
(2008) 02 AHC CK 0269
In the Allahabad High Court

Muir Mills

APPELLANT

Vs

Presiding Officer, Labour Court-I and Others

RESPONDENT

Date of Decision : 06-02-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (2008) 117 FLR 640 : (2008) 2 UPLBEC 1707

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.K. Shukla, J.—M/s. Muir Mills, a unit of National Textile Corporation (U.P.) Ltd. Kanpur, has approached this Court questioning the validity of order dated 31.7.2006 passed by Presiding officer, Labour Court-I, Kanpur in proceeding u/s 33-C(2) of the Industrial Disputes Act, 1947.

2. Brief background of the case is that M/s Muir Mills was earlier owned and controlled by the private management and thereafter due to mismanagement and labour problem, the mill in question became sick and was closed. Its management was earlier taken over by the Government of India under the Industrial (Development and Regulation) Act, 1952 vide gazette Notification dated 22.12.1965. Subsequent to the same, the mill was nationalized by the Government of India under the Sick Textile Undertaking (Nationalization) Act, 1974 (Act No. 57 of 1974). After nationalization by the Central Government, the petitioner mill along with its entire property stood vested in the Central Government u/s 3(1) Act No. 57 of 1974. u/s 3(2) of the said Act, the Mill stood transferred and vested in the National Textile Corporation, and u/s 6(2) of the said Act, the mill thereafter stood transferred to its subsidiary Textile Corporation known as National Textile Corporation, U.P. Ltd., as such the mill in question stood transferred and vested in the National Textile Corporation (U.P.) limited with effect from the appointed day i.e. 1.4.1974. After nationalization of the mill in spite of large amount of money being pumped by the Central Government,

production of the mill deteriorated by every passing year, and consequently, the Central Government stopped providing finance and production activity completely came to a halt with effect from 1.4.1991. National Textile Corporation, U.P. Ltd. has 11 units including the petitioner mill, and in order to work out a scheme for revival of the unit, matter was referred to the Board for Industrial and Financial Reconstruction (BIFR) under the provisions of the Board for Industrial and financial Reconstruction Act, 1985, and the case was registered as Reference No. 504 of 1993, and the National Textile Corporation Ltd., including petitioner, had been declared as sick unit. The BIFR vide its order dated 21.3.2002 framed voluntary rehabilitation scheme for the National Textile Corporation, U.P. Ltd. under which 9 out of 11 units of the Corporation were proposed to be closed and modified voluntary retirement Scheme (MVRS) was introduced. The said schema was approved by the (Board of Directors and the same was made effective with effect from 1.1.2002. In petitioner mill same was made effective with effect from 13.6.2002. Respondent-workmen of both the writ petitions, after going through the terms of MVRS, moved application for voluntary retirement under their signatures; their request had been accepted and the amount which was due after calculation was duly paid and the same was even accepted by them, without raising any objection and a certificate of declaration was also given by them that the same was full and final settlement towards MVRS and no amount remained unpaid from the mill, and thereafter, the respondent-workmen had no concern with the establishment in question. However, thereafter application was moved u/s 33-C(2) of the Industrial Disputes Act, 1947, claiming amount towards Ex-gratia on the ground that wrong calculation had been done. Said claim was registered and the said application was allowed by contending that wrong calculation was made by applying wrong formula, as such the amount in question was directed to be paid. At this juncture present writ petition have been filed.

3. After counter and rejoinder affidavits have been exchanged, present writ petitions have been taken up for final hearing and disposal with the consent of the parties.

Sri D.P, Singh, learned Counsel for petitioner, contended with vehemence that in the present case once the respondent-workmen had accepted voluntary retirement scheme and had certified that each and every amount due under the scheme was paid, then it was not at all open to them to have moved application u/s 33-C(2) of the Industrial Disputes Act, 1947 and the Labour Court has clearly misdirected itself in entertaining the claim and allowing the same, as such the impugned order in question is unsustainable and deserves to be quashed.

Sri S.F.A. Naqvi, learned Counsel appearing on behalf of the respondent workmen, on the other hand, contended that this was plain and simple case of computation and as wrong formula had been applied while computing Ex-gratia amount; as such said error has been rectified, and consequently, no interference is required.

4. After respective arguments have been advanced, factual position which

emerges is to the effect that Modified Voluntary Retirement Scheme (MVK5) had been introduced in the petitioner establishment with effect from 13.6.2002 and under the said MVRs, there was clear cut condition stipulated in respect of calculation of ex-gratia amount and the said amount was to be calculated by reckoning 30 days in a month. Clause 3.1.6 of the MVRs is being quoted below;

3.1.6 For the purpose of reckoning a month while calculating Ex-gratia amount, it shall be reckoned as 30 days in a month. Further compensation for proportionate month is also to be taken into account for calculation for the Ex-gratia.

5. Both the workmen Ganga Prasad and Zulfikar Haider moved application for their voluntary retirement under the MVRs scheme under their own signatures on 12.7.2002 and 6.7.2002 respectively. Voluntary resignation of Ganga Prasad was accepted on 30.9.2002 with effect from 1.1.2002 and thereafter MVRs amount was calculated to a total amount of Rs. 2,89,107/-, which was duly paid to him vide Cheque No. 123058 dated 3.10.2002 and the same was inclusive of Ex-gratia amount of Rs. 1,25,101/-, and its additional compensation of Rs. 1,25,101/- at the rate of 100%, and gratuity amount of Rs. 35,870/- apart from leave encashment and other amount. Ganga Prasad accepted the said amount without any objection and also gave declaration dated 10.10.2002 that he had received the amount in full and final towards MVRs and no amount remained unpaid from the mill. Similarly, in respect of Zulfikar Haider, his application under MVRs was accepted by the competent authority on 26.8.2002 with effect from 1.9.2002 and total amount qua him calculated was Rs. 3,38,381, which was to him vide Cheque No. 121825 dated 4.9.2002. this amount was inclusive of Ex-gratia amount of Rs. 1,39,947/-, and its additional compensation of Rs. 1,39,947/- at the rate of 100% and gratuity amount of Rs. 54,318/- apart from, leave encashment and other amount. Zulfikar Haider accepted the said amount without any objection and also gave declaration dated 10.9.2002 that he had received the amount in full and final towards MVRs and no amount remained unpaid from the mill.

6. After the aforesaid amount had been accepted by the respondent-workmen, application was moved by them u/s 33-C(2) of the Industrial Disputes Act, 1947, claiming more amount towards Ex-gratia and precise mention was made therein that calculation had been, made incorrectly, by applying wrong formula, and computation ought to have been made reckoning a month on the basis of 26 days". Objection preferred qua the said claim has been rejected and claim of respondent-workmen has been accepted. In the present case undisputed factual position is that gratuity amount paid to respondent-workmen had been computed as per provisions under the Payment of Gratuity Act and as far as Ex-gratia amount is concerned, same has been computed strictly on the basis of the provisions as contained under the MVRs Clause 3.16. Once calculation has been on the basis of Clause 3.16 of MVRs; entire amount in question has been paid; Same has been accepted and in writing declaration has been given clearly and categorically mentioning therein that entire amount has been received by them

as per MVRs, then it was wholly unfair on the part of the respondent workmen to raise further grievance as has been sought to be raised in the present case, claiming that, ex-gratia amount was liable to be computed treating a month of 26 days. The claim was totally unfounded and was not at all maintainable, specially when computation was made as per MVRs and the respondent-workmen after accepting the same had given certificate to that effect that full and final settlement had already been made.

7. Voluntary retirement package having been acted upon, is not liable to be taken lightly and no interference is liable to be made as when VRS is accepted, considerable amount is paid, ex-gratia besides terminal benefits and said amount is paid for not doing any work or rendering any service, rather the same is paid in lieu of the employee himself leaving service of the company and foregoing all his rights and claims thereon. This aspect of the matter has been noted by Hon'ble Apex Court in the case of A.K. Bindal and Another Vs. Union of India (UOI) and Others, of the said judgment being relevant are quoted below:

34. This shows that a considerable amount is to be paid to an employee Ex-gratia besides the terminal benefits in case he opts for voluntary retirement under the Scheme and his option is accepted. The amount is paid not for doing any work or rendering any service. It is paid in lieu of the employee himself leaving the services of the company or the industrial establishment and forgoing all his claims or rights in the same. It is a package deal of give and take. That is why in business world it is known as "Golden Handshake". The main purpose of paying this amount is to bring about a complete cessation of the jural relationship between the employer and the employee. After the amount is paid and the employee ceases to be under the employment of the company or the undertaking, he leaves with all his rights and there is no question of his again agitating for any kind of his past rights, with his erstwhile employer including making any claim with regard to enhancement of pay scale for an earlier period. If the employee is still permitted to raise a grievance regarding enhancement of pay scale from a retrospective date, even after he has opted for Voluntary Retirement Scheme and has accepted the amount paid to him, the whole purpose of introducing the Scheme would be totally frustrated.

35. The contention that the employees opted for VRS under any kind of compulsion is not worthy of acceptance. The petitioners are officers of the two companies and are mature enough to weigh the pros and cons of the options which were available to them. They could have waited and pursued their claim for revision of pay scale without opting for VRS. However they, in their wisdom thought that in the fact situation VRS was a better option available and chose the same. After having applied for VRS and taken the money it is not open to them to contend that they exercised the option under any kind of compulsion. In view of the fact that nearly ninety nine per cent of employees have availed of the VRS Scheme and have left the companies (PCI and HFC), the writ petition no longer survives and has become infructuous.

8. Petitioners' Counsel has placed reliance on the judgment of Sri Digvijai Woolen Mills Ltd. v. Mahendra Partapria Buch 1980 (41) FLR 153 (SC), and judgment in the case of Nizam Sugars Ltd. Vs. Chelikani Sri Ranganayakulu and Another, Both the judgments cited on behalf of petitioners, will not come to the rescue of petitioners. In the case of Sri Digvijai Woolen Mills Ltd. (supra), the question for consideration was relating to mode of calculating fifteen days wages of monthly rated employee under Section 4(2) of the Payment of Gratuity Act. In the said case, gratuity was to be paid at the rate of fifteen days wages, based on the wages last drawn by the employee concerned and qua the same view has been taken, a month is understood to mean 30 days, but the manner of calculating gratuity payable to employee under the Act, work for 26 days cannot be said to be perverse. Under the Payment of Gratuity Act, there was no such provision provided for, that for the purposes of reckoning a month while calculating gratuity amount, it shall be reckoned as 30 days in a month. In this background, Hon'ble Supreme Court has termed the view taken to be not perverse. Here, there is specific provision, as to how a month has to be reckoned. Similarly, in the case of Nizam Sugar Ltd., there was no settlement or agreement for calculating daily wages, in the said background, the view taken was that Ex-gratia amount be computed on the basis of daily wages worked out by dividing last drawn wages per month by 26 and multiplying the same by 45 days, unless otherwise expressly provided. Here, in the present case, there is specific provision, for reckoning month for calculating ex-gratia amount, as 30 days a month.

9. Consequently, in the present case, presiding Officer of the Labour Court has totally misdirected itself by misconstruing the provisions of MVRS and the terms and conditions thereof, which have been voluntarily accepted by the respondent workmen and the benefit whereof has been extracted from the same, as such writ petitions are allowed. The orders dated 31.7.2006 passed by Presiding officer, Labour Court-I, Kanpur, are hereby quashed and set aside.