(2015) 07 BOM CK 0048

In the Bombay High Court

Case No : Writ Petition No. 1013 of 2010

Hiralal APPELLANT

Vs

LIDCOM and Others RESPONDENT

Date of Decision : 10-07-2015

Acts Referred:

Citation : (2015) 07 BOM CK 0048

Hon'ble Judges : Anand Vasant Nirgude, J;A.M. Badar, J

Bench : Division Bench

Advocate : P.V. Mandlik, Senior Counsel i/b Amol Gandhi, for the Appellant; V.D. Gunale, Advocates for the Respondent

Final Decision : Allowed

Judgement

Anand Vasant Nirgude, J—Heard.

2. Rule. Rule made returnable forthwith. By consent of parties, the petition is taken up for final hearing.

3. Petitioners herein are challenging the order dated 19.1.2010, issued by the Managing Director of respondent No. 1 -Sant Rohidas charmodyog and Charmakar Vikas Corporation Maryadit (hereinafter referred to as "Sant Rohidas Corporation" for the sake of brevity) thereby directing them to refund the amount received by them from their erstwhile employer under the Voluntary Retirement Scheme to their erstwhile employer, within 15 days of receipt of the said order.

4. Shri Mandlik, learned Senior Counsel for petitioners argued that petitioners were in service of respondent No. 3 -Godavari Garments Ltd., a Subsidiary of respondent No. 2 -Marathwada Development Corporation. As the said Corporation started running under losses it offered a Voluntary Retirement Scheme to its employees and petitioners accepted retirement in that scheme. Shri Mandlik, learned Senior Counsel further argued that after receipt of the amount of ex-gratia/compensation under the Voluntary Retirement Scheme,

petitioners gave a golden hand shake to their employer Godavari Garments Ltd. in the year 2005. Subsequently, as contended by Shri Mandlik, learned Senior Counsel, in the year 2006 about 95 posts were available with respondent No. 1 Sant Rohidas Corporation-a Corporation owned and managed by the State. Names of petitioners were recommended by their erstwhile employer -Godavari Garments Ltd. and accordingly, petitioners came to be employed with the respondent No. 1 Sant Rohidas Corporation. This appointment, as contended by learned Senior Counsel, was a fresh appointment. Thereafter, respondent No. 1 Sant Rohidas Corporation, on 19.01.2010, issued the impugned letter directing petitioners to refund the amount of ex-gratia/compensation received under the Voluntary Retirement Scheme to their erstwhile employer Godavari Garments Ltd. This letter, according to Shri Mandlik, is also extending a threat that, petitioners will be removed from service if they fail to refund the amount of ex-gratia/compensation to their erstwhile employer i.e. Godavari Garments Ltd. According to the learned Senior Counsel, the present employer of petitioners i.e. Sant Rohidas Corporation has no power and authority to issue such direction, particularly when petitioners were offered fresh employment without any benefits of continuity in service.

5. Per contra, Shri Gunale, learned counsel for respondent No. 1 Sant Rahidas Corporation vehemently argued that the impugned letter dated 19.1.2010 was issued under the directions of the State Government and the State Government had issued such directions well within its power and competence. He also contended that the policy of respondent No. 1 -Sant Rohidas Corporation was upheld by this Court in Writ Petition No. 2870 of 2009. He also drew our attention to the communication dated 7.1.2010 which is a letter issued by the Department of Social Justice and Special Assistance of the State, informing respondent No. 1 Sant Rohidas Corporation to take action in pursuance to the judgment of this Court in W.P. No. 2870 of 2009. It was pointed out by Shri Gunale, learned counsel that a meeting was convened in the chamber of the Principal Secretary, Social Justice Department and in that meeting, the Principal Secretary of Social Justice Department had directed to take such action. In nutshell, it is contention of Shri Gunale, learned counsel for the respondent No. 1 that the impugned action of respondent No. 1 is at the instance of the State Government.

6. Shri Tope, learned Additional Government Pleader appearing for the State reiterated the submissions of Shri Gunale, learned counsel for respondent no.1 and further added that the petitioners who are ex-employees of the autonomous Corporation of the State, cannot take double benefit from the State. In his submission, petitioners have already received ex-gratia amount/compensation in token of termination of their services and subsequently, they were offered re-employment with another Corporation, owned by the State. Therefore, in submission of Shri Tope, learned Additional Government Pleader, petitioners cannot be allowed to get this double benefit and they are rightly directed to refund the ex-gratia amount/compensation which was received by them because

of Voluntary Retirement.

7. We have carefully considered the rival submissions and also perused the material placed on record. It is not in dispute that petitioners were working with respondent No. 3 Godavari Garments Ltd., a subsidiary of the Marathwada Development Corporation. It is also not in dispute that the Marathwada Development Corporation is a State owned undertaking. After rendering continuous service with that Corporation upto 2007, petitioners had chosen to opt for Voluntary Retirement by accepting the benefits offered by their employer - Godavari Garments Ltd. The petitioners, as such, stood retired from service of the Godavari Garments Ltd., after receipt of compensation package. Thus, the relationship of employer and employee between petitioners and Godavari Garments Ltd. was severed in the year 2005 under the Voluntary Retirement Scheme. Office orders dated 9th December, 2005 on record page nos.19 and 29 are making this aspect clear. It is apparent that the State had taken a policy decision as reflected in Government Resolution dated 18th December, 1992 (Record page no. 35) for closing or winding up the operation of Public Sector Enterprises incurring losses or which have become unviable. This Government Resolution provides for compensation package and prescribes that no commitment for providing alternate employment be given to the employees opting for V.R.S. As per clause 7 of that Government Resolution, if other State Public Sector Enterprise provides employment to such persons, then that employment should be treated as fresh employment. It was under this policy of the State petitioners opted for voluntary retirement offered by Godavari Garments Ltd.

8. It is also not in dispute that Sant Rohidas Corporation is another State owned Corporation. Record shows that after retirement of the petitioners from services of the Godavari Garments Ltd., there was an occasion for filling up the posts with respondent No. 1 -Sant Rohidas Corporation. At this juncture, it will not be out of place to refer another Government Resolution dated 14th October, 2003, issued by the Department of Social Justice, Cultural Affairs and Sports of the State. By this Government Resolution, the State Government considered the fact that the candidates from surplus cadre with the State Government were not available and, therefore, it took a decision that posts which were vacant with respondent No. 1 Sant Rohidas Corporation, should be filled in by giving re-employment to the employees who were retrenched/retired from other Corporations whose activities are closed. Considering the fact that there were posts available with State owned respondent no.1 Corporation and that because of closure of State Government undertaking several employees were retrenched, it is seen that the State Government has taken a decision to grant an opportunity to the retrenched/ retired employees to offer themselves for employment. It is in these circumstances, petitioners were invited by respondent No. 1 Sant Rohidas Corporation somewhere in August 2006 for interviews. Petitioners were accordingly interviewed by respondent No. 1 Sant Rohidas Corporation. As they were found suitable for employment, they were appointed on suitable posts with

the Respondent No. 1 Sant Rohidas Corporation.

9. On perusal of the letter inviting petitioners for interview as well as the appointment orders issued to them, it becomes crystal clear that petitioners were given fresh appointment with respondent No. 1 Sant Rohidas Corporation. They were made aware that earlier services rendered by them with some other autonomous Corporation owned by the State Government were not to be considered for any purpose. It was also brought to the notice of the petitioners that the respondent No. 1 Sant Rohidas Corporation shall not be liable for any service dues which petitioners might be having with their erstwhile employer. No continuity in service was granted to them by counting their previous service with Godavari Garments Ltd. With these terms, fresh appointment was provided to the petitioners by the respondent No. 1 Sant Rohidas Corporation.

10. It is thus clear, that, this fresh appointment offered to petitioners and accepted by them, was without having any benefit of long service rendered by them with the erstwhile employer, which happened to be other State owned Corporation.

11. It is cardinal rule of service jurisprudence that after retirement or retrenchment from one employer on accepting compensation package when the employee accepts another employment with another employer, he is not entitled to any benefits of the service rendered by him with his previous employer. Similarly, he cannot be made liable to refund any monetary benefits accrued due to employment to his earlier employer while seeking fresh employment with new employer. In the case in hand, what the petitioners had received as compensation package, for giving golden hand shake to their erstwhile employer was not a bounty, but, it was reward for long service rendered by them with their erstwhile employer. The fresh employment secured by them with another State owned autonomous Corporation has nothing to do with their previous service and benefits received from it.

12. In the light of these reasons, it was wholly unjustified on the part of the respondent No. 1 Sant Rohidas Corporation to direct the petitioners to refund the compensation amount received by them to their erstwhile employer and that too under threat of termination of their services on failure to do so. The impugned orders are, as such, wholly arbitrary and illegal.

13. It was argued that the impugned action is at the behest of the State. We have perused the Government Resolution dated 14th October, 2003 by which it was decided that the vacant posts with respondent No. 1 Sant Rohidas Corporation as well as with another Corporation of the State should be filled in by re-employment of the retrenched/terminated/retired employees of some other Corporation. This Government Resolution as well as Government Resolution dated 18th December, 1992 nowhere provided that retrenched/ terminated/ retired employees shall be required to refund the compensation amount received by them in order to seek re-employment with other State owned Corporation. As

such, reliance on the Government Resolution dated 14th October, 2003 by respondents is wholly misplaced.

14. We have also considered the minutes of the meeting dated 23.11.2006 relied by respondents. Perusal of those minutes of the meeting shows that in a meeting convened in the chamber of the Principal Secretary of the Department of Social Justice, Managing Director of several State owned Corporations were present. The Principal Secretary of the said department in that meeting instructed them that while granting re-employment, continuity in service should be offered to those employees who have not accepted the compensation package while leaving the service of earlier employer/autonomous Corporation owned by the State. In addition, the Principal Secretary also instructed that pay of such employees should be protected while offering reemployment. It was further instructed by the Principal Secretary that those employees who had accepted compensation package should be asked to refund that amount while accepting new employment with some other autonomous Corporation owned by the State. It is apposite to note that these instructions can not be construed as decision of the State. Moreover, these instructions require a conjoint reading. These instructions in no unclear terms state that for seeking benefit of continuity in service and pay protection in re-employment the retired/retrenched/ terminated employee should refund the amount received under the compensation package. In the case in hand, the employment offered to petitioners was without these benefits. Petitioners had accepted the employment with respondent no.1 as fresh employment without having any benefit of continuity in service and pay protection regarding the earlier employment with erstwhile employer/ autonomous State owned Corporation. Under these circumstances respondent No. 1 -Sant Rohidas Corporation is not at all justified in directing petitioners to refund the compensation amount received by them while accepting Voluntary Retirement offered by their erstwhile employer.

15. Our attention was also drawn to the judgment of this Court rendered at the Nagpur Bench in W.P. No. 2870 of 2009. That matter proceeded on its own facts and was disposed of on the basis of the statement of the learned counsel for respondent No. 2 therein. That statement was regarding policy of absorption by LIDCOM, which was stated to be uniformly applied to its employees. It appears that in that case the employees were given continuity in service and pay protection. However in the case in hand, appointment orders issued by respondent no.1 corporation shows that petitioners are not given such benefits. Therefore, the judgment so cited has no application to the case in hand.

16. In the result, we pass the following order :-

[a] The writ petition is allowed;

[b] The impugned notice/order dated 19.1.2010 issued by the Managing Director of respondent No. 1 Sant Rohidas Corporation is quashed and set aside.

[c] Rule is made absolute in above terms with no orders as to costs.