

(1968) 05 MP CK 0003
In the Madhya Pradesh High Court

Hira Mills Ltd. (by Manager)	Vs	APPELLANT
Mukund Sonubhaiya Pandit and Others		RESPONDENT

Date of Decision : 01-05-1968

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 33C

Citation : (1972) ILR (MP) 293 : (1968) JLJ 906 : (1969) 1 LLJ 81 : (1968) 13 MPLJ 643 : (1968) MPLJ 643

Hon'ble Judges : P.V. Dixit, C.J.;G.P Singh, J

Bench : Division Bench

Judgement

P.V. Dixit, C.J.

The circumstances in which this application under Articles 226 and 227 of the Constitution for the issue of a writ of certiorari for quashing a decision of the industrial court is filed are that respondent 1, Mukund, was employed as a permanent clerk in the petitioner-mills. The management held an enquiry against him on the charge of disobedience of an order of the management directing him to work in the provident fund section on 9,11 and 12 September 1962. As a result of the enquiry, Mukund's services were terminated with effect from 3 March 1963 after giving him one month's notice-pay. On 5 March 1963, Mukund received from the petitioner-mills the salary amount due to him as well as the amount of gratuity and passed a receipt in favour of the petitioner in the following words :-

Received the sum of Rs. Rs. 2,360.66 (in words, two thousand, three hundred and sixty rupees and sixty-six naye paise only). Received in full and final payment of all my claims.

On 24 March 1963, Mukund delivered to the petitioner a letter of approach as required by the proviso to Section 31(3) of the Madhya Pradesh Industrial Relations Act, 1960, questioning the validity of his discharge from service, and claiming reinstatement with back-wages. The petitioner did not accept the

demand of the said respondent. Thereupon he filed an application before the labour court to claim reinstatement with back-wages. According to the applicant, respondent 1 also received the amount of provident fund due to him after the filing of the application that he did before the labour court. The labour court held that the domestic enquiry conducted by the management was illegal and accordingly quashed the order of discharge directing reinstatement in service of Mukund and payment to him of 50 per cent of back-wages. The petitioner then preferred a revision petition before the industrial court which was dismissed. The petitioner now seeks a writ of certiorari for quashing the orders of the industrial court and the labour court,

The only contention, which was advanced on behalf of the petitioner before the industrial court and which has been repeated before us, is that respondent 1 having voluntarily accepted the payment of notice-pay, gratuity and provident fund, was estopped from challenging the order of termination. It was said that he was entitled to get these amounts only on the footing that his services had been validly terminated. In support of this contention, Sri Chapheker, learned counsel for the petitioner, placed strong reliance on the observations of the Supreme Court in *Nagubai Ammal and Others Vs. B. Shama Rao and Others*, in regard to the decision in *Verschures Creameries, Ltd. v. Hull and Netherlands Steamship Company, Ltd.* (1921) 2 K.B. 6D8, on the doctrine of election. The Supreme Court said;

There, the facts were that an agent delivered goods to the customer contrary to the instructions of the principal, who thereafter filed a suit against the purchaser for price of goods and obtained a decree. Not having obtained satisfaction, the principal next filed a suit against the agent for damages on the ground of negligence and breach of duty. It was held that such an action was barred. The ground of the decision is that when on the same facts a person has the right to claim one of two reliefs and with full knowledge he elects to claim one and obtains it, it is not open to him thereafter to go back on his election and claim the alternative relief. The principle was thus stated by Bankes, L.J.:

Having elected to treat the delivery to him as a authorized delivery they cannot treat the same act as a misdelivery. To do so would be to approbate and reprobate the same act.

The same observations of Scrutton, L.J., on which the appellants rely are as follows:

A plaintiff is not permitted to " approbate and reprobate." The phrase is "apparently" borrowed from the Scotch Law, where it is used to express the principles embodied in our doctrine of election- namely, that no party can accept and reject the same instrument: *Ker v. S. Wauchope* (1819) 1 Bligh 1 (21); *Douglas Menzies v. Vmphelby* 1908 A.C. 224 at 232. The doctrine of election is not however confined to instruments. A person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only

be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing¹ some other advantage, That is to approbate and reprobate the transaction.

In our judgment, the doctrine of election has no applicability whatsoever here. It applies only when, as pointed out in *Lissenden v. C.A.V. Bosch* 1940 A.C. 412 an interest is conferred as an act of bounty by some instrument." In *Lissenden* case 1940 A.C. 412 the House of Lords held that the withdrawal by a workman of the compensation money deposited by the employer could not take away his statutory right of appeal conferred upon him by the Workmen's Compensation Act. The payment to respondent 1 of the amount of salary for the notice period, gratuity amount and the provident fund amount; was not any payment made to him gratuitously or merely as a matter of bounty or boon. It was not any benefit which the respondent Mukund took under the order terminating his services de hors the claim on merits. He would have got those amounts as of right even after not accepting the order of discharge as a valid one, and having it set aside. If the order of discharge is set aside as invalid, then the respondent would clearly be entitled to get as of right his salary. The amount of gratuity and provident fund is always payable to an employee on the cessation of his service, no matter whether it is by retirement or by resignation or by termination of service. It cannot, therefore, be maintained that when the respondent Mukund received the salary, gratuity and provident fund amounts he obtained thereby some advantage under the order of discharge to which he would not have been entitled if he had not accepted the order as a valid one. Further, this is not a case where it can be urged that on the setting aside of the order of termination, restitution by repayment to the petitioner of the gratuity and provident fund amount is impossible. Mukund had no choice between any two reliefs. There being no choice before Mukund, his act in accepting the salary, gratuity and provident fund amounts could not prevent him from approaching the labour court for having the order terminating his services set aside.

This position is fully supported by the decision of the Supreme Court in *Bhau Ran, v. Baiz Nath Smgh* AIR 1961 S.C. 1327. In that case, the Supreme Court made the following observations (at p. 1329) on the applicability of the equitable doctrine of election:

It seems to us, however, that in the absence of some statutory provision or of a well-recognized principle of equity, no one can be deprived of his legal rights including a statutory right of appeal. The phrase " approbate and reprobate" is borrowed from Scotch Law where it is used to express the principle embodied in the English doctrine of election, namely, that no party can accept and reject the same instrument (per Scrutton, L.J.) in *Verschures Creameries, Ltd. v. Hull and Netherlands Steamship Company, Ltd.* (1921) 2 K.B. 608 (vide supra). The House of Lords further pointed out in *Lissenden v. C.A.V. Bosch, Ltd.* 1940 A.C. 412 (vide supra) that the equitable doctrine of election applies only when an interest is conferred as an act of bounty by some instrument. In that case they

held that the withdrawal by a workman of the compensation money deposited by the employer could not take away the statutory right of appeal conferred upon him by the Workmen's Compensation Act. Lord Maugham, after pointing out the limitations of the doctrine of approbate and reprobate, observed towards the conclusion of his speech:

It certainly cannot be suggested that the receipt of the sum tendered in any way injured the respondents. Neither estoppel nor release in the ordinary sense was suggested. Nothing was less served than the principles either of equity or of justice." Lord Wright agreed with Lord Maugham and Lord Atkin and declined to apply the "formula" to the appeal before the House because there was no question of the appellant having alternative or mutually exercisable right to choose from.

No doubt, as pointed out by Lord Atkin, that in a conceivable case the receipt of a remedy under a judgment may be made in such circumstances as to preclude an appeal. But he did not think it necessary to discuss in what circumstances the statutory right of appeal may be lost and added:

"I only venture to say that when such cases have to be considered it may be found difficult to apply this doctrine of election to cases where the only right in existence is that determined by the judgment: and the only conflicting right is the statutory right to seek to set aside or amend the judgment; and that the true solution may be found in the words of Lord Blanesburgh in *Moore v. Cunard Steamship Company* (1935) 28 B.W.C.G. 162.

Referring to the case of *Moore v. Cunard Steamship Company* (1935) 28 B.W.C.C. 162, the Supreme Court then said:

According to Lord Blanesburgh when an order appealed against and later set "aside, has been acted upon in the meantime" any mischief so done is undone "by an appropriate order. Thus the only question which has to be considered is whether the party appealing has so conducted himself as to make restitution impossible or inequitable.

In view of these observations of the Supreme Court, the contention of the petitioner that by receiving the amount that he did after the order of discharge, Mukund had forfeited his right of approaching the labour court for challenging the validity of the order of discharge, cannot but be rejected.

Sri Chaphekar then argued that while receiving the amount of salary, gratuity, etc., Mukund passed a receipt in favour of the petitioner saying that he had received a sum of Rs. 2,360.66 "in full and final payment" of all his claims. It was said that the passing of this receipt constituted an act of waiver on the part of Mukund giving up his right of questioning the legality of the order terminating¹ his services. Learned counsel relied on *Andhra Laundry (Proprietor, R.A. Masilamani) Vs. Additional Labour Court and Others*, , We are unable to accept this contention. The receipt which Mukund passed was in regard to "full

and final payment" of his money-claims. This is clear from the fact that in the receipt, which Mukund gave to the petitioner, it was not said that the amount was received in full settlement of all his claims. What was said was that the amount was received "in full and final payment " of all his claims. The payment referred to in the receipt is clearly of money-claims. It is reasonable to think that when his services were terminated, it became of immediate importance to Mukund to collect without delay the amount due to him in order to sustain himself during the period of unemployment facing him. If, therefore, finding himself without any job and without any steady and continuous source of income, Mukund approached the petitioner for payment of salary, gratuity and provident fund amounts and passed the receipt that he did, it would be wrong to infer that by receiving the aforesaid amounts and passing a receipt containing the statement " received in full and final payment of all my claims " Mukund precluded himself from challenging the correctness and legality of the order of his discharge from service.

The decision of the Madras High Court, relied on by the learned counsel for the petitioner, is not in point and is clearly distinguishable;. That was a case where the management of a laundry decided to close down the laundry business in accordance with 8. 25PFP of the Industrial Disputes Act, 1947, and issued a notice to the workmen informing them of the closure and adding that they would be paid all their dues in accordance with law. All the workmen received their wages, retrenchment compensation and gratuity from the management, and passed individual receipts of having received the sums paid to them in full and final settlement of their claims. Thereafter, the workmen filed claim petitions before the labour court u/s 33C(2) of the Industrial Disputes Act claiming computation of the benefits of retrenchment compensation, gratuity and leave-wages under the Act after giving credit for the amount received from the management. The learned single Judge of the Madras High Court, who decided the matter, held that the passing of receipts by the employees in full and final settlement of their claims did not amount to election but that it amounted to waiver or estoppel. He reached this conclusion on the reasoning that the workmen signed stamped receipts with full knowledge of their claims and they were aware of their rights under the Act find they had sufficient time either to reject the terms offered by the management and insist upon the statutory benefits under the Act or accepting the terms offered by the management. Thus, in that case, the workers, by accepting the amount of retrenchment compensation, wages, gratuity, etc., from the management in full and final settlement of all their claims, gave up their right of having the benefit of retrenchment compensation, gratuity, leave-wages, etc., computed u/s 33C of the Industrial Disputes Act. In the Madras case, the workers first accepted in full settlement of their claims a certain sum, and later on claimed a larger amount to which according to them they were entitled u/s 33C of the Industrial Disputes Act. The position here is different. In the case before us, Mukund's claim before the labour court was not that he was entitled to receive more than Rs. 2,360.65;

the dispute raised by him was about the legality of the order of discharge. As we have endeavoured to point out, the receipt passed by Mukund cannot on any principle be read as one embodying a declaration of Mukund that he was giving up his right to challenge the legality of the order of his discharge from service.

For the foregoing reasons, this petition is dismissed with costs of respondent 1, Mukund. Counsel's fee is fixed at Rs. 100. The outstanding amount of security deposit, if any, after deduction of costs, shall be refunded to the petitioner.