Sequeira

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2064 OF 2002.

Shri Ashok D.Haldankar & 502 others
having their address at
C/o.Vinodkumar M.Acharya,
Omkar Apt., 'B' Wing, Flat No.6,
Near Hira Vidyalaya, 72 Bhatwadi,
Virar (W), Pin Code : 401 303 .. Petitioner

Vs.

1. Shriram Mills Ltd.
G.K.Marg, Mumbai-400 013

2. Shri V.M.Bhat,
Vice President, Pankaj Apt.,
1st floor, J.P. Road, Dawood
Baug Lane, Andheri (West)
Mumbai – 400 058.

3. Shri Vikas Kasliwal
"Padam" Opp. Jaslok Hospital,
Mahalaxmi, Mumbai – 400 026.

4. The Member, Industrial Court, .. Respondents
Mumbai.

Mr.S.S.Pakale, for Petitioners.
None for Respondents.

CORAM: N.M.Jamdar J.
Thursday 20 August, 2015

Oral Judgment :

By this petition, the Petitioners challenge the common Judgment and order dated 21 December 2001 passed by the Member Industrial Court, Mumbai disposing of the complaints filed by the Petitioners.

2 The Petitioners were in employment of Respondent No.1 -Shriram Mills Ltd ('mill'). The mill had declared a Voluntary Retirement Scheme-VR scheme, on 20 November 1993. This VR scheme set out certain benefits to be given to the workers who would resign from the services of the mill on or before 2 December 1993. One more VR scheme was declared some time in December 1993 and January 1994. In response to the second scheme various employees resigned from their services and collected their legal dues. Thereafter the Respondent No.1-mill entered into an agreement with a recognised and representative Union. Pursuant to this agreement the Respondent No.1 came out with another VR scheme on 21 September 1995. Various employees resigned taking benefits under the scheme who were also paid their dues.

3. The Petitioners filed Complaint (ULP) No.1387 of 1996 in the Industrial Court Mumbai, under Section 28 read with Item 5 and 9 of Schedule IV of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (MRTU & PULP). The Petitioners contended that Respondent No.3 one Vikas Kasliwal had conducted department wise meetings and had given an appeal

to the workers to opt for VRS to help the Company to survive. According to them assurances were given that if other workers are given certain additional benefits in subsequent schemes Petitioners would be paid such additional benefits. The Petitioners contended that believing these assurances, the Petitioners took VR scheme in December 1993 and January 1994, but the Respondents declined to adhere to their promise that they will give same additional benefits to Petitioners as given to those who resigned as per the scheme of 1995. Accordingly, the Petitioners prayed that it be declared that the Respondents discriminated those workers who opted the VR scheme in December 1993 and January 1994 against the workers who took retirement under the 1995 scheme.

4. The Respondents filed their Written statement and the averments made by the Petitioners were denied. The parties also examined their respective witnesses, who were also cross-examined.

5. The learned Industrial Court, Mumbai clubbed the complaints filed by the Petitioners together and heard them together. Industrial Court came to the conclusion that Petitioners had failed to prove that the Respondents have committed unfair labour practices under Item 5 & 9 of Schedule IV of the MRTU & PULP Act, and they are not entitled to any relief. The learned Industrial Court after assessment of evidence came to the conclusion that the theory of oral assurances was not proved by the Petitioners. The learned Industrial Court also observed that no documentary

evidence was produced on record by the Petitioners. Accordingly, the learned Industrial Court dismissed the complaints by the impugned order dated 21 January 2001.

6. Mr.Pakale, the learned counsel for the Petitioners submitted that the Industrial Court has not properly appreciated the evidence of the witnesses of respondents Management. He submitted that the fourth witness i.e. Gyanaba Krishna Patil had not stated in his cross-examination about the assurance and he had admitted of attending the meeting. He submitted that this evidence has not been appreciated in correct perspective. Mr.Pakale further submitted that the Petitioners had proved their case by leading oral evidence and in view of these assurances and the fact that the other workers under subsequent scheme were given more benefits it is equitable that the Petitioners were also extended the same benefits.

7. It is not possible to grant any relief to the Petitioners in writ jurisdiction. There is admittedly no documentary evidence produced by the Petitioners. The VR Scheme under which the Petitioners took resignation formed a contract between the Petitioners and the Company. This contract does not contain any clause regarding that benefits will be extended if extended in the subsequent schemes. The Petitioners have only sought to make out a case based on oral assurance. Whether the oral assurances were given or not given and whether the Petitioners believed the same, without questioning, are matters of pure appreciation of evidence. It is not possible to re-appreciate the evidence to the extent of

arriving at a completely different factual finding in the writ jurisdiction. Had it been a case that the assurance was in writing or the contract stipulated certain terms, it would have been a different matter to give effect to such stipulations. The learned Industrial Court after considering this position has dismissed the complaints and it cannot be said that the findings of the learned Industrial Court in absence of the documentary evidence is perverse so as to interfere with it.

8. Mr.Pakale submitted that the Respondents be called upon to pay the amounts under the equitable jurisdiction of this Court. It is not possible to issue a writ to that effect, but it is open to the Petitioners to make representation to the Respondents appealing to their good sense. No order can be passed in this petition, which is accordingly dismissed. **Rule** discharged. No order as to costs.

(N.M.Jamdar J.)