
(2016) 12 RAJ CK 0076

In the Rajasthan High Court

Case No : Special Appeal Writ No. 1051 of 2012

Uday Singh Mathur

APPELLANT

Vs

Modern Food Industries (I) Ltd.

RESPONDENT

Date of Decision : 02-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 LLJ 236

Hon'ble Judges : Mr. Navin Sinha, CJ. and Dr. Pushpendra Singh Bhati, J.

Bench : Division Bench

Advocate : Shri R.K. Jain, Advocate, for the Respondents; Shri Suresh Kashyap, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

1. The present appeal arises from order dated 09.07.2012 dismissing S.B. Civil Writ Petition No.8153/2012 declining to interfere with the Award dated 10.04.2012 of the Labour Court-I, Jaipur in Case No. L.C.R. 216/2003. The Labour Court held that Appellant of his independent volition took voluntary retirement and there was no element of force, pressure or coercion exercised upon him for the same.

2. Learned Counsel for the Appellant submitted that under the Voluntary Retirement Scheme for Workmen, 2001 (hereinafter called the "VRS") the Management was required to take a decision on the application for VRS within two weeks. It naturally means that the employee had a right to withdraw his application before expiry of two weeks or communication of acceptance. The Appellant submitted his application for VRS on 06.05.2002 and withdrew it on 08.05.2002. Once a letter of withdrawal had been given before its acceptance the action of the Respondents in communicating acceptance thereafter on 09.05.2002 was illegal, arbitrary and an act of force compelling voluntary retirement which cannot be described as voluntary any more. Without prejudice to the same it was submitted that this acceptance was never communicated to

the Appellant. Acknowledging that the financial benefits of the VRS were accepted on 09.05.2002 it was submitted that it was under compulsion as the Appellant had no other option but to accept whatever was being offered to him rather than be a loser by loss of job and financially also while he had a family to look after. The aspect that the application for VRS was withdrawn before acceptance has not been considered in its correct perspective both by the Labour Court and the Learned Single Judge.

3. All issues incidental to an order of Reference can be decided simultaneously to avoid multiplicity of litigation even if it was not specifically mentioned in the order of Reference. If acceptance of the application for VRS after withdrawal amounted to coercion or pressure was incidental and ought to have been decided rather than a pedantic approach to the terms of Reference. The finding that the withdrawal dated 08.05.2002 was by the Union in a representative capacity and not individual by the Appellant while the letter seeking VRS on 06.05.2002 was personal is perverse and contrary to the record. The withdrawal was also personal signed by the Appellant even though it may have been signed by some others also. The Management had originally agreed to pay additional Rs.1,00,000/- amount and on which understanding the VRS was given but which was sought to be withdrawn subsequently and therefore the appellant was compelled to withdraw his letter for VRS on 08.05.2002.

Counsel for the Respondents submitted that the Reference was limited as to whether the VRS application was obtained forcefully or it was voluntary. This naturally referred to the original application by the Appellant for grant of VRS and not the alleged subsequent withdrawal by him. The Management had denied before the Labour Court receipt of any communication dated 08.05.2002 withdrawing the request for VRS. The Appellant had filed an application for a direction to call for the records from the Management including the letter dated 08.05.2002. This was rejected by the Labour Court holding that if the Appellant was asserting a fact, the onus lay on him to prima facie establish that fact before the Management could be called upon or any directions given. On 09.05.2002 itself pursuant to communication of the acceptance of his VRS the Appellant received approximately Rs. 3,00,000/- without any protest or prejudice. Subsequently other legitimate entitlements have also been paid and received by him without protest or prejudice.

4. We have considered the submissions on behalf of the parties.

5. The order of reference dated 08.10.2003 under Section 10(1) of the Industrial Disputes Act in the relevant extracts translated from its vernacular form reads as follows : -

"If the appellant was given voluntary retirement on 09.05.2002 or it was obtained from him forcefully if not to what relief he is entitled ?"

6. The Labour Court on considering the statement of claim, the reply thereto and the evidence led by the parties arrived at the conclusion that there was no

material for concluding that the letter dated 06.05.2002 given by the Appellant for VRS was obtained from him under any pressure or duress. The Appellant after awareness of the acceptance accepted the financial benefits of the same including Provident Fund, gratuity etc. If the VRS was under a scheme the Appellant could not claim anything beyond the same to make it a ground of challenge.

7. There can be no doubt that matters incidental to a Reference can also be decided by the Labour Court and it is not necessary that the terms of the Reference must be specific with regard to each item. The Reference apparently was with regard to the initial letter for VRS given by the Appellant on 06.05.2002 only and not its withdrawal. The issue regarding withdrawal of the application however loses much of its relevance in the facts of the present case if the contents of the letter dated 08.05.2002 are examined and analysed to decide whether it amounts to a withdrawal or not. If it amounts to a withdrawal of a VRS different considerations will arise. If it does not amount to a withdrawal of VRS entirely different considerations would arise. The letter seeking VRS dated 06.05.2002 states that he had gone through the VRS displayed on the notice Board and was submitting his application under the same seeking approval with benefits under the Scheme. The letter dated 08.05.2002 does not allege that any part of the VRS Scheme was being violated. It states that certain additional benefits had been suggested for which a verbal assurance was given and subject to which he had made the request dated 06.05.2002. But the letter dated 06.05.2002 does not contain any such reference or indication. The letter dated 08.05.2002 does not state or talk of an unconditional withdrawal of the request for VRS but refers to an oral assurance for additional Rs. 1,00,000/- regarding which no evidence was led. If the amount was given he was willing to accept VRS otherwise it may be treated as a letter withdrawing the request for VRS. If request for VRS was unconditional under the scheme and in acceptance of the same, the withdrawal also had to be specific and unconditional. There could be no claims beyond the scheme. The Appellant does not allege any violation of the scheme. The letter dated 08.05.2002 therefore cannot be treated as withdrawal of the request for VRS.

8. The reference essentially was with regard to the fact that if the letter dated 06.05.2002 had been given voluntarily or it was obtained under compulsion and force. In his statement of claim Appellant pleaded that his signature on the letter was obtained under coercion but failed to lead any evidence in support of the same. If the letter dated 08.05.2002 was not a withdrawal of the request for VRS the entire edifice of the arguments on behalf of the Appellant that acceptance thereafter tantamounts to coercion loses its significance and calls for no consideration.

9. The argument that he accepted the monetary benefits on 09.05.2002 under compulsion does not appeal to the Court. In the facts of the case, it was a voluntary act with full awareness apparent from the fact that even thereafter he

continued to accept the monetary benefits, provident fund, gratuity etc. on subsequent dates. The judgments cited with regard to the right for withdrawal of the application before acceptance therefore have no application to the facts of the present case.

10. The order of the Labour Court or the order under appeal therefore call for no interference.

11. The appeal is dismissed.