(2016) 09 BOM CK 0088

In the Bombay High Court

Case No : Writ Petition No. 1811 of 2016.

Smt. Phulabai Prakash Pawar, Padwal Nagar, Behind Masjid, Thergaon, Pune 411 033 - Petitioner (Orig. Complainant) @HASH SKF India Ltd, Chinchwad, Pune-411 033 /(Orig. Respondent)

Date of Decision : 07-09-2016

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2016) 6 AIRBomR 154 : (2016) 6 ALLMR 185 : (2017) 1 CLR 22

Hon'ble Judges : R. M. Savant, J.

Bench : Single Bench

Advocate : Mr. A. H. Patil, Advocate, for the Petitioner in all the Writ Petitions; Mr. Kiran Bapat a/w Mr. J. K. Desai i/by Ms. Desai and Desaiu Associates, for the Respondent No. 1

Final Decision : Dismissed

Judgement

R. M. Savant, J. (Oral)—Rule in all the Writ Petitions. Having regard to the nature of challenge raised heard forthwith by the consent of the Learned Counsel for the parties.

2. The writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India is invoked against the identical orders dated 20.10.2015 passed by the Learned Member of the Industrial Court, Pune. By the said orders, the Revision Applications filed by the Petitioners above named came to be dismissed and resultantly, the orders dated 18.07.2014 passed by the Learned Judge of the Labour Court allowing the application Exh.C4 and thereby directing the Petitioners to deposit the amount which was paid to them under the Voluntary Retirement Scheme came to be confirmed.

3. Since the above Petitions involve common facts and raise the identical challenge, by consent of the Learned Counsel for the parties, Writ Petition No. 1811 of 2016 is treated as the lead matter. The Petitioner in Writ Petition No.1811 of 2016 as also the Petitioners in the companion Petitions would be referred to as such and the Respondents herein would be referred to as the

Respondents.

4. The facts giving rise to the filing of the above Writ Petition No.1811 of 2016 can in brief be stated thus :-

The Petitioner Smt. Phulabai was working with the Respondent No.1 company and had worked as such for around 15 years. The Respondent No.1 announced a Voluntary Retirement Scheme in an around September 2008. Under the said Voluntary Retirement Scheme, the employees who would opt for it were granted graded payment in terms of the number of years of service they had put in. The employees of the Respondent No.1 were required to opt for the scheme, which was kept open between 23.09.2008 to 31.10.2008. The Petitioner Smt. Phulabai by her letter dated 20.10.2008 opted for the said scheme. The said letter of Smt. Phulabai was acted upon by the Respondent No.1 and by letter dated 31.10.2008 the acceptance of the Respondent No.1 was communicated to the said Smt. Phulabai. The Petitioners in the companion matters also opted for the said scheme at the same contemporaneous time and the said Petitioners were also conveyed the acceptance by the Respondent No.1 in the same manner as the said Smt. Phulabai. The amount payable to the said Smt. Phulabai and the Petitioners in the companion Petitions is tabulated hereinunder for the sake of ready reference.

Sr. No.

Writ Petition No.

Name of the Petitioner

Amount

1

1831 of 2016

Sunil Kumbhar

Rs.5,93,971/-

2

519 of 2016

Kisan Kalate

Rs.15,16,645/-

3

1798 of 2016

Dnyaneshwar Kalapure

Rs.15,19,847/-

4

1811 of 2016

Phulabai Pawar

Rs.6,88,979/-

5

2722 of 2016

Rajaram Nikam

Rs.13,65,584/-

6

2753 of 2016

Shashikant Mane

Rs.7,59,002/-

7

2988 of 2016

Machindra Borhade

Rs.19,04,181/-

8

2989 of 2016

Bhimraga Birajdar

Rs.9,50,226/-

9

2994 of 2016

Suresh Sonwal

Rs.13,92,807/-

10

3042 of 2016

Narayan Mankar

Rs.17,12,687/-

11

3605 of 2016

Vinayak Borkar

Rs.10,66,539/-

12

3607 of 2016

Hansabai Kolhe

Rs.9,63,340/-

13

3615 of 2016

Praveenkumar Patel

Rs.8,70,648/-

14

3616 of 2016

Balkrishna Gholap

Rs.8,65,512/-

15

3617 of 2016

Deelip Mankar

Rs.12,85,195/-

The said amount was paid by cheques to the said Smt. Phulabai and the Petitioners in the companion Petitions in about four instalments from October 2008. The Petitioner Smt. Phulabai as also the other Petitioners accepted the said four instalments paid by cheque. The Respondent No.1 thereafter came out with another Voluntary Retirement Scheme in the year 2009, though a graded payment similarly to the one envisaged under the Voluntary Retirement Scheme 2008 was offered under the said Scheme of 2009, the financial benefits were slightly higher than the Voluntary Retirement Scheme of 2008. The Petitioner Smt. Phulabai and the other Petitioners in the companion matters by letter dated 29.06.2009 addressed to the Managing Director of the Respondent No.1 expressed their intention to withdraw from the said Voluntary Retirement Scheme of 2008. It was alleged in the said letter that the Petitioners were made to subscribe to the said scheme i.e. Voluntary Retirement Scheme 2008 by way of undue influence, fraud and mis-representation and termed the action of the Respondent No.1 as illegal, improper and bad in law. It was also stated in the penultimate paragraph of the said letter that alternatively the Applicants claim that the difference in compensation/ money that has been offered in the

Voluntary Retirement Scheme of 2009 may be paid to them within seven days of receipt of the said letter, failing which they would be constrained to approach the Court of law for redressal of their grievances. A reference would be made to the said penultimate paragraph in the later part of this judgment. The said letter dated 29.06.2009 did not evince any response from the Respondent No.1 to the claim made therein, in view of the fact that the Petitioners had already been paid under the Voluntary Retirement Scheme of 2008 and in so far as the Respondent No.1 was concerned the matter stood closed, it was stated in the reply dated 01.07.2009 of the Respondent No.1 that the said claim for reinstatement or additional payment was only made as and by way of extracting more money from the Respondent No.1.

5. The Petitioner and the other Petitioners in the companion Writ Petitions filed Complaint (ULP''s) in the Labour Court at Pune under Item No.1(a), (b) & (d) of Schedule IV of the MRTU & PULP Act, 1971. In the said Complaint, the purported reason as to why the Petitioner had accepted the Voluntary Retirement Scheme 2008 was stated. The Complaint was founded on the fact that the Petitioner was made to accept the Voluntary Retirement Scheme by exercise of undue influence, fraud etc. on him i.e. the Complainant. The substantive relief in the complaint was for a declaration that the Respondents had indulged in unfair labour practise under Item No.1(a), (b) & (d) of Schedule IV of the MRTU & PULP Act, 1971 and a direction was sought that the Respondents be directed to reinstate the Petitioner in service with effect from 31.10.2008 with full back wages and continuity of service. Since the complaints were filed on 22.07.2009 i.e. after the period of 90 days of the cause of action having arisen which was on 30.10.2008 the Petitioner filed an application for condonation of delay in filing the Complaint. To the said application, a reply came to be filed by the Respondent No.1 on 03.12.2009. On behalf of the Petitioner Smt. Phulabai and the Complainants in the other Complaints, affidavit in lieu of examination-in-chief of their witness came to be filed on 03.02.2011. The Labour Court by its order dated 24.04.2012 allowed the said application for condonation of delay filed by the Complainant Smt. Phulabai as also the Complainants in the other Complaints. The said order dated 24.04.2012 passed by the Labour Court was taken exception to by the Respondent No.1 by filing Revision Applications. The Revision Applications filed in respect of Smt. Phulabai and the other Petitioners came to be dismissed by the Learned Member of the Industrial Court by judgment and order dated 31.07.2013 thereby confirming the order of the Labour Court condoning the delay in filing the Complaint. It would be apposite to refer to paragraph 10 of the order passed by the Industrial Court, which for the sake of ready reference is reproduced hereinunder :-

"10. The Labour Court will have to now take up the workman issue as a preliminary issue. The Labour Court will also have to consider the law developed on the point of litigation of retirees of VRS. In that regard, the Labour Court will have to take into consideration the judgment of the apex Court, in the case of Man Singh v. Maruti Suzuki India Ltd., 2011 III CLR pg. 390."

Hence the Industrial Court had directed the Labour Court to adjudicate upon the issue that would arise in the Complaint by taking into consideration the judgment of the Apex Court in Man Singh v. Maruti Suzuki India Ltd. Hence, between the period 22.07.2009 to 31.07.2013 the proceedings relating to the condonation of delay were being pursued by the parties.

6. After the Industrial Court had decided the Revision Applications relating to condonation of delay, wherein the observations made in paragraph 10 therein have already been adverted to herein above. The Respondents abovenamed filed the instant application Exh.C-4 for directing the Complainant Smt. Phulabai and the others to deposit the amount received by them under the Voluntary Retirement Scheme 2008. The said application was founded on the judgment of the Apex Court in Man Singh v. Maruti Suzuki India Ltd. It was stated in the said application that since the Complainant has challenged her own action of accepting voluntary retirement, before challenging the said action, the Complainant is required to deposit the entire amount which she has received on account of the Voluntary Retirement Scheme or required to refund the said amount to the Respondent No.1. The said application Exh.C-4 was replied to on behalf of the Petitioner Smt. Phulabai as also on behalf of the other Complainants i.e. the Petitioners in the companion Petitions. Diverse contentions were sought to be raised to oppose the said application, amongst which was the contention based on the merits of their case as regards withdrawal from the Voluntary Retirement Scheme 2008. It was also sought to be contended that the fight between the Respondent No.1 and the workmen was an unequal fight and therefore there can be no question of equities being balanced between unequals. The Learned Judge of the Labour Court considered the said application and has order dated 18.07.2014 allowed the same. The Learned Judge of the Labour Court has placed reliance on the judgments of the Apex Court reported in (2008) 14 SCC 58 in the matter of Ramesh Chandra Sankla and others v. Vikram Cement and others and (2011) 14 SCC 662 in the matter of Man Singh v. Maruti Suzuki India Limited and another. The Learned Judge of the Labour Court held that since the Complainant is questioning the Voluntary Retirement Scheme which has been accepted by her, it would be equitable that benefits under the said scheme are directed to be deposited in the Labour Court. The Learned Judge accordingly granted time to deposit which has been mentioned in the operative part of the impugned order and made the said deposit a condition precedent for proceeding with the complaint.

7. The Petitioner aggrieved by the order dated 18.07.2014 passed by the Learned Judge of the Labour Court allowing application Exh.C-4 challenged the same by way of a Revision Application being Revision (ULP) No.13 of 2015. The Learned Judge of the Industrial Court reiterated the finding of the Labour Court that when the Complainant is challenging the said retirement/termination under the said scheme when she is saying that she was forced to retire or her services has been terminated unfairly, she has to deposit the entire amount received in the Court. The Industrial Court referred to the judgment of the Apex Court in

Man Singh''s case (supra), wherein the Apex Court has observed that before proceeding with the complaint, the amount received under the Voluntary Retirement Scheme is required to be deposited. The Learned Member of the Industrial Court observed that when the Complainant is seeking equity she has to do equity and therefore cannot keep the benefits which she has received under the Voluntary Retirement Scheme and then seek further benefits. Both the Courts below did not countenance the submissions urged on behalf of the Complainant/Revision Applicant that the fight between Respondent No.1 and the Complainant was an unequal fight. The Industrial Court observed that the litigation is between an employer and employee and therefore the said contention could not be accepted. As indicated above, it is the said judgment and order dated 20.10.2015 which is taken exception to by way of the above Writ Petitions.

8. Heard the Learned Counsel for the parties.

9. The Learned Counsel Shri. A. H. Patil appearing on behalf of the Petitioners would seek to raise contentions which revolve around the merits of the case of the Complainants in the said Complaints (ULP). The Learned Counsel for the Petitioner endeavoured to point out as to how the Complainants were coaxed into acceptance of the Voluntary Retirement Scheme 2008 and how the Respondent No.1 thereafter came with a better and more beneficial Voluntary Retirement Scheme of 2009. The Learned Counsel also sought to re-urge the case of the Complainant before the Courts below as to how the equities between the Petitioner and the Respondent No.1 could not be balanced having regard to their respective financial standing. The Learned Counsel sought to distinguish the instant case from the cases which were before the Apex Court in Ramesh Chandra Sankla''s case (supra) and Man Singh''s case (supra). It was the submission of the Learned Counsel that in the said two cases, the Apex Court had directed the pre-deposit of the amount, whereas, in the instant case, it is the Labour Court which has directed the Complainant to do so. The Learned Counsel also sought to place reliance on the judgment of a Learned Single Judge of this Court (N. M. Jamdar, J) in Writ Petition No.4260 of 2012 and companion matter between Saint Gobain Sekurit India Ltd. v. Kuyesh Durjan Yadave and another to contend that on an application being filed by the employer, it is not necessary that a pre-deposit is required to be ordered and that while directing pre-deposit various factors would have to be taken into consideration, namely the equities between the parties, the time taken for challenge, the amount received, nature of challenge and other relevant parameters. It was therefore the submission of the Learned Counsel that the instant application being filed in the year 2013 long after the payment was received in the year 2009, the Petitioners could not be directed to deposit the amount received under the Voluntary Retirement Scheme.

10. Per contra, the Learned Counsel appearing for the Respondent No.1 Mr. Kiran Bapat would contend that the employer is entitled to come with better and newer Voluntary Retirement Scheme, if it feels that the response to the earlier scheme

was not adequate as the intention is to rationalise the work force so that the Company becomes financially viable. The Learned Counsel would contend that a grievance is made as regards the acceptance of the Voluntary Retirement Scheme 2008 only after all the instalments were paid. The Learned Counsel would contend that some of the Complainants i.e. the Petitioners above named have received huge amounts under the Voluntary Retirement Scheme. The Learned Counsel would seek to draw this Court''s attention to the letter dated 29.06.2009, in which letter, as indicated above, the Petitioner has claimed the difference in compensation/money that has been offered under the Voluntary Retirement Scheme 2009 and has claimed compensation within seven days of the receipt of the said letter. This letter according to the Learned Counsel is a pointer to the real intention and motive of the Petitioner and the Petitioners in the companion Petitions for resiling from the Voluntary Retirement Scheme 2008. The Learned Counsel would contend that in so far as the time lag is concerned, since the application for condonation of delay filed by the Petitioner was pending and since the said issue was finalised only on 31.07.2013 by the dismissal of the Revision filed by the Respondent No.1. It is only thereafter that the Respondent No.1 could file the application for directing the Petitioner to re-deposit the amount, as the Petitioner was earlier prosecuting the application for condonation of delay. The Learned Counsel would contend that in so far as the application for condonation of delay is concerned, though the reply affidavit was filed by the Respondent on 03.12.2009, the affidavit of evidence was filed on behalf of the Petitioner only on 03.12.2011 i.e. a good one year and two months after the said affidavit in reply was filed by the Respondent No.1 and therefore the Petitioner could not be blamed for any delay that has been caused in deciding the said application for condonation of delay. The Learned Counsel would contend that in terms of the law laid down by the Apex Court in Ramesh Chandra Sankla''s case (supra) and Man Singh''s case (supra), the equities have to be balanced by directing the Petitioner in the above Petition and the other Petitioners in the companion Petitions to deposit the amount paid under the Voluntary Retirement Scheme 2008.

11. Having heard the Learned Counsel for the parties, I have considered the rival contentions. The issue which arises for consideration is whether the Petitioner in the lead matter i.e. Smt. Phulabai as also the Petitioners in the companion matters are required to be directed to redeposit the amount paid to them under the Voluntary Retirement Scheme 2008. There can be no doubt about the fact that the benefits under the Voluntary Retirement Scheme 2008 have been availed of by the Petitioner and the Petitioners in the companion Petitions and as stated in the earlier part of this judgment, the amount payable to the Petitioner was paid by four instalments from October 2008. The Petitioner as also the other Petitioners in the companion Writ Petitions have accepted the said amount. The Petitioner by filing the instant complaint under Item No.1(a), (b) and (d) of Schedule IV of the MRTU & PULP Act, 1971, has questioned the acceptance of the Voluntary Retirement Scheme by her on the ground that the Respondent No.1

has coaxed her to accept the said scheme by allegedly representing that no better Voluntary Retirement Scheme would come in future and immediately thereafter in the year 2009, a fresh Voluntary Retirement Scheme was announced. It was also the case of the Petitioner that an impression was sought to be given to the Petitioner that the Respondent No.1 is in dire financial straits, which resulted in the Petitioner accepting the said Voluntary Retirement Scheme. It is further stated that the Petitioners thereafter acquired knowledge that in fact the Respondent No.1 has recruited new hands in the form of trainees to replace the Petitioners. This is the foundation of the Complaint (ULP) filed by the Petitioners. In so far as the law on the said aspect, where the employees are seeking to resile from the Voluntary Retirement Scheme which they have accepted. The judgments of the Apex Court in Ramesh Chandra Sankla''s case (supra) and Man Singh''s case (supra), can be said to be an exposition of the Apex Court on the said aspect. In Ramesh Chandra Sankla''s case (supra), the workmen had sought to retract themselves from the acceptance of the said Voluntary Retirement Scheme on the same ground as in the instant case. It was the submission of the workmen that through deceit, the said Voluntary Retirement Scheme was foisted on the workmen. It was their case that they had received the amount under coercion and duress. Paragraphs 99 and 100 of the said judgment are material and are reproduced hereinunder :-

"99. 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 has it 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.

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 rent 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."

12. The said judgment of the Apex Court in Ramesh Chandra Sankla''s case

(supra) was referred to by another two judge bench of the Apex Court in Man Singh''s case (supra). A contention was sought to be raised on behalf of the workman in the said case that the direction of the High Court to deposit the amount received by him under the Voluntary Retirement Scheme along with interest at 7.5% p.a. for the reference to proceed was quite inequitable and illegal. The Apex Court held that the said submission made on behalf of the workman is fully answered by the judgment of the Apex Court in Ramesh Chandra Sankla''s case (supra) and reference was made to paragraph 100 of the said judgment. The Apex Court thereafter concluded that the said case was squarely covered by the decision of the Apex Court in Ramesh Chandra Sankla''s case (supra) and the contentions raised on behalf of the workman that the High Court had no jurisdiction for directing refund of the entire amount received by the Applicant as a condition precedent for proceeding, was rejected. The said judgments lay down the proposition of law that one who seeks equity must do equity and therefore one who calls in question the Voluntary Retirement Scheme after accepting the benefits must not retain the benefits and must refund the same.

13. Now, coming to the judgment of a Learned Single Judge of this Court in Saint Gobain Sekurit India Ltd.''s case (supra) is concerned, in the said case, the application for directing the workmen to re-deposit the amount paid by the employer under the Voluntary Retirement Scheme was rejected upto the Industrial Court. The rejection by the Industrial Court was sans any reasons. The Learned Single Judge found fault with the same and remanded the matter back to the Industrial Court for a de-novo consideration of the said application. Whilst directing remand, the Learned Judge observed that there can be no question of the power of the Court to direct re-deposit, but the existence of the said power would not automatically mean that it is a mandatory pre-condition and whether such a direction is justified or otherwise, would depend on the facts of each case and various parameters would therefore come in play. The Learned Judge has thereafter by way of illustration mentioned the parameters, namely, the time taken for challenge, the amount received, nature of challenge and other relevant parameters.

14. Hence, even if the said parameters are to be applied, the instant case cannot be said to be a case where the orders passed by the Learned Judge of the Labour Court as confirmed by the Industrial Court directing pre-deposit can be faulted with. The Complaint filed by the Petitioner, as also by the other Petitioners was filed beyond limitation. The Petitioner had therefore filed an application for condonation of delay as also the other Petitioners. As indicated above, it was only after the issue of condonation of delay was finally decided on 31.07.2013, that the application Exh.C-4 could be filed on behalf of the Respondent No.1 for directing the pre-deposit. Hence, the Respondent No.1 cannot be accused of delay in filing the application Exh.C-4. The application can be said to have been filed at the first opportunity after the complaint fructified on the delay being condoned in filing of the same. The application obviously could not have been

filed prior thereto. Hence the time lag between the filing of the Complaint and the filing of the application Exh.C-4 cannot be held against the Respondents.

In the instant case, the amount paid under the Voluntary Retirement Scheme is a lump-sum amount and graded payment depending on the years of service that a workman had put in. There were no different heads under which any amount was attributed, but was a lump-sum payment. Hence, the amount paid could not be divided or separated under any heads. The Petitioner has accepted the Voluntary Retirement Scheme 2008 on account of which there is a severance of relationship as employer and employee but since the Petitioner is calling in question the said scheme and is contending that she still is a employee of the company, she cannot retain the amount she has received for leaving the company. The same cannot be permitted as one who claims equity must do equity. Hence equity demands that the Petitioner in the above Petition and the Petitioners in the companion matters do not retain the amount and deposit the amount as directed by the Courts below. In so far as the said aspect is concerned, the fact that the Petitioners in the letter dated 29.06.2009 have sought the difference in payment between the Voluntary Retirement Scheme 2008 and Voluntary Retirement Scheme 2009 is eloquent of the Petitioners real intention in resiling or retracting from the said Voluntary Retirement Scheme 2008. There is therefore substance in the contention urged on behalf of the Respondents that the complaint filed is as and by way of extracting more monies from the Respondent No.1.

15. In my view, therefore, the concurrent orders passed by the Courts below based on the judgments of the Apex Court, cannot be said to suffer from any error of jurisdiction on the part of the Courts below or any other illegality or infirmity for this Court to interfere in its writ jurisdiction. The above Writ Petition No.1811 of 20016 as also the companion Writ Petitions are accordingly dismissed. Rule to accordingly stand discharged in all the Writ Petitions, with parties to bear their respective costs.

16. However, the time to deposit the amount is extended by a period of six weeks i.e. upto 19.10.2016.

