
(2017) 02 BOM CK 0119
In the Bombay High Court
Case No : Writ Petition No. 1026 Of 2017

Motiram

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 08-02-2017

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes (Bombay) Rules, 1957 — Rule 62(4)
Industrial Disputes Act, 1947 — Section 18(1), Section 2(p), Section 25

Citation : (2017) 2 CLR 319 : (2017) LabLR 423 : (2017) 1 LLJ 759 : (2017) 3 MhLJ 853

Hon'ble Judges : Ravindra V. Ghuge, J.

Bench : Single Bench

Advocate : Shri Shejwal Arun S., Advocate, for the Petitioner; Shri Kendre S.N., Advocate, for the Respondent No. 1 and 2; Shri Prabhakaran T.K., Advocate, for the Respondent No. 3

Final Decision : Dismissed

Judgement

Ravindra V. Ghuge, J. (Oral) - Heard learned Advocates for the respective parties.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioners are aggrieved by the order dated 22.8.2016 passed by the respondent No.2 / Authority, whereby, the Conciliation Officer has not referred the demands put-forth by the petitioners to the Industrial Tribunal for adjudication.

5. The learned Advocate for the petitioners has strenuously criticized the impugned order. His submissions can be summarized as follows:-

(a) Respondent No.3 is a Company having a manufacturing Unit at W-28, MIDC, Waluj, Aurangabad.

- (b) There were 22 workers, who were permanent in the said plant.
- (c) These 18 petitioners are amongst the said 22 workers.
- (d) The petitioners have been working for more than 20 years.
- (e) On 28.12.2013, respondent No.3 / establishment / factory granted three days" holidays.
- (f) By notice dated 30.12.2013, respondent No.3 factory declared a closure of the W-28 establishment.
- (g) Respondent No.3 has another factory at A-8 MIDC, Waluj, which has now been closed down w.e.f. 1.1.2017 as per the statement of respondent No.3.
- (h) The petitioners were the members of the Aurangabad Mazdoor Union (CITU).
- (i) The Union took up the cause of the petitioners before the office of the Deputy Commissioner, Labour.
- (j) A settlement dated 12.8.2014, was signed under Section 2(p) read with Section 18(1) of the Industrial Disputes Act, 1947 and Rule 62(4) of Industrial Disputes (Bombay) Rules, 1957, between the parties.
- (k) The Assistant Commissioner of Labour was a witness to the cheques paid to the petitioners / workers.
- (l) The conditions of the settlement were mentioned therein.
- (m) The petitioners have been tricked by respondent No.3 and since the factory at A-8 was in operation and was undertaking production of activities which were also undertaken in W-28, the petitioners raised a demand notice for reemployment / reinstatement with all back wages from 30.12.2013 alleging violation of Section 25-H and 25-O.
- (n) The petitioners are poverty stricken employees and are without an employment today.
- (o) They deserve to be reinstated in service with full back wages.
- (p) An Industrial Dispute ought to have been submitted to the Industrial Tribunal.
- (q) The Impugned order is illegal, unsustainable and baseless.

6. The learned Advocate for respondent factory submits that the said factory at W-28 has been permanently closed down. Similarly, w.e.f. 1.1.2017, the factory at A-8 has also been closed down. There is no manufacturing activity and no job available to any worker, much less the petitioners. By signing the settlement, dated 12.8.2014, pursuant to the demands of the petitioner and the Union against the closure, 20 workers involved including the petitioners, were paid a total amount of Rs.1,01,32,065/-. (Rs. One Crore One Lakh Thirty Two Thousand Sixty Five only/-).

7. He further submits that after signing a settlement with regard to the closure and after having taken all the benefits from the settlement, the petitioners have utilized the money paid to them and thereafter have raised an industrial dispute on 9.10.2015, contending that the closure is illegal. The thrust of the petitioners' demand is on Sections 25-O and 25-H. Nevertheless, after signing the settlement, the petitioners are precluded from raising any industrial dispute.

8. I have considered the submissions of the learned Advocates.

9. This Court had heard the learned Advocates for quite some time on 1.2.2017 and 6.2.2017.

10. The Honourable Apex Court in the matter of Man Singh v. Maruti Suzuki India Limited and another [(2011) 14 SCC 662], had dealt with a case wherein the appellant had sought voluntary retirement with the respondent / factory. He accepted all the benefits of VRS and gave up all his rights of employment and non-employment. After accepting all the benefits as a package under the VRS, he had moved the Labour Court alleging compulsion, duress, and coercion. The management challenged the said dispute, which was referred to the Labour Court in a Reference, by filing a Writ Petition before the Punjab and Haryana High Court. Taking into account the fact that the employee had received the entire monetary package and had then raised a grievance against the VRS, the learned Single Judge ordered as under:-

" 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.

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

The employee was, therefore, directed to deposit the entire VRS amount along with 7.5.% per annum interest.

11. Before the Honourable Apex Court, the employee contended that he was compelled to accept the money and was coerced to sign the voluntary retirement papers. Considering his submissions, the Honourable Apex Court sustained the direction of the learned Single Judge to the extent of depositing the entire VRS amount. However, the imposition of interest was held to be a bit harsh and the said direction was set aside.

12. It would be apposite to reproduce paragraphs 6 to 9 of the Man Singh judgment (supra) as under:-

"6. In Ramesh Chandra Sankla and Ors. v. Vikram Cement and Ors. a number of workmen of Vikram Cement Company who had ceased to be the employees of Company after accepting full benefits under the scheme of voluntary retirement

moved the Labour Court under Section 31 of the Madhya Pradesh Industrial Relations Act, 1960 making the same allegations against the Company as the Appellant in this case. In that case, the Labour Court declined to decide certain issues framed at the instance of the management as preliminary issues. The management's appeal against the decision of the Labour Court not to decide those issues as preliminary issues was rejected by the Industrial Court. The writ petition filed by the management was dismissed by a learned single Judge on the ground that the orders passed by the Labour Court and affirmed by the Industrial Court were interlocutory in nature. The management took the matter before the Division Bench which held that the writ petitions filed by the Company were under Article 227 of the Constitution and the single Judge was exercising supervisory jurisdiction; hence, intra-court appeals were not maintainable and the appeals filed by the Company were liable to be dismissed on that score alone. Even while holding that the management's appeals were liable to be dismissed as not maintainable, the Division Bench went on to hold that since the workmen had approached the Labour Court after having received the benefits under the scheme, it would be equitable to direct the concerned employees to return the benefits so received to the employer subject to the undertaking by the Company that in the event the Labour Court allowed the claim and granted benefits to the workmen, the same would be restored to them by the Company with interest at the rate of 6% per annum.

7. The workmen challenged the order of the Division Bench before this Court inter alia on the ground that having held that the management's appeals were not maintainable, the Division Bench had No. jurisdiction to make the impugned direction. This Court repelled the workmen's contention and in paragraphs 100 and 101 of the decision held and observed as follows:

100. Even otherwise, according to the workmen, they were compelled to accept the amount and they received such amount under coercion and duress. In our considered opinion, they cannot retain the benefit if they want to prosecute claim petitions instituted by them with the Labour Court. Hence, the order passed by the Division Bench of the High Court as to refund of amount cannot be termed unjust, inequitable or improper. Hence, even if it is held that a "technical" contention raised by the workmen has some force, this Court which again exercises discretionary and equitable jurisdiction under Article 136 of the Constitution, will not interfere with a direction which is in consonance with the doctrine of equity. It has been rightly said that a person "who seeks equity must do equity". Here the workmen claim benefits as workmen of the Company, but they do not want to part with the benefit they have received towards retirement and severance of relationship of master and servant. It simply cannot be permitted. In our judgment, therefore, the final direction issued by the Division Bench needs No. interference, particularly when the Company has also approached this Court under Article 136 of the Constitution.

101. For the foregoing reasons, in our opinion, the order passed by the Division

Bench of the High Court deserves to be confirmed and is hereby confirmed. The payment which is required to be made as per the said order should be made by the applicants intending to prosecute their claims before the Labour Court, Mandsour. In view of the fact, however, that the said period is by now over, ends of justice would be served if we extend the time so as to enable the applicants to refund the amount. We, therefore, extend the time up to 31-12-2008 to make such payment. We may, however, clarify that the claim petitions will not be proceeded with till such payment is made. If the payment is not made within the period stipulated above, the claim petitions of those applicants will automatically stand dismissed. The Labour Court will take up the claim petitions after 31-12-2008.

The present case is squarely covered by the decision of this Court in Ramesh Chandra Sankla (*supra*). We, thus, find no merit in the submission made on behalf of the Appellant that the High Court had no jurisdiction to make a direction for refund of the entire amount received by the Appellant as a condition precedent for the reference to proceed."

13. Considering the law, I called upon the petitioners on 6.2.2017, when the matter was heard, to deposit the amounts received by the petitioners on 12.8.2014, without interest in this Court. Today, when the matter is heard, the learned Advocate for the petitioners submits on instructions that none of the petitioners are willing to deposit any money in this Court.

14. I, therefore, considered the Writ Petition on its merits.

15. Petitioner No.1 was not party to the settlement dated 12.8.2014. He challenged the closure. Pursuant thereto, a fresh settlement was signed on 18.12.2014 between petitioner No.1 and respondent No.3 under the provisions of the Industrial Disputes Act, 1947. He received a total amount of Rs.6,62,308/- as a full and final settlement inclusive of Rs.1,60,000/0- as ex-gratia. After the passage of one year, he has joined petitioner Nos.2 to 18 and has raised an industrial dispute.

16. I find from the identical settlements dated 12.8.2014 and 31.12.2014 that these petitioners have specifically agreed to give up and relinquish all claims against the factory and had undertaken not to raise any monetary demand / dispute against the company at any time in future before any Court or Government authority or department. The recital of the case in the settlements indicates that the entire settlement was with reference to the closure of the factory from 30.12.2013. Complaint (ULP) No.170 of 2013, filed by the Union was also withdrawn on 22.1.2014.

17. Paragraph Nos.1 to 4 of the Settlement read as under:-

" 1. All the 20 Ex-workmen who are covered under this settlement and the union have accepted that the Factory is closed irrevocably on and from 30.12.2013 and all the Ex-workmen have relinquished their past, present and future rights on the

employment with the Company. They further agreed that they shall not raise any demand, dispute in relation to their employment, re-employment, future employment, terms of employment any time in future before any Court of Law or authority against the Company.

2. The company has agreed to pay Ex-gratia Amount of Rs. 1,60,000/- to each of the workmen in addition to the full and final settlement dues and all the Ex-workmen have agreed to receive the said amount being a consideration for relinquishing all claims against the Company in their full and final satisfaction. They further agreed that they shall not raise any monetary demand dispute against the company any time in future before any Court of Law or the Government officials / Authorities.

3. That all 20 Ex-workmen requested the Company that in consideration of efforts made by Aurangabad Mazdoor Union (AMU) for reaching amicable settlement with the company and they have requested the Company to deduct Rs. 3000/- per workman from the additional consideration amount of Rs. 1,60,000/- towards Union Fund and same be paid separately to the Aurangabad Mazdoor Union (AMU). This request has been agreed by the Company.

4. The Ex-workmen requested the Company to issue fresh cheques in lieu of the one deposited in the Industrial Court at Aurangabad which have since been expired. The Workmen undertake to withdraw cheques from the court, which are outdated and return the same to the company. The Company has agreed for the same."

18. Pursuant to the above, besides receiving the full and final payments, each of these petitioners were paid Rs.1,60,000/- as an ex-gratia amount. They contributed Rs.3,000/- each towards the Union fund for recognizing the efforts put in by the Union for resolving the closure issue and for fetching each of these petitioners a higher package deal than what is provided for under Section 25(F) of the Industrial Disputes Act, 1947.

19. The above circumstances are no different than those appearing in the case of the Man Singh (supra). In the said case before the Honourable Apex Court, the factory was in operational condition and the appellant therein had opted for VRS. Yet the Honourable Apex Court concluded that having accepted the VRS and received the money, unless the entire amount is not deposited in the Court, the grievance cannot be entertained. In the instant case, the factory was closed down on 30.12.2013. The settlement was signed on 12.8.2014 and 18.12.2014. The factory at W-28 has also been permanently closed down. None of the petitioners are willing to deposit the money in the Court.

20. The Honourable Apex Court in the matter of Ramesh Chandra Sankla Etc. v. Vikram Cement Etc . [(2008) 14 SCC 58] , has taken a view in similar set of facts as under:-

" In our considered opinion, taking into account facts and circumstances in their

entirety, the order passed and direction issued by the Division Bench of the High Court was in furtherance of justice. Not only it has not resulted in miscarriage of justice, in fact it has attempted to put status quo ante by balancing interests and leaving the matter to be decided by a Competent Authority in accordance with law. Even otherwise, according to the workmen, they were compelled to accept the amount and they received such amount under coercion and duress. In our considered opinion, they cannot retain the benefit if they want to prosecute Claim Petitions instituted by them with the Labour Court. Hence, the order passed by the Division Bench of the High Court as to refund of amount cannot be termed unjust, inequitable or improper. Hence, even if it is held that a "technical" contention raised by the workmen has some force, this Court which again exercises discretionary and equitable jurisdiction under Article 136 of the Constitution, will not interfere with a direction which is in consonance with the doctrine of equity. It has been rightly said that a person "who seeks equity must do equity". Here the workmen claim benefits as workmen of the Company, but they do not want to part with the benefit they have received towards retirement and severance of relationship of master and servant. It simply cannot be permitted. In our judgment, therefore, the final direction issued by the Division Bench needs no interference, particularly when the Company has also approached this Court under Article 136 of the Constitution."

21. Considering the above, I find that the grievance of the petitioners cannot be entertained unless and until they deposit the entire amount received by them in the Court and which they have declined as per the instructions of the learned Advocate for the petitioners.

22. I find that this instant case is an example of "abuse of the process of law". However, since the petitioners are workmen, I am not imposing any costs on them. This petition being devoid of merits is, therefore, dismissed.

23. Rule is discharged.