

(2009) 11 P&H CK 0117
In the Punjab And Haryana At Chandigarh

Maruti Suzuki India Limited	Vs	APPELLANT
State of Haryana and Another		RESPONDENT

Date of Decision : 23-11-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 2S

Citation : (2010) 157 PLR 198

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Judgement

K. Kannan, J.—The writ petition is filed challenging the reference made by the Government to the Labour Court accepting the plea of the workman that there was a dispute to be adjudicated by the Labour Court. The dispute raised by the workman on the basis of the claim statement was that he was compelled under various circumstances to receive compensation under Voluntary Retirement Scheme when he was not willing to do so. The details of the so called coercion exercised by the management was revealed in his claim statement as follows:

1. That I had been working with the Maruti Udyog Limited (MUL), Palam Gurgaon Road w.e.f. 08.04.1988 on permanent basis till my illegal and unjustified removal from service through the process of getting forced resignations from us in the garb of "Voluntary Retirement Scheme (VRS)" as per the scheme dated 24.09.2001.
2. That in the month of August, 2001 before the introduction of VR Scheme dated 24.09.2001, I was called by my Supervisor and was advised to resign from my post with immediate effect.
3. That when I asked for the reasons for asking me to submit my resignation, I was told by my Supervisor that the top management is planning to reduce a number of employees from each division.
4. That on not submitting my resignation at the request of my Supervisor, I was regularly being persuaded to submit my resignation failing which I was told by

my Supervisor that the Management would terminate my services by giving me the prescribed notice under the law and as per rules of the company.

5. That meanwhile a Voluntary Retirement Scheme was introduced by the management vide its Circular No. 07/01 dated 24.09.2001, photocopy of which is enclosed as Annexure A-I.

6. That on introduction of the VRS, I was more vigorously followed by my Supervisor to submit my resignation and I was also threatened again by my Supervisor that in case I did not submit my resignation, my services shall be terminated by the Management.

7. That my Supervisor also advised me that in case the Management terminates my services, it would be pre-judicial to my interest since, I, in that case, shall be having difficulty in getting further job elsewhere because the management shall not issue any experience certificate and/or will not give satisfactory report about my work in case of any enquiry by my future employer.

8. That when the regular follow up and pressure on me by the supervisor did not help, I was called by the Personnel Department and was asked to take delivery of my termination letter. Shri A. Talukdar again tried to convince me to submit my resignation or face dismissal. Shri Talukdar also advised me that at the most he could help me by giving me VRS benefits for which, otherwise, I am not eligible. He gave me two hours time to think over the matter and opt for either taking dismissal orders or apply for VRS.

9. That having no option left with me, I, under coercion, unwillingly had to put my signatures on applications form for VRS.

The claim statement was filed in August, 2002 when the workman is reported to have received the amount of compensation under the Voluntary Retirement Scheme in October, 2001.

2. The contention of the learned Counsel appearing for the management is that once the workman had received the benefit and encashed the same, he shall not be entitled to urge that he was subjected to any threat or coercion. According to him, the receipt of the amount by the workman itself terminates the master and servant relationship and there shall be no more opportunity for an industrial adjudication. The learned Counsel refers me to the decision in Gyanendra Sahay Vs. Tata Iron and Steel Co. Ltd., which dealt with the case of the Division Bench of the High Court of Jharkhand holding that employee's allegations for compulsory retirement were vague and having sought premature retirement voluntarily and having accepted the retiral benefits without any protest, it was not open to him to turn around and say that he was compelled by the company to seek voluntary retirement. This finding of the Division Bench was accepted by the Hon"ble Supreme Court and the intervention sought through a SLP at the instance of the workman was rejected. The learned Counsel also refers to a decision in J.K. Cotton Spinning and Weaving Mills Company Ltd. Vs. State of U.P.

and Others, that held that if the workman tendered resignation and which was also accepted by the employer, it did not amount to termination of services by the employer and hence, he was not covered by the first part of the retrenchment u/s 2-S of the Industrial Disputes Act and the employer was not required to comply with the Section 6-N of the U.P. Industrial Disputes Act, 1947. National Engineering Industries Ltd. Vs. State of Rajasthan and Others, was a case where a settlement, which had been entered into in the course of conciliation proceedings with a recognized majority union was sought to be challenged when the Court held that even those persons, who belonged to the minority union would be bound and the wholesale reference of all the disputes in the charter of demands of Workers' Union for adjudication was bad inasmuch as such disputes were made the subject of tripartite settlement. The reference was found to be a result of non-application of mind by the State Government. The Division Bench of this Hon''ble Court has held in M/s Maruti Udyog Ltd. v. State of Haryana and Anr. in C.W.P. No. 17186 of 2008 dated 11.04.2008 with reference to challenge made by the very same management against a complaint of the Voluntary Retirement Scheme as having been forced upon the workman, that a demand notice having emanated 2 1/2-3 years after voluntary retirement and after encashing the cheque under Voluntary Retirement Scheme was not a good enough ground to make a reference, especially when the workman was only contending that such acceptance of compensation was made when the workman was "not in a perfect mental state." This assessment was found to be vague to sustain a reference.

3. If in the decision of the Hon''ble Supreme Court in Gyanendra Sahay v. Tata Iron and Steel Co. Ltd., an assessment was made by the Division Bench that the allegation of force upon employee was vague, in the decision of the Division Bench of this Hon''ble Court, the observation was that the workman's contention was equally vague with reference to the alleged mental state of the workman. A contract could be vitiated on several grounds, which are set out in Section 19 of the Contract Act, as when the consent to an agreement is caused by coercion, fraud or misrepresentation. Coercion is defined u/s 15 as resulting from threat to commit an act forbidden by the Indian Penal Code or the unlawful detaining or threatening to detain any property to the prejudice of the person whatever the interest or cause any person to enter into an agreement. The free consent of a person could be sullied by several situations, as set out under Sections 15 to 18, 20 to 22 of the Contract Act. All this is not stated that there is already a proof of such coercion. The matter has to be examined in the context of whether sufficient allegations of coercion or undue influence are made. I have extracted the entire portion of the allegation of the workmen suggestive of the undue pressures alleged to have been caused on the workman by the management. It is perfectly legitimate and possible for the management to contend that such force had not been practised or that such a contention cannot be accepted even in the absence of any police complaint. These are essential matters of fact which would go for an adjudication. If the Government had before it had some material

through an assertion by a statement and therefore, the Government had been subjectively satisfied about the existence of dispute, the reference cannot be rejected. The decisions referred to above and cited by the learned Counsel could be seen as constituting a proposition that in cases where the allegations are vague and there existed no ground for entertaining a doubt about the validity of the settlement between the management and the workmen, there ought to be no ground for reference. However, in a case where allegations are made and the Government is of the view that such allegations would require to be squarely addressed in an enquiry, the decision to make the reference cannot be faulted and thrown out at the threshold through a writ petition. The grievance of the management that the workman, who had obtained benefit of a monetary recompense shall have no right to seek an adjudication is in some way justified. Section 33 of the Specific Relief Act leaves the power to require the benefit to be restored when an instrument is cancelled or successfully resisted as being void or voidable. The workman contends that Voluntary Retirement Scheme to which he was forced to participate was the result of practice of coercion which if established would make the contract voidable. To make the scales even, the Labour Court will undertake the adjudication on the reference, if only the workman deposits the amount which he has received into Court with interest from the date when he has received to the date of deposit calculated at 7.5% per annum. If the deposit is not made within 60 days from the date when reference was issued to him, the reference made by the Government shall stand annulled.

4. The writ petition is disposed of in the above terms.