

(2016) 06 GUJ CK 0011

In the Gujarat High Court

Case No : Letters Patent Appeal No. 117 of 2016 In Special Civil Application No. 19648 of 2015 With Civil Application No. 1684 of 2016 In Letters Patent Appeal No. 117 of 2016 With Civil Application No. 2933 of 2016

Harish Ramanbhai Patel & 50 Others

APPELLANT

Vs

State of Gujarat & 3 Others

RESPONDENT

Date of Decision : 08-06-2016

Acts Referred:

Citation : (2016) 2 CLR 959 : (2016) 150 FLR 806 : (2016) 3 LLJ 126

Hon'ble Judges : Mr. R. Subhash Reddy, C.J. and Vipul M. Pancholi, J.

Bench : Division Bench

Advocate : Mr. Asim M. Pandya, Advocate With Mr. Harshad K. Patel, Advocate, for the Appellant; Mr. Dhawan Jayswal, Assistant Government Pleader. and Mr. Mihir Joshi, Senior Advocate With Mr. Kunal B. Nayak For Messrs Trivedi & Gupta, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

R. Subhash Reddy, C.J.—;This Letters Patent Appeal is filed by the original petitioners in Special Civil Application No.19648 of 2015 aggrieved by the oral order of the learned Single Judge dated 07.01.2016, to the extent of direction issued to refund the entire amount received by them under Voluntary Retirement Scheme introduced by respondent no.4-company.

2. Respondent no.4 - a company registered under the Companies Act, is engaged in the business of manufacture of soda ash. On 13.04.2015, respondent no.4-company and the office bearers of GHCL Employees" Union entered into a settlement in presence of the Assistant Commissioner of Labour, Junagadh. Clauses "B", "C" and "D" of the said settlement pertain to rationalisation of manpower, surplus man power and reduction of excess manpower. As per clauses in the settlement, issue of manpower will be dealt with by evolving a rational criterion which will be agreeable by respondent no.4 and the recognised employees" union. Respondent no.4- company, in terms of the settlement, have

identified certain workmen as surplus and introduced voluntary retirement scheme. The petitioners have accepted the terms and conditions of the scheme and also received monetary benefits in terms of the scheme.

3. After accepting the monetary benefits as per the voluntary retirement scheme introduced by respondent no.4-company, on 21.05.2015, some of the employees filed a complaint before the Labour Commissioner against declaration of surplus manpower made by respondent no.4. In response to the said complaint, Commissioner of Labour addressed letter dated 21.05.2015 to respondent no.4, to see that industrial peace is not jeopardized.

4. Again on 08.06.2015, the appellant- petitioners made representation to the Collector to intervene in the matter and to see that the appellant- petitioners were reinstated in service. It is their grievance that no rational criterion was evolved by respondent no.4 in declaring the surplus manpower. It is also their case that respondent no.4 has unilaterally, arbitrarily and forcefully applied voluntary retirement scheme and the same is not fair, just or beneficial to the workmen, who are declared surplus.

5. The Special Civil Application is filed by the employees, who are declared surplus and extended benefit of voluntary retirement scheme by seeking following prayers:

"10(A) Be pleased to quash and set aside the VRS of respondent no.4 of imposing the VRS upon the petitioners being contrary to law, arbitrary, mala fide, unfair labour practise and hence violative of the fundamental rights of the petitioners under Article 14, 19 and 21 of the Constitution of India.

(B) Be pleased to reinstate the petitioners in service of respondent no.4 with continuity of service and all attendant benefits arising therefrom.

(C) In the alternative be pleased to direct respondents no.1 to 3 to examine the grievances, including the legality and propriety of the settlement dated 13/4/2015 at Annexure-A and the VRS framed thereunder, of the petitioners, hold conciliation proceeding between the petitioners and respondent no.4 and/or make a reference to the competent court if required and decide the reference within a time bound schedule.

(D) Pending admission and final disposal of this petition respondent no.4 may be directed to take back the petitioners in service on their original job/point on ad hoc/provisional basis and to pay them the same salary with other benefits which were being paid to the petitioners before the termination (of) their services by imposing VRS upon them.

(E) Ex parte ad interim relief in terms of clause (D) may kindly be granted."

6. The learned Single Judge while issuing notice to the respondents has observed that there is need to examine whether any reference needs to be made to the appropriate forum with regard to the grievance of the petitioners. Further the

learned Single Judge has observed that in the event the State authorities make or are directed to make reference to the Labour Court/Tribunal, it would be necessary for the petitioners to refund the entire amount received by them or to deposit it with the forum, as may be directed by the Court. This appeal is mainly directed aggrieved by such condition imposed by the learned Single Judge in order dated 07.01.2016 while issuing notice to the respondents.

7. Heard Shri Asim M. Pandya, learned advocate appearing with Shri Harshad K. Patel for the appellants; Shri Dhawan Jayswal, learned Assistant Government Pleader for respondents no. 1, 2 and 3; and Shri Mihir Joshi, learned senior advocate appearing with Shri Kunal B. Nayak for Messrs Trivedi & Gupta Advocates for respondent no.4- company

8. Shri Asim M. Pandya, learned advocate for the appellants submitted that the appellants are aggrieved by part of the order passed by the learned Single Judge, as much as the learned Single Judge, while issuing notice, has observed to refund the entire amount received by the appellant/petitioners under Voluntary Retirement Scheme, even before adjudication of the issue. It is submitted that as much as the appellants are not in service and they were denied their due salaries by applying voluntary retirement scheme forcefully, they cannot be directed to deposit the monetary benefits which were extended to them even before adjudicating the issue by the competent court. It is submitted that under the provisions of the Industrial Disputes Act, if the appropriate Government is of the opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing, refer the dispute to the appropriate forum and the said provision does not contemplate to impose any condition for adjudication of the dispute as ordered by the learned Single Judge. It is submitted that if the said condition is allowed stand it amounts to denial of access to justice to the appellants. The learned counsel in support of his argument placed reliance on the judgment of the Hon'ble Supreme Court in the case of Prem Chand Garg and another v. Excise Commissioner, U.P. and others, reported in A.I.R. 1963 SC 996, and also relied on the case of Imtiyaz Ahmad v. State of Uttar Pradesh & others, reported in A.I.R. 2012 SC 642. On the other hand, it is submitted by Shri Mihir Joshi, learned senior counsel appearing for respondent no.4- company that the appellants having received the monetary benefits voluntarily under the scheme of voluntary retirement introduced by respondent no.4- company, are trying to raise dispute without any basis. It is submitted that when the scheme was introduced by respondent no.4- company, they have accepted monetary benefits which were extended as per the scheme and having received the said benefits it is not open to raise any dispute. It is submitted that in any event the appellants cannot be allowed to seek adjudication of the dispute without depositing the amounts which they have received under the voluntary retirement scheme. The learned counsel in support of his argument has placed reliance on the judgment of the Hon'ble Supreme Court in the case of Mansingh v. Maruti Suzuki India Limited and another, reported in (2011) 14 SCC 662.

9. Having regard to the contentions advanced by the learned counsels on both the sides, the only question which arises for consideration is, whether the condition to refund the monetary benefits received by the appellant- petitioners before adjudication of the dispute by the competent forum is sustainable or not.

10. While it is the case of respondent no.4 that pursuant to settlement entered by respondent no.4- company with the union, surplus manpower was identified and they were extended monetary benefits as contemplated under the voluntary retirement scheme. It is not in dispute that all the appellants have received monetary benefits while accepting voluntary retirement scheme in the month of June 2015. It is their case now that rational criterion was not evolved by respondent no.4- company in declaring surplus manpower and their retirement is illegal and arbitrary. The learned Single Judge, while issuing notice to the respondents, has ordered to deposit all the amounts the appellant- petitioners have received under the voluntary retirement scheme in the event the Government refers the dispute under the provisions of the Industrial Disputes Act, 1947. Though the learned counsel for the appellants placed reliance on the judgment in the case of Prem Chand Garg and another v. Excise Commissioner, U.P. and others A.I.R. 1963 SC 996 (supra), we are of the view that the said judgment would not render any assistance in support of the case of the appellants having regard to the situation in this case. In the aforesaid judgment, in the rules framed by the Hon"ble Supreme Court, for giving of security for costs in a proceeding under Article 32 of the Constitution, the Hon"ble Supreme Court has held that such a rule for pre-deposit of the amount infringes the fundamental right. Further in the case of Imtiyaz Ahmad v. State of Uttar Pradesh & others, reported in A.I.R. 2012 SC 642 (supra), while considering the long delay in delivery of justice, the Hon"ble Supreme Court has held that it violates the rights guaranteed under Article 21 of the Constitution of India and it is further held that access to justice in an egalitarian democracy must be understood to mean qualitative access to justice as well.

11. In the instant case it cannot be said that the appellants are denied access to justice by imposing any onerous condition by any rules. It is the case where the appellant-petitioners, having received benefits under voluntary retirement scheme, are disputing such retirement alleging that they were forcefully made to accept such a scheme offered by respondent no.4- company. Precisely, it is their case that it is not voluntary retirement, but it is a compulsory retirement made by respondent no.4- company by coercive means. The learned Single Judge, while issuing notice to the respondents, has observed that in the event the matter is to be referred for adjudication to the competent forum, the petitioners have to deposit the benefits which they have received under the scheme. Exactly, similar issue fell for consideration before the Hon"ble Supreme Court in the case of Mansingh v. Maruti Suzuki India Limited and another, reported in (2011) 14 SCC 662 (supra), which is relied on by learned senior counsel, Mr. Mihir Joshi. In the aforesaid case challenge is made to voluntary retirement on the ground of duress. When the employer has taken stand that the dispute raised by the

workmen should not be allowed to proceed so long as they retain monetary benefits collected under voluntary retirement scheme. The High Court has directed to refund the amounts received by the workmen along with interest at the rate of 7.5% per annum, as condition precedent for proceeding with the reference before Labour Court. However, the Hon"ble Supreme Court while upholding the condition to refund the amounts received, has set aside imposition of interest as ordered by the High Court.

12. The aforesaid decision squarely applies to the case on hand. In view of the same, we are of the view that there is no merit in this appeal so as to declare the condition imposed by the learned Single Judge in ordering refund of the amount received by them under Voluntary Retirement Scheme, either arbitrary or illegal. It is not in dispute that the appellants have received monetary benefits under voluntary retirement scheme and want to dispute such retirement and seek adjudication by the competent authority. They cannot do so by retaining the amounts which they have received under voluntary retirement scheme. By applying the ratio laid down by the Hon"ble Supreme Court in the matter of Mansingh v. Maruti Suzuki India Limited and another, reported in (2011) 14 SCC 662 (supra), we are of the view that there is no merit in this appeal so as to interfere with the impugned order. The appeal is devoid of merit. Accordingly it is dismissed. Notice is discharged. No order as to cost.

13. Consequently, both the Civil Applications are disposed of. Notice is discharged. Stay granted earlier is vacated.