

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7635 OF 2012

Sahebrao Keshav Gerange
Age major, Occ. Nil,
R/o Islak - Nimbalak,
Tq & Dist. Ahmednagar.

..Petitioner

Versus

The Manager,
Ahmednagar Forgings Ltd.
D-95, MIDC, Ahmednagar.

..Respondent

...
Advocate for Petitioner : Shri Barde P. V.
Advocate for Respondents : Shri Upadhye V.N.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 25, 2015
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ORAL JUDGMENT:-

1. Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioner workman challenges the impugned judgment and award dated 26.3.2012, delivered by the Labour Court in Reference (IDA) No.60 of 2007.

5. It is stated that the petitioner joined the respondent in 1987 and was granted permanency from 1.7.1997. He suffered an accident, arising out of and in the course of his employment with the respondent on 14.5.2000. Since he suffered a dis-ability, he was unable to discharge his duties and could not report for duties. Upon recovering from the accident, he reported to work on 13.9.2000. It is stated that he was orally terminated and the respondent restrained him from reporting for duties.

6. The petitioner raised an industrial dispute, which was referred to the Labour Court as Reference (IDA) No.60 of 2007. By the impugned award, the Labour Court concluded that the termination is illegal and unsustainable. However, instead of reinstating him with continuity and back wages, he was granted a compensation of Rs.45,000/-.

7. Grievance of the petitioner is that the employer has arrived at a settlement under Section 2(p) read with Section 18 of the Industrial Disputes Act, 1947, by which, all the workmen working with the Chain and Machine Division were granted voluntary retirement. Those workmen, whose age was less than 53 years, were given Rs.5,00,000/- along with Rs.21,000/- as a V.R.S. package. Those workmen who fell in the age group of 54 to 57, were given Rs.80,000/- per year of remainder of service. In all 153 persons benefited from the said settlement.

8. The petitioner submits that he is of an advanced age now, coupled

with the injuries that he suffered in the above referred accident, which makes him unable to report for duties.

9. He submits that he had filed an application - WC No.87 of 2000, before the Workmen's Compensation Court, alleging 100% disability. The respondent / management opposed the application and despite having orally terminated the petitioner from 13.9.2000, they claimed that the petitioner had lost a meager earning capacity. Finally, by its judgment dated 11.2.2005, the Compensation Court concluded that the petitioner has lost 14% of his earning capacity. Compensation to that extent was accordingly awarded. Shri Barde, therefore, submits that in the peculiar facts of this case, this Court may modify the award and enhance the compensation.

10. Shri Upadhye, learned Advocate for the respondent - management has vehemently opposed the petition. He submits that the respondent is willing to reinstate the petitioner even now and take him in employment. He further submits that the compensation awarded is based on the retrenchment compensation formula under Section 25(F) which has been followed by the Labour Court and, therefore, amount of Rs.45,000/- has been awarded.

11. Shri Upadhye submits that there are no circumstances in which the compensation can be enhanced in the light of the fact that the petitioner has not been granted reinstatement with continuity and full back wages.

Had that been the award, the respondent - management would have challenged it before this Court through a separate petition. He, therefore, submits that there is no merit in the claim of the petitioner.

12. Shri Upadhye further submits that the settlement as regards the V.R.S. was signed on 24.6.2009. The petitioner was out of employment as on the said date. He, therefore, cannot claim the benefit of the said settlement. There were 153 persons for whom, the scheme was floated through the settlement. The petitioner, therefore, cannot claim parity and seek the benefits of the said settlement, while assailing the impugned award.

13. It emerges from the record that the respondent - employer had not issued any order of termination to the petitioner. It was a case of oral termination. If the respondent did not desire to keep the petitioner in employment as on 13.9.2000, I am circumspect about the intention of the respondent, who is offering re-employment at this stage to the petitioner. So also, the petitioner has submitted that he would not opt for reemployment or reinstatement since he apprehends inappropriate treatment at the hands of the respondent. It is, therefore, submitted by the petitioner that compensation be quantified instead of directing the reinstatement.

14. It is not in dispute that the Labour Court has concluded in clause (2) of the operative part of the order that the petitioner is entitled for

reinstatement with continuity. If that be the position, the petitioner will have to be construed to be in employment of the respondent as on date of the V.R.S. settlement. Had he been in employment, the said settlement dated 24.6.2009 would have covered the petitioner. Since the said settlement is now not available, as it was a scheme for 153 people mentioned in Annexure "A" to the settlement, I am not inclined to direct the respondent to grant the benefits of the VRS package to the petitioner.

15. I, therefore, find it necessary to quantify the compensation to be paid to the petitioner. The compensation awarded by the Labour Court is apparently meager, keeping in mind that the petitioner had put in 13 years of service, his termination was held to be illegal and unsustainable, which has not been challenged by the management and the tenure of employment that would have been available to him, if he was in service.

16. This Court in the matter of J.W.Mane Vs. Wockhardt [2010 LLR 955], has considered the law of quantifying compensation in lieu of service and continuity of service. Similarly, the Apex Court has also considered such situation for quantifying compensation in the judgments delivered in the following cases:-

1. Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal [2013 LLR 1009],

2. Assistant Engineer, Rajasthan Development Corporation and another Vs. Gitam Singh [(2013) 5 SCC 136],

3. *BSNL Vs. man Singh [(2012) 1 SCC 558] and*

4. *Jagbir Singh Vs. Haryana State Agriculture Marketing Board [(2009) 15 SCC 327]. ”*

17. In yet another recent judgment of the Apex Court, delivered in the case of Bhavnagar Municipal Corporation Vs. Salimbhai Umarbhai Mansuri [2013 (6) Mah. L.J. 919 (SC) = (2013) 14 SCC 456], the Apex Court has considered the aspect of quantifying compensation.

18. While considering the aspect of compensation, I am taking into account the 13 years' service put in by the petitioner, the accident that he suffered out of and in the course of his employment, the subsequent loss of employment due to the accident and his deprivation of the benefits of the VRS Settlement. Taking into account these factors, I am of the view that an amount of Rs.4,00,000/- (Rs.Four lakhs only/-) would be sufficient compensation to be paid by the respondent to the petitioner. While arriving at this conclusion, I have kept in view the judgments delivered by the Apex Court, referred to herein above, as well as the recent judgment of the Apex Court in the case of Bhavnagar Municipal Corporation (supra).

19. In the light of the above, this petition is partly allowed. The impugned judgment, dated 26.3.2012, delivered by the Labour Court in Reference (IDA) No.60 of 2007 stands modified in the above terms.

20. The compensation so awarded shall be paid by the respondent to the petitioner within a period of twelve weeks from today.

21. Rule is, accordingly, made partly absolute.

(RAVINDRA V. GHUGE, J.)

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akl/d