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**(2017) 07 RAJ CK 0034**  
**In the Rajasthan High Court**  
**Case No : 748 of 2016**

Maton Mines Mazdoor Sangh

APPELLANT

Vs

Hindustan Zinc Ltd.

RESPONDENT

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**Date of Decision :** 13-07-2017

**Acts Referred:**

[Industrial Disputes Act, 1947](#), [Section 2\(s\)](#), [Section 2\(OO\)](#), [Section 2\(a\)](#), [Section 25H](#) - Definitions - Definitions - Definitions - Re-employment of retrenched

**Citation :** (2017) 07 RAJ CK 0034

**Hon'ble Judges :** Ramchandra Singh Jhala

**Bench :** SINGLE BENCH

**Advocate :** Deelip Kawadia, Dr.Sachin Acharya, Shreedhar Mehta

**Final Decision :** Dismissed

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## Judgement

1. The above captioned 7 writ appeals challenge a singular order dated 2.6.2016 passed by the learned Single Judge allowing 17 writ petitions filed by Hindustan Zinc Limited. Not all affecting workmen are aggrieved by the impugned order, and this is evident from the fact that only 7 writ appeals have been filed concerning 7 writ petitions which were allowed.

2. Hindustan Zinc Limited had filed writ petitions challenging reference orders dated 26.7.2010 and 4.4.2012 to the effect whether the action of the Management of Hindustan Zinc Limited in terminating the services of (workmen named in the reference) and thereafter not reinstating/reemploying is legal and justified.

The reference order dated 4.4.2012 was with reference to the Union espousing the cause of 184 workmen. The said reference orders read as under:

"Whether the action of the Management of the Hindustan Zinc Limited in terminating the services of Shanti Lal Jain with effect from 27.3.2002 and thereafter not re- instating/reemploying him is legal and justified? To what relief, the workman is entitled and from which date?" x x x x x ""Whether the action of the Management of the Hindustan Zinc Limited Udaipur in Retrenching 184 workmen ( List enclosed ) w.e.f 25.8.2001 by giving them Special Voluntary Retirement Scheme-II on closure of Maton Rock Phospate Mines, Udaipur and in not giving preference to these retrenched 184 workmen (list enclosed) at the time of new appointments made by the management on re-starting the mining activities in the same mine, is legal and justified? What relief the workmen are entitled to ? "

3. Relevant facts correctly noted by the learned Single Judge are that Hindustan Zinc Limited, a Government Company within the meaning of Section 617 of the Companies Act, 1956 was dis-invested by the Government retaining 26% share therein. The remainder were acquired by private individuals. Post dis-investment due to uneconomic and unviable earning operations at Maton Mines of the Company the Management decided to stop operations in the Maton Mines and close the same. 202 workmen were working in the Mines. The Company floated a special scheme for voluntary retirement of its employees. Of the 202 employees, 179 opted to take benefit under the voluntary retirement scheme and their offers to be voluntarily retired being accepted, benefit as per the scheme was given to them. These 179 workmen took the money given to them. 23 workmen did not opt for voluntarily being retired under the scheme. They were retrenched by the Management. Compensation for retrenchment was paid. These 23 workmen raised an industrial dispute and during conciliation proceedings 21 agreed to accept being voluntarily retired. Thus, of the 23 retrenched workmen, 21 accepted the benefit under the

voluntary retirement scheme. In this manner, of the 202 workmen, 200 stood voluntarily retired from service. Two employees remained named Radhey Shyam Jat and Rajesh Ghawri. The two agreed to be given fresh appointment in another establishment of the Company. Thus, qua those two also no dispute remained.

4. All this happened in the year 2002.

5. After six and half years the Union and some of the workmen who had taken voluntary retirement raised a dispute that the principal focus being violation of Section 25H of the Industrial Disputes Act, 1947. The pleadings are not clear but it appears that the foundation is re-employment given to two workmen named Radhey Shyam Jat and Rajesh Ghawri, over looking the fact that Radhey Shyam Jat and Rajesh Ghawri were given fresh appointment in another establishment of the Company. The Maton Mine was not re-opened. It still lies closed.

6. Case of the Company is pleaded on the definition of "workman" as defined under Section 2(s) of the Industrial Disputes Act, 1947. It read as under:-

"(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or (ii) who is employed in the police service or as an officer or other employee of a prison; or (iii) who is employed mainly in a managerial or administrative capacity; or (iv) who, being employed in a supervisory capacity, draws wages exceeding (ten thousand rupees) per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

7. The argument of the Company was that a workman would be a person employed in an industry and will include such person who has been dismissed, discharged or retrenched. Section 2 (oo) was also pressed into aid to highlight that voluntary retirement of the workman was excluded from the definition of "retrenchment".

Section 2(oo) reads as under:-

"(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include- (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or (c) termination of the service of a workman on the ground of continued ill-health."

8. The workmen and the Union raised a preliminary objection to the maintainability of the writ petition and urged that the industrial fora could decide the same. The Management relied upon the decisions reported as 2000(2) SCC 455 Nedungadi Bank V/s K.P.Madhavan Kutty and 2007(9) SCC 109 Dharappa V/s Vijapur Cooperative Milk. The workman relied upon the decision of the Supreme Court reported as AIR 1984 SC 153 D.P.Maheshwari V/s Delhi Administration & ors. as also AIR 2008 SCW 306 Haryana Land Reclamation and Development Corporation Ltd. V/s Nirmal Kumar.

9. The learned Single Judge has distinguished the decision in D.P.Maheshwari's case (supra) noting that in said decision, based on evidence a preliminary finding returned by the industrial fora was challenged. With reference to the decision reported as 2000 (1) SCC 371 National Engineering Industries Ltd. V/s State of Rajasthan & ors., the learned Single Judge has held that

since it was a case of voluntary retirement and facts were not in dispute, the writ petitions could be entertained. On merits, the learned Single Judge has held it to be a case of voluntary retirement and hence status of a workman not being available to the employees who had opted for voluntary retirement. The learned Single Judge has quoted paragraph 24 from the judgment of the Supreme Court in National Engineering Industries Ltd. case.

It reads as under:-

"24. It will be thus seen that High Court has jurisdiction to entertain a writ petition when there is an allegation that there is no industrial dispute and none apprehended which could be the subject matter of reference for adjudication to the Industrial Tribunal under Section 10 of the Act. Here it is a question of jurisdiction of the Industrial Tribunal, which could be examined by the High Court in its writ jurisdiction. It is the existence of the industrial tribunal which would clothe the appropriate Government with power to make the reference and the Industrial Tribunal to adjudicate it. If there is no industrial dispute in existence or apprehended appropriate government lacks power make any reference. A settlement of dispute between the parties themselves is to be preferred, where it could be arrived at, to industrial adjudication, as the settlement is likely to lead to more lasting peace than an award. Settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements it could be the subject matter of yet another industrial dispute which an appropriate Government may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the Conciliation Officer must be fair and reasonable. A settlement which is sought to be impugned has to be scanned and scrutinized. Sub-sections (1) and (3) of section 18 divide settlements into two categories, namely, (1) those arrived at outside the conciliation proceedings and (2) those arrived at in the course of conciliation proceedings. A settlement which belongs to the first category has limited application in that it merely binds the parties to the agreement but the settlement belonging to the second category has extended application since it is binding on all the parties to the industrial disputes, to all others who were summoned to appear in the conciliation proceedings and to all persons employed in the establishment or part of the establishment, as the case may

be, to which the dispute related on the date of the dispute and to all others who joined the establishment thereafter, A settlement arrived at in the course of conciliation proceedings with a recognized majority union will be binding on all

workmen of the establishment, even those who belong to the minority union which had objected to the same. The recognized union having the majority of members is expected to protect the legitimate interest of the labour and enter into a settlement in the best interest of the labour. This is with the object to uphold the sanctity of settlement reached with the active assistance of the Conciliation Officer and to discourage an individual employee or a minority union from scuttling the settlement. When a settlement is arrived at during the conciliation proceedings it is binding on the members of the workers' union as laid down by section 18(3) (d) of the Act . It would ipso facto bind all the existing workmen who are all parties to the industrial dispute and who may not be members of Unions that are signatories to such settlement under section 12(3) of the Act. The Act is based on the principle of collective bargaining for resolving Industrial disputes and for maintaining industrial peace. "This principle of industrial democracy is the bedrock of the Act", as pointed out in the case of *P. Virudhanchalam & Ors. v. Management of Lotus Mills & Anr .*, [1998] 1 SCC 650. In all these negotiations based on collective bargaining the individual workman necessarily recedes to the background. Settlements will encompass all the disputes existing at the time of the settlement except those specifically left out."

10. The learned Single Judge has also quoted a paragraph to similar effect in the decision reported as 2003(11) SCC 572 Vice Chairman and Managing Director, A.P.SIDC.Ltd. V/s R.Varaprasad & ors. It reads as under:-

"12. This being the position both learned single Judge and the Division Bench of the High Court were not right in taking a contrary view that the benefits available under the Scheme and terminal benefits should be reckoned and calculated as on the date of actual relieving the employees notwithstanding the cut off date mentioned by the Corporation and accepted by the employees. An employee even after accepting his application could not be relieved unless entire amount to which he was entitled under the Scheme was paid. Such payment depended on making funds available by the State Government. All employees who accepted VRS could be relieved at a time or batch by batch depending on availability of funds. Further funds may be made available early or late.

If the argument of the respondents that relieving date should be taken as effective date for calculating terminal benefits and financial package under VRS, the dates may be fluctuating depending on availability of funds. Hence it is not possible to accept this argument. When the employees have opted for VRS on their own without any compulsion knowing fully well about the Scheme, guidelines and circulars governing the same, it is not open to them to make any claim contrary to the terms accepted. It is matter of contract between the Corporation and the employees. It is not for the courts to re-write the terms of the contract, which were clear to the contracting parties, as indicated in the

guidelines and circulars governing them under which Voluntary Retirement Schemes floated".

11. On the issue of delay, the learned Single Judge has noted a paragraph from the decision in Nedungadi Bank Limited case (supra). It reads as under:-

"Law does not prescribe any time limit for the appropriate government to exercise its powers under section 10 of the Act: It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us L.C.A NO. 3/2007 to be -no rational basis on which the Central Government has exercised powers in this case after lapse of about seven years of order dismissing the respondent from service. At the time reference, was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale `could not be the subject matter of reference under section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising industrial dispute was ex facie bad and incompetent."

12. With reference to the failure report sent by the conciliation officer, in paragraph 24 of the impugned decision, the learned

Single Judge has held as under:- "24. In the instant case, the failure report sent by the conciliation officer is totally laconic and does not comply with the stipulation and provisions of Section 12(4) of the Act of 1947. An application was moved under Section 2A of the Act of 1947. Once a detailed reply had been filed before the conciliation officer that there was no retrenchment, dismissal or termination of the services of the workman and retirement was on account of the voluntary retirement scheme opted by him in conciliation proceedings, the conciliation officer ought to have stayed his hands. The conciliation report does not take note of the detailed reply that was filed by the petitioner-Company nor does it enlist as to what steps were taken by him to ascertain the nature of the dispute. The very reference order has gone on the presumption there was termination of the services of the workman without going into the details or noting that there was no termination/retrenchment involved and the respondents had availed benefits of voluntary Retirement Scheme. Even the reference order dated 4.4.2012 is self contradictory. 179 accepted the voluntary

retirement offered on 25.8.2001 and not 184. Obviously without appreciating the VRS and the conditions therein the appropriate Government has formulated the question ""Whether the action of the Management of the Hindustan Zinc Limited Udaipur in Retrenching 184 workmen ( List enclosed ) w.e.f 25.8.2001 by giving them Special Voluntary Retirement Scheme-II on closure of Maton Rock Phosphate Mines, Udaipur and in not giving preference to these retrenched 184 workmen (list enclosed) at the time of new appointments made by the management on re-starting the mining activities in the same mine, is legal and justified? What relief the workmen are entitled to ? Voluntary Retirement and retrenchment are mutually opposed to each other. That is why, it became all the more important for the conciliation officer to have complied with Section 12 (4) of the Act of 1947 in giving full details of the statement of facts pertaining to the case. Had the failure report been detailed, the appropriate government would have noted the fact that there was no termination / retrenchment of services."

13. With respect to the pleadings in the application moved by the workmen and the Union under Section 2 (a) of the ID Act, 1947, finding returned by the learned Single Judge in paragraph 27 of the impugned decision reads as under:-

"27. Admittedly, in the instant case, there is no allegation in the application moved under Section 2(a) of the Act of 1947 that voluntary retirement scheme was obtained fraudulently or under coercion. There is a mention in some writs the settlement arrived at was under duress but what has to be kept in mind is that after the voluntary retirement scheme came into effect and was accepted by the parties, the same has not been challenged to date nor was the same sought to be set aside by invoking Section 19 of the Act of 1947. Be that as it may, the appropriate government did not go through the nature of the dispute which was limited to seeking benefit of section 25 H of the Act of 1947. Had the appropriate government applied its mind and not acted mechanically it would have noted that there was no "termination/ retrenchment" as mentioned in the reference orders."

14. In appeal same contentions which were advanced before the learned Single Judge have been reiterated.

15. On the issue whether the learned Single Judge ought not to have entertained the writ petitions, contention of the appellants was that where a settlement was on account of a fraud, misrepresentation or concealment of a fact and the same was challenged, the disputed question of fact had to be decided by the industrial fora. Thus, counsel urged that the learned Single Judge



ought not to have entertained the writ petitions.

16. There can be no quarrel with the proposition that where a settlement by a workman entered with the employer is challenged by the workman as tainted with a fraud or misrepresentation, that itself would be an industrial dispute capable of being referred to an industrial fora. But in this case we do not find any pleading of misrepresentation or fraud. The pleadings of the workman and the Union are loose and laconic. Meaningfully read the case would be that since the Management threatened closure of the Maton Mines they were left with no option but to accept the scheme for voluntary retirement. This plea is neither here nor there for the reason as a matter of fact Maton Mine was closed and it still lying closed. The backdrop of fact concerning voluntary retirement has been noted by us hereinabove. When the Company floated the scheme of voluntary retirement, 179 workmen accepted the benefit under the same. This left 23 workman who were retrenched. Raising an industrial dispute, 21 also accepted to be voluntarily retired. Thus qua 200 workman the chapter was closed. There being no disputed question of fact, the learned Single Judge was perfectly justified in considering whether the appropriate Government applied its mind to the question whether it was a case of termination or retrenchment. The finding returned by the learned Single Judge in paragraph 27 of the impugned decision cannot be faulted with.

17. The principles of law culled out by the learned Single Judge with reference to the decision of the Supreme Court, the quoted paragraphs whereof have been reproduced by us hereinabove, have been correctly applied by the learned Single Judge. Having taken VRS and there being no plea of fraud or misrepresentation to induce the workmen to accept the VRS, the learned Single

Judge has correctly held that it is neither a case of retrenchment nor of illegal termination. It is a simple case of voluntary retirement and thus, the workmen not being entitled to raise any industrial dispute.

18. We additionally highlight that it is not the case of the workmen that the terms and conditions of the scheme were unfair or unjust. We also highlight that other than the 179 workmen who had accepted benefit under the voluntary retirement scheme and who had raised no industrial dispute, remaining 23 raised an industrial dispute. As noted above 21 out of 23 entered into a settlement and accepted thereafter the benefit under the voluntary retirement scheme. It is these workmen who are now litigating again. Neither they nor the Union has issued any notice contemplated by law terminating the settlement.

19. The writ appeals are accordingly dismissed.

20. No costs.