IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016

Bharatiya Kamgar Karamchari Mahasangh
Vs.
M/S Jet Airways Limited

Brief Facts

In the present case, the appeal results from the High Court of Bombay's decision in Writ Petition No. 2657 of 2017, which upheld the Central Government Industrial Tribunal's award dated 30.03.2017 rejecting the Appellant-Union's demand for reinstatement with full back wages.

The respondent was running a business of commercial airline that uses aircraft to transport both people and goods. The respondent employed around 169 temporary workers in a variety of cadres including loader-cumcleaners, drivers, and operators, under a fixed-term contract.

According to the Bombay Industrial Employment (Standing Orders) Rules, 1959), the workmen were treated as temporary despite having completed 240 days of service and despite the fact that the work was permanent and regular. A settlement, dated 02.05.2002, was reached as a result of the Trade Union's charter of demands, which were the subject of discussions.

Bhartiya Kamgar Sena renounced the claim for the provision of permanent status in the aforementioned charter of demands, and a comprehensive settlement, dated 02.05.2002, was signed as a package agreement, providing various benefits to the workers who renounced the demand. According to the settlement signed between the Union and the Company on 02.05.2002, the respondent company asserts that the workers do not have a right to permanency.

The argument was brought up by the workers, and a decision had to be made. The CGIT, however, posed the question of whether the Union's claim for the re-employment/reinstatement of these 169 workmen with full back wages in the service of that first party is just and proper in its award of 30.03.2017 and answered it in the negative.

It was determined that there was no retrenchment based on Section 25-H of the Industrial Disputes Act, 1947, because the termination of a fixed-term contract did not constitute a retrenchment as defined in Section 2(oo)(bb) of the same Act. Therefore, it was not possible to consider hiring the affected workers again.

The issues involved with the Industrial Employment (Standing Orders) Act of 1946, who is the Appropriate Authority authorised to issue the Standing Order(s), and does a party-to-party private agreement or settlement supersede the Standing Order(s)?

Decision

The court viewed that every industrial setting with 100 or more workers working or employed on any day during the previous year is covered by the Act. In accordance with Section 2(b) of the Act, "appropriate government" is defined as the Central Government in the case of industrial establishments under its control, the Railway Administration in the case of major ports, mines, or oilfields, and the State Government in the case of all other industrial establishments.

Since the Respondent Company is not, as defined by Section 2(b), under the jurisdiction of the Central Government, the State Government is plainly the proper government in relation to the Respondent Company. The State Government is the appropriate Government because the current situation fits under the section's latter part. The parties shall be subject to the Bombay Model Standing Order.

The Court noted numerous times that the certified standing orders have statutory authority. A contract between the employer and the employee is implied by the Standing Order. Therefore, no agreement between the employer and the employee may supersede the statutory contract set forth in the certified Standing Orders.

Regarding the case's facts, the CGIT observed that the letters sent to the workers by the airlines (the Respondent herein) were intended to appoint them for a specific period of time. Even though their

appointment period was occasionally extended by appointment orders, their job was still meant to stop after that time period expired. It is maintained that even if they worked for 240 days or more and that their work was regular and permanent, the fact that their appointment was for a fixed-term contract meant that it had no bearing on their employment. The Tribunal noted that due to a change in government policy, the airlines were left with little choice but to not renew the workmen's fixed-term contracts.

According to a cumulative reading of the clauses 4C and 32 of Bombay Model Standing Order, a worker who has worked for 240 days in a business is eligible to be made permanent, and no contract or settlement that restricts this right can be reached, much less be deemed legally enforceable. The Act, which is the benefit law, stipulates that any agreement, contract, or settlement in which an employee's rights are waived off shall not supersede the Standing Orders.

Affirming that the Appellant-Union is entitled to all benefits under the Bombay Model Standing Order, the appeal was allowed in light of the aforementioned discussions. The judgement dated 10.01.2018 issued by the High Court of Judicature at Bombay in Writ Petition No. 2657 of 2017 affirming the award dated 30.03.2017 made by CGIT in Reference No. CGIT-2/56 of 2013 is overturned and set aside.

Link of the Order

https://ibbi.gov.in//uploads/order/cfd2aad9cad48bbb9749edde047c2ca6.pdf