(2015) 12 BOM CK 0078

In the Bombay High Court

Case No : Writ Petition Nos. 4260, 4261 of 2012, Civil Application Nos. 1271 and 1272 of 2015

Saint Gobain Sekurit India Ltd. — APPELLANT

Vs

Kuyesh Durjan Yadav and Others — RESPONDENT

Date of Decision : 08-12-2015

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 227
Industrial Disputes Act, 1947 — Section 18(1), 2(p)
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28

Citation : (2016) 1 MhLj 822

Hon'ble Judges : N.M. Jamdar, J.

Bench : Single Bench

Advocate : K.M. Naik, Senior Advocate, A.K. Gopalan and Hemant Telkar i/by Haresh Mehta and Co., for the Appellant; Jane Cox and R.A. Amonkar, for the Respondent

Final Decision : Disposed Off

Judgement

N.M. Jamdar, J.—Rule. Rule made returnable forthwith in both the petitions. Respondents waive service. Taken up for final disposal by consent of the parties.

2. The issue involved in both these petitions is, whether it is mandatory for the Court entertaining a complaint/proceedings on behalf of the workmen calling in question the Voluntary Retirement Scheme of which they have availed some benefits, to direct the deposit of the amount received by the workman as a condition precedent for entertaining the proceedings.

3. The respondent workmen were working with the Petitioner establishment. On 11 December 2006, a voluntary retirement scheme was displayed on the notice board of the Company wherein an amount of Rs. 4,00,000/- was offered to the workmen and agreements were signed on 28 December 2006.

4. Respondents filed Complaints under Section 28 of the M.R.T.U. & P.U.L.P. Act.

The Respondents contended that: The agreement dated 28 December 2006 was illegal, unconstitutional and not binding. They were misled into signing the agreement and they were informed that they would be given work, and the scheme was with a malafide intention. The case of the Petitioner that financial position of the Petitioner was not sound, was incorrect. The Respondents by fear and coercion, were forced to sign the settlement. The Respondents prayed that the scheme and the agreement dated 28 December 2006 be declared as cancelled and the Petitioner be directed to give work to the workmen.

5. The Petitioner filed its written statement and contested the claim of the Respondents. According to the Petitioner, the agreement of settlement under Section 2(p) and Section 18(1) of the Industrial Disputes Act, with Rule 62 of Industrial Disputes (Bombay) Rules 1957, was signed by the General Secretary of the Respondent Union -Maharashtra Labour Union. It was contended that the workmen signed the Settlement for full and final settlement of their dues, and all amounts were paid to them. It was denied that the Petitioner had resorted to any unfair labour practice and that Respondents voluntarily entered into an agreement and they were precluded from challenging the same.

6. The Petitioner filed an application on 19 October 2011 praying that, before proceeding with the Complaint it is necessary for the Respondents/Complainants to deposit the amount received by them from the Petitioner under the voluntary retirement scheme with the Court. Reliance was placed on the decision of the Apex Court in the case of Man Singh v/s Maruti Sizuki India Ltd. & anr. 2011 III CLR 390. It was contended that, unless such amount is deposited, the complaint cannot proceed. The application was opposed by the Respondents by filed a reply on 27 February 2011, wherein it was contended that the decision of the Apex Court is not applicable and it is not necessary that the amount, which the respondents had received, should be directed to be deposited. The Labour Court heard the application taken out by the Petitioner for direction to deposit the amount. The Labour Court, after referring to the decision of the Apex Court, rejected the application by the impugned order dated 17 April 2012.

7. I have heard Mr.K.M. Naik, learned senior advocate for the Petitioner in both petitions and Ms.Jane Cox, learned advocate for the Respondents in both petitions.

8. At the outset, it needs to be stated that the order passed by the Industrial Court is completely unreasoned. The Industrial Court has reproduced the rival contentions and passages from the decisions of the Apex Court and has stated that, in view of the decision of the Apex Court, the direction to deposit the monetary benefits, cannot be given, even though the Apex Court, in the cited case, had approved the direction of the Division Bench of the High Court directing such deposit.

9. Primary contention of the Petitioner is that, whenever a workman desires to challenge a voluntary retirement scheme, having received some benefits under

it, no enquiry on the legality of the scheme is permissible unless the amount received is first deposited. An absolute proposition is advanced that such deposit is the mandatory precondition for entertaining any complaint. For that purpose, reliance is placed on the decision of the Apex Court in the case of Ramesh Chandra Sankla Etc. Vs. Vikram Cement Etc., , and the decision of the Apex Court in the case of Man Singh.

10. I have considered the contentions. It is not impermissible to challenge a voluntary retirement scheme on the ground of fraud even though it is signed. Whether a workman will succeed in his challenge or not would depend on facts of each case. But there is no legal bar to put-forth such a complaint. Question is regarding the precondition of deposit. No statutory provision mandating such precondition is shown. Said requirement is sought to be insisted by the Petitioner relying on the aforesaid decisions of the Apex Court. It will be therefore necessary to scrutinize the decisions in detail.

11. In the case of Ramesh Chandra Sankla, the workmen had challenged the scheme after having accepted the amount under the scheme and having issued stamps receipts, on the ground that they were pressurized, threatened and forced to accept some amount and they were not allowed to join duty. The Labour Court considered the preliminary objection raised by the employer and opined that it is not possible to dismiss the case as not maintainable. The Labour Court rejected the request of the employer to frame the issues as to whether the matter was barred by estoppel, whether it was time barred and contrary to the provisions of law, holding that they are not preliminary issues. The matter thereafter reached the Madhya Pradesh High Court. The Division Bench considered the order passed by the Single Judge dismissing the petition filed by the employer. The Division Bench of the High Court held that, since the employees who approached the Labour Court challenging the voluntary retirement and received the benefit thereunder, it would be equitable to direct that any employee who wants to maintain a petition against the said scheme and to seek reinstatement, should return the benefits received to the employer, subject to the condition and undertaking as offered by the learned counsel for the appellant, that in the event, the Labour Court directs refund of the amount and other benefits to the employee concerned, the same would be restored to the employee with interest at the rate of six per cent per annum. The Division Bench made it clear that the Labour Court shall decline to proceed with the application of the employee who does not refund the amount to the employer as herein above directed. This direction of the Division Bench was challenged before the Apex Court. The Apex Court held that it is permissible for the High Court in exercise of jurisdiction under Article 226 to take cognizance of the entire facts and circumstances and pass appropriate order to do complete and substantial justice between the parties. The Apex Court held that the powers under Articles 226 and 227 are discretionary and are required to be exercised in the larger interest of justice. The Apex Court held that, while granting relief in favour of the applicant, the Court must take into consideration the balancing interest and

equities, according to the facts and circumstances of the case. The Apex Court held that, taking into account the facts and circumstances in its entirety, the order passed by the Division Bench was in furtherance of justice. The Apex Court also held that, in its equitable and discretionary jurisdiction under Article 136 , the Apex Court was not inclined to interfere with the order of the direction of the Division Bench.

12. In the case of Man Singh, voluntary retirement scheme was challenged by the appellant on the ground that the consent was under duress and his removal from services was illegal. A Reference was made in respect of termination of the appellant which was challenged by the employer before the learned Single Judge of Punjab and Haryana High Court. The learned Single Judge disposed of the petition and directed that, to make the scales even, the Labour Court will undertake the adjudication only if the workman deposits the amount which he had received, with interest. This direction was challenged by the appellant therein before the Apex Court and the Apex Court, following decision in the case of Ramesh Chandra held that there is no merit in the submission that the High Court had no jurisdiction to make direction to refund the amount. The Apex Court modified the direction to some extent and reduced the rate of interest.

13. In both the above cited cases, the High Court had passed orders in its equitable jurisdiction, after considering the facts and circumstances of the case before it. Such direction regarding pre-deposit was held to be within jurisdiction. The High Court, in its equitable jurisdiction, directed the workman to deposit any benefit which he has received under the voluntary retirement scheme with or without interest, before proceeding to examine his challenge on merits.

14. That such power to direct pre-deposit exists, cannot be doubted. But from the existence of this power, an equator does not automatically follow that it is a mandatory precondition. That, it is permissible, even equitable, does not necessarily mean it is automatic, irrespective of the fact situation. The Apex Court, in both these decisions, has not laid down any such absolute proposition of law. Whether such a direction is justified or otherwise, would depend on facts of each case and various parameters would therefore come in play. The Court may consider the time taken for challenge, the amount received, nature of challenge and other relevant parameters. The Court may find that it is equitable to direct to deposit the amount before the challenge is considered. It is one thing to contend that the Court should generally direct such pre-deposit in view of the aforesaid decision of the Apex Court, but it is another thing to say that in all matters automatically pre-deposit should be ordered. In a given case, if the Court finds that such direction is not equitable, it is not precluded from refusing to order pre-deposit. Therefore, without there being any application of mind to the facts of the case and without considering the equities of the matter, straightway, a direction to deposit the entire amount as a mandatory precondition, cannot be passed. Neither it is contemplated under the relevant statute or in the decisions of the Apex Court.

15. In short, such direction cannot be automatic and without application of mind. In the present case, there is absolutely no discussion at all nor any application of mind by the Industrial Court. The orders passed by the Industrial Court are perverse. The orders reproduce the paragraphs of the decision of the Apex Court where pre-deposit was approved and thereafter dismisses the applications in one line stating exactly the opposite. It is therefore necessary that the impugned orders are set aside and the matters are remanded back to the Industrial Court to consider the applications afresh in the light of what is stated above.

16. Since the complaints are pending from the year 2011, it is expected that the Industrial Court, upon remand, will consider the application expeditiously.

17. Impugned orders of the Industrial Court dated 17 April 2012 is quashed and set aside. The application filed by the Petitioner on 19 October 2011 stands restored to file, to be disposed of in the light of what is stated above. All contentions of the parties in this regard are kept open.

18. Rule made absolute in above terms. No costs.

19. In view of the above, both the civil applications stand disposed of.