

(2004) 07 BOM CK 0041
In the Bombay High Court
Case No : Writ Petition No. 306 of 2000

Carona Limited

APPELLANT

Vs

Sitaram Atmaram Ghag and Others

RESPONDENT

Date of Decision : 29-07-2004

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (2005) 1 BomCR 788 : (2005) 105 FLR 44 : (2005) 1 LLJ 833 :
(2005) 1 MhLj 513

Hon'ble Judges : F.I. Rebello, J

Bench : Single Bench

Advocate : Piyush Shah, for the Appellant; Gayatri Singh, for the Respondent

Final Decision : Dismissed

Judgement

F.I. Rebello, J.—By an order dated 6/7th March, 2000, the petition was admitted on the following issues :-

"Considering the above, the petition is admitted only on the limited issue, as to whether the workers, who had sought to recover VRS dues by filing complaints u/s 138 of the Negotiable Instruments Act, can claim that they are entitled to be paid wages."

2. At the hearing of this petition, on behalf of the petitioner, the learned counsel contends that the respondents are not workmen within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and that being the case, the complaint as filed by them was not maintainable. This very issue was raised at the time when the petitioner applied for admission and interim relief. The same has been disposed of by this Court while passing the orders on 6/7th March, 2000. The contention was dealt in paragraph (9), which reads as under :-

"The third contention is that in order to maintain the complaint the person must be a workman within the meaning of Section 2(s) of the I.D. Act. There should be no severance of relationship of master and servant save and except to the

limited extent of "individual disputes". The petitioners had solemnly informed those who had opted for the VRS, by clarification of August 16, 1996 that in the event the VRS amount is not paid by January 31, 1997 the letter of resignation submitted to the company under this Scheme shall stand revoked till an understanding is reached between the workers and the management in this respect. It is too late for the very same petitioner to come before this Court and contend that since the workers had availed of VRS Scheme they are not workmen within the meaning of Section 2(s) of the I.D. Act. This argument at the instance of the petitioners could have been considered if the VRS scheme had been implemented and the workers had been paid their benefits. Even there prima facie it is devoid of merit. Article 226 of the Constitution is not to be exercised like in the case of the present petitioners to perpetuate injustice. Article 226 is a constitutional power, conferred on a Constitutional Court to exercise its extra-ordinary jurisdiction to set right the violation or deprivation of fundamental rights and/or breach of any other statutory rights. It is not a power to be exercised at the instance of employer who has failed to fulfil the solemn promise that had been given to the workers, to induce them to resign from their jobs. This contention on the part of the petitioners must be rejected."

It is thus clear that issue has been raised and answered and that issue stands concluded. At the highest it would be for consideration by the learned Appellate Bench of this Court where an appeal has been preferred and pending against the order dated 6th/7th March, 2000. There is no question of re-opening at the stage of hearing of the petition when the issue has been heard and finally decided. The petitioner will clearly be barred by the principles of issue estoppel. In the light of that the ground raised will have to be rejected.

3. Even assuming the contention as raised on behalf of the petitioner herein could be raised let us consider the contention as raised now. The learned counsel has placed reliance on the language of Section 2(s) and more specifically to the words "dismissed, discharged or retrenched". It is therefore submitted that a workmen, who has taken voluntary retirement is neither dismissed, discharged or retrenched and consequently a complaint at the instance of such workmen would not be maintainable. In support of the contention, reliance was placed on the judgment of a Division Bench of the Kerala High Court in the case of *Everstee v. District Labour Officer* 1999 (II) CLR 380. It is essential that the facts of that case are understood to find out whether the ratio of that judgment could be followed by this Court. From the facts set out in the said judgment, it is clear that the workmen had accepted the benefits offered to them in pursuance of the voluntary retirement package announced by the management and on being satisfied about the calculation and the quantum thereof, chose to tender resignation and thereafter, on diverse dates, received benefits, confirming each time that the management had fully and finally settled the accounts, thereby severing the employer-employee relationship once and for all. It is thus clear that in that case, apart from the fact that the workmen had accepted the voluntary retirement scheme, the workmen had been paid all the benefits in the

terms of the scheme and consequently, were held to be no longer in service. The learned Division Bench of the Kerala High Court taking this fact into consideration was pleased to hold that the person, who has tendered his resignation pursuant to the voluntary retirement scheme offered by the management and had received all the benefits arising out of such resignation, cannot be treated as a workman. The material fact, therefore was that the workmen had received all the benefits. In other words both parties had acted on the V.R.S. Scheme. The requirement of severance of employment is whether the workman had received the benefit; whereupon only, the relationship would be severed. There would be no contract of employment between the workman and employer in existence. On the facts of the present case, admittedly, the only benefit the workman received were "bounced cheques". The cheques which were issued were never realised and consequently, the workmen did not receive the benefits.

Purandaran v. Hindustan Lever Ltd. 2001 (II) CLR 170, was also a case arising from a voluntary retirement scheme. The workmen had received benefits. They raised a dispute on the ground that they were tempted to accept the terms of the scheme. The learned Single Judge of the Kerala High Court held that it was not the contention raised by the workmen that they were forcibly thrown out of the employment. In other words, the learned Judge proceeded on the footing that if the offer and acceptance under the V.R. Scheme was in contravention of law being void or violative under the provisions of the Contract Act, it would not be binding. For example, if it was procured by coercion, undue influence, fraud or the like. It is thus clear that merely making the offer under the V. R. Scheme and the Company accepting the offer would not result in a workmen falling outside the definition of the workman, if the workman makes a case that his act of accepting the voluntary retirement scheme was pursuant to an act of fraud or that he was forced to forcibly accept or he was under undue influence to accept the voluntary retirement scheme or the like. The judgment therefore is clearly distinguishable and will be of no assistance to the petitioner in the instant case.

4. The real question in the instant case is whether pursuant to the VRS Scheme which the workman had accepted they were estopped from filing a complaint. To the scheme, itself a clarification was issued on August 16, 1996. The said clarification reads as under :-

"This is to clarify in respect of some doubt raised by some of the workman regarding VRS amount payable by January, 31, 1997 as per the VRS scheme displayed on the Notice Board. The Management would like to reiterate that in case the VRS amount is not paid by January 31, 1997 the letter of resignation submitted to the company by the workmen under this Scheme shall stand revoked till an understanding is reached between workers and the management in this respect and that the workmen would be entitled for wages salary for the period September, 1996 till the date it is declared that VRS amount cannot be paid to the workman. Thereafter the workmen would start earning wages."

In short, what appears from this clarification issued by the management; was

that on account of inability on their part to pay the VRS amount in terms of the cheques issued, the workmen were given notice that if the VRS amount was not paid, the letter of resignation would stand revoked. In other words, there would be no cessation of relationship of employer and workman. Consequently, the workman would be entitled for wages/salary for the period September, 1996 onwards till it is declared that VRS amount cannot be paid to the workman. Consequently, the workman till the date of final payment would continue to be workman within the meaning of Section 2(s) of the Industrial Disputes Act. The learned counsel for the respondent has also drawn my attention to the contention raised by the management before the Industrial Court based on the clarification itself and accepting the contents of the clarification. Even otherwise as the monies had not been paid in terms of acceptance of the offer under the VR Scheme, the letter of resignation under the scheme is of no consequence, as the offer was made by the workmen, on the condition that the employer would make payment in terms of the VRS Scheme, and the employer in terms accepted the offer that he will make payment in terms of the V.R.S. Scheme. Once that be the case, it is clear that there is no cessation of relationship between employer and employee. The workman continued to be workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947.

5. In the light of that, the impugned order cannot be faulted. However, direction (4) of the order will have to be modified and stands modified as under :-

The petitioners are directed to pay to the workmen as set out in the order wages from September, 1996 till date and to continue to pay the same as long the respondent workmen continue to be employees, employed by the petitioner and or until payments are made under the VRS scheme. If the management hereinafter makes payment under the VRS scheme, from that date the liability of the employer to pay to the workmen the wages will cease. The impugned order stands modified accordingly. Rule made absolute in the above terms.

The learned counsel seeks stay of the order. The petitioner have failed to pay the compensation or wages of the workmen in spite of the order of this Court. There is no stay in force, it is therefore not a fit case where relief by way of stay can be granted in favour of the petitioner. Application for stay rejected. C.C. expedite.