
(2008) 03 MP CK 0066
In the Madhya Pradesh High Court

National textile corporation (MP) Ltd. and Another	APPELLANT
Vs	
Priya Kumar Sharma	RESPONDENT

Date of Decision : 14-03-2008

Acts Referred:

Constitution of India, 1950 — Article 136
Industrial Disputes Act, 1947 — Section 250

Citation : (2008) 118 FLR 514 : (2008) 3 LLJ 753 : (2008) 3 MPLJ 490

Hon'ble Judges : Shahi Kant Kulshreshtha, J; Manjusha Namjoshi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.K. Kulshreshtha, J.

This appeal is directed against the order dated 6/10/2005 of the learned Single Judge, passed in W.P.(S) No. 1356/2005 whereby the learned Single Judge has quashed the order of acceptance of M.V.R.S. (Modified Voluntary Retirement Scheme) dated 31/5/2002 and directed that respondent be reinstated and paid all back wages w.e.f. 7/8/2004. It has further been directed that if he cannot be absorbed / reinstated in the appellant No. 2 - Swadeshi Textile Mill, he be transferred to any other Unit of appellant No. 1 within the State of Madhya Pradesh.

The facts of the case lie in a narrow compass. The respondent was appointed by order dated 13.11.1982 in the Swadeshi Cotton & Flour Mill, Indore. In view of the deteriorated financial health of the said Company when the Company nearly collapsed, an application was made for permission u/s 250 of the Industrial Disputes Act, 1947 for closing down the industrial establishment - appellant No. 2, which was granted. However, pending the said closure and with a view to extend better advantages, the Company floated the Modified Voluntary Retirement Scheme and affixed notice thereof (Annexure R/3) on 30/3/2002, inviting applications for voluntary retirement in accordance with the said Scheme, failing which the employees as were not inclined to accept voluntary

retirement, were to be retrenched in accordance with the provisions contained in Section 250 of the Industrial Disputes Act. The respondent made an application (Annexure R/2) for seeking voluntary retirement but, it appears, he subsequently declined its acceptance despite the condition in the application that the option once exercised would be irrevocable. It is also the case of the respondent that he was continued in the said Mill and was being paid salary with the result, according to his contention, his employment had continued without having been interrupted by either the acceptance of Modified Voluntary Retirement Scheme or the order passed by the State Government u/s 250 of the Act. It was also contended that since after acceptance of his application of MVRS he was allowed to work and his relieving period was extended from time to time upto 7/8/2002, he was entitled to continue as the employee of the said establishment.

The respondent (present appellants) filed return in which it was averred that the employee had first been appointed as an Apprentice Supervisor in respondent No. 2 - Mill on 13/11/1982, and he continued to work as Supervisor in the Processing Department till he tendered resignation on 7/8/2004. By way of preliminary objection, it was pointed out that the Industrial Establishment being a Scheduled Industry, was governed by the provisions of the M.P. Industrial Relations Act and it was open to the employee to have approached the Labour Court u/s 31(3) read with Section 62 of the said Act. It was further pointed out that Swadeshi Textile Mill was though a Unit of National Textile Corporation which is a Government of India undertaking, it became a Sick Unit and Reference was made to the Board of Industrial and Financial Reconstruction for declaring it a Sick Company. Subsequently, it was declared a Sick Company and Rehabilitation Scheme was sanctioned which was under implementation and the Unit had been permanently closed down. It was stated that in view of the permission for closure, the Scheme called MVRS was announced for the benefit of the employees in which it was stated that such of the employees who were not inclined to accept VRS under the said Scheme would be dealt with in accordance with the provisions of Sub-section (8) of Section 250 of the Act. The claim of the petitioner (respondent herein) that he had continued in service was refuted and it was pointed out that the services were extended from time to time notwithstanding that he stood terminated / retrenched. The respondent was paid a sum of Rs. 5,25,025/-towards VRS.

After hearing the parties, the learned Single Judge directed reinstatement of the petitioner on the ground that some other employees had also been continued and in case he cannot be accommodated in Swadeshi Mill, he should be transferred to any other Unit of appellant No. 1, within the territory of Madhya Pradesh. It is this order that has been assailed in the present appeal.

Before advertng to the contentions made by the parties, it would be proper to refer to Section 250 of the Industrial Disputes Act, which reads as under:

25-O. Procedure for closing down an undertaking.-(1) An employer who intends to close down an undertaking of an industrial establishment to which this

Chapter applies shall, in the prescribed apply for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner:

Provided that nothing in this subsection shall apply to an undertaking set up for the construction buildings, bridges, roads, canals, dams or for other construction work.

(2) Where an application for permission has been made under subsection (1), the appropriate Government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen and persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors, by order and for reasons to be recorded in writing, grant refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(3) Where an application has been made under Sub-section (1) and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period, of sixty days.

(4) An order of the appropriate Government granting or refusing to grant permission shall, subject to the provisions of Sub-section (5), be final and binding on all the parties and shall remain in force for one year from the date of such order.

(5) The appropriate Government may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under subsection (2) or refer the matter to a tribunal for adjudication : that where a reference has been made to a Tribunal under this subsection, it shall pass an award within a period of thirty days from the date of such reference.

(6) Where no application for permission under Sub-section (1) is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.

(7) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that the provisions of Sub-section (1) shall not apply in relation to such undertaking for such period

as may be specified in the order.

(8) Where an undertaking is permitted to be closed down under subsection (2) or where permission for closure is deemed to be granted under Sub-section (3), every workman who is employed in that undertaking immediately before the date of application for permission under this section, shall be entitled to receive compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

It is an admitted position that the respondent employee did not take any steps to resist the application of the Mill for permission to close down the Industrial Establishment. There is specific provision contained in Sub-section (5) of Section 250 for review of the order granted under Sub-section (2) of Section 250. The respondent admits that he did not take any action in accordance with Sub-section (5) to seek review of the order passed u/s 250. Under these circumstances, the order attained finality and as a consequence of the said order, the employees could claim only the compensation, as provided in Sub-section (8) of Section 250.

The petitioner admits that if his case is dealt with under Sub-section (8) of Section 250, he would be in a disadvantageous position as the package offered by the Modified VRS is more favourable than what a worker of his level would be entitled under Sub-section (8) of Section 250. Before considering whether his reinstatement could have been directed and direction issued for his reinstatement in any other Unit of the appellant No. 1, we are of the view that the contentions raised by the respondent - employee should be considered *seriatim*.

The appellant has brought to our notice the order dated 18/8/2006 by which the Supreme Court did not deem it fit to grant leave under Article 136 of the Constitution of India, against the impugned order, in view of the remedy of the intra court appeal having become available. It was in this context that the SLP was dismissed with liberty to the appellant No. 1 to approach the High Court. The respondent has submitted that though the Swadeshi Textile Mills was a respondent in the original petition and it had not jointed the National Textile Corporation as petitioners before the Supreme Court, in the cause title of the Writ Appeal, Swadeshi Textile Mills has been arrayed as petitioner No. 2. It cannot be disputed that in the Writ Petition before the learned Single Judge Swadeshi Textile Mills Ltd., was very much a respondent and since both the respondents were aggrieved by the order, could have approached this Court in appeal, we do not find any substance in the said objection.

The respondent employee has also assailed the applicability of the MVRS in his case. A copy of the Scheme has been filed as Annexure R/3, giving options to the employee to seek voluntary retirement failing which the cases of such employees will be considered under the provisions of Section 250 of the Act. The respondent does not dispute that in response to the said notice, he had made an

application on 31/5/2002 but submits that he had withdrawn it by letter Annexure P/2 dated 24/5/2002, notwithstanding that as per the Scheme, option exercised was irrevocable.

Before dealing with the other conditions raised by the parties, we may refer to the appointment order dated 13/11/1982 of the petitioner. This appointment letter has been issued by Swadeshi Cotton & Flour Mills, Indore and in the penultimate paragraph, it is mentioned that the employee will be governed by the Disciplinary / Service Rules of NTC and standing orders etc., of the mills. The respondent - employee has submitted that the fact that his service was subject to not only the standing orders of the Mills but also the Disciplinary Service Rules of NTC, itself manifests that he was not an employee of Swadeshi Cotton & Flour Mills, Indore but of the National Textile Corporation. The contention of the employee is quite fallacious. When it is clear that he was to be governed and regulated by the standing orders of the Swadeshi Mills, mere incorporation of the Disciplinary and Service Rules of the NTC would not make him an employee of the National Textile Corporation. It is not uncommon that in stead of framing the Rules, Rules are borrowed from other sources and incorporated in the Rules of an organisation. Under these circumstances, we are of the considered view that the respondent was an employee of Swadeshi Cotton & Flour Mills and not of the NTC, notwithstanding that Swadeshi Cotton & Flour Mills was also a Unit of the National Textile Corporation. We are fortified in our view by the fact that the Mill was treated as a separate entity and it was only in regard to this Mill that the order u/s 250 of the Industrial Disputes Act was passed by the State Government. The order u/s 250 (Annexure R/1) grants permission for closure of Swadeshi Textile Mills, subject to the condition that the management ensures payment of wages and other statutory dues before closing the Company. It was in this backdrop that a beneficial scheme was extended to the advantage of the employees in the shape of MVRS while the appellant No. 2 could have simply given compensation in accordance with Sub-section (8) of Section 250.

The main grievance of the respondent is that he was continued in the Mill till 7/8/2004 and thereafter also he had reported for duty but he was not allowed to work. It is on account of his continuance that the respondent claims that his VRS was not accepted and he was continued as a servant of the Swadeshi Mills and since, according to the terms of his appointment, he was to be governed and regulated by the Rules of NTC itself, the closure of Swadeshi Mills could not have been treated as permission to terminate his employment. He has also referred to the pay slip to show that even subsequent to his option for voluntary retirement, he had been continued in the organisation as his service was considered indispensable.

The respondent employee admits that almost all persons, nearly 600 in number, have accepted the modified VRS except 10 to 12 employees including the respondent. Learned Counsel for the appellants has pointed out that even for the closure of an establishment, it is necessary to retain some staff from within or

take resort to the help of out source till the enormous task of closing an establishment of the magnitude like Swadeshi Mills is accomplished. It was in this connection that some persons were retained and the petitioner employee could not claim any advantage on that count on the premises that Swadeshi Mills was still functional and employing people. The petitioner employee has not controverted the fact that only a handful of employees had been retained for closing down the establishment and at present there is only one employee while others have been discontinued. This shows that a minimal number of employees had been appointed, perhaps for taking care of the land and building. However, the progressive decrease in the employees retained in the beginning clearly gives an indication that only the retrenchment of the said employees was postponed from time to time till the work for which they were engaged was over.

The learned Single Judge has branded the action of the Corporation as arbitrary and mala fide on the ground that factual position was different. Learned Single Judge has also taken into consideration the fact that the employee has not accepted the VRS as well as terminal benefit and, indeed, he had withdrawn his application. It has also been observed that the National Textile Corporation has a number of Units and since it was not in dispute that some of the employees who have continued and the petitioner was also willing to serve, and he cannot get alternative employment, he deserve to be reinstated.

Learned Single Judge, in our humble view, has not appreciated the impact of Section 250 of the Industrial Disputes Act relating to the closure of an organisation. Sub-section (8) of Section 250 makes it luculent that it is only the compensation payable in accordance with the said provision which the employee can claim. It has not been disputed that modified VRS provided better package than the amount required to be paid under Sub-section (8). Under these circumstances, it is difficult to understand as to why a person would opt for the payment in accordance with Sub Section (8) while VRS provides him many times more. We have already seen that insofar as the respondent was concerned, he was the employee of appellant No. 2 - Swadeshi Mills and not of National Textile Corporation. Under these circumstances, his employment fluctuated with the financial health of the employer and since the employer had been given permission to proceed in accordance with Section 250, the appellant No. 2 was entitled to terminate the employment of an employee by resort to the provisions of Sub-section (8) thereof.

Though the respondent was continued till 7/8/2004 and thereafter not allowed to work, it is clear that the respondent received salary / pay / wages from the Swadeshi Mills upto that period. However, since the respondent was kept in dilemma with regard to his entitlement and under some confusion, perhaps he declined to accept the Modified VRS after making an application for the same, he deserves to be granted the amount of VRS with interest @ 12%.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside and it is directed that the appellant shall calculate the amount of VRS

payable to the respondent on the basis that the respondent had continued in the service of the appellant upto 7/8/2004. The appellants shall pay interest @ 12% per annum, compoundable annually from that date to the date the amount of Rs. 5,25,025/-was paid and thereafter on the balance amount, if any, till its payment. We also direct that the appellant shall pay to the respondent employee ex-gratia amount of Rs. 1,00,000/-as the appellants are also responsible to a very great extent in creating a dilemma in the mind of the employee. The appellants are directed to pay the amount within three months from today.