badli workers for the year 2009-2010. According to the learned counsel for the petitioner, the total amount payable is Rs.10,83,103/- and not Rs.19,24,877/-. He also submitted that the petitioner in terms of the interim order, has deposited an amount of Rs.11,54,926/-.

28. On the other hand, the learned counsel appearing for the respondent No.1 submitted that, as far as the calculation made by the petitioner is concerned, it is not disputed. If that is so, to this extent, the impugned order of the second respondent requires to be modified.

For the foregoing reasons, the writ petition is partly allowed. The order passed by respondent No.2 dated 02.02.2012 produced at Annexure `M` is modified only to the extent of appropriation of liability of the petitioner at Rs.10,83,013/-. In all other respects, the order of the second respondent dated 02.02.2012 stands confirmed. The amount deposited before this Court be transferred to the second respondent and the same may be disbursed to the workmen concerned according to their entitlement.

**Sd/-
JUDGE**

sma