

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10094 OF 2014

Janardhan Sahdeo Shinde

...Petitioner

Vs.

1) M/s. Hindustan spinning & Weaving Mills Ltd.
and ors.

...Respondents

Mr. S. N. Deshpande, Advocate for the petitioner.

Mr. A. K. Jalistagi a/w Mr. C. M. Lokesh, Advocates for the respondents.

Coram : Smt. R. P. SondurBaldota, J.

Date : 3rd August, 2015.

P. C. :

1] This petition by a workman challenges the order dated 28th March, 2014 of the Industrial Court, Mumbai in Appeal (IC) No.37 of 2009. By the impugned order, the appeal is partly allowed. The order impugned in the appeal is modified and the respondent – employer is directed, pay the petitioner, in addition to the back wages, monetary benefits of the Voluntary Retirement Scheme and interest at the rate of 8% per annum from the date of acceptance till realization of the amount.

2] The respondent has raised a preliminary objection of maintainability of the petition, contending that the petitioner is estopped from challenging the impugned order since at his own instance, the impugned order stands executed and his claim

thereunder satisfied fully. It is the submission of Mr. Jalistagir, the learned Advocate for the respondents that private execution of the impugned orders would be at par with execution of the orders through process of Court.

3] The brief statement of facts required to be noted for the purpose of deciding the preliminary objection is as follows :

The petitioner was working with the respondent as a weaver. He was dismissed from service with effect from 28th November, 2001 after holding due enquiry against him for the charge of absenteeism. He challenged his dismissal by filing Application (BIR) No.24 of 2002, contending that the dismissal was illegal. The Labour Court by its judgment and order dated 9th June, 2009, on remand, disposed of the complaint holding that the dismissal of the petitioner from service was illegal. It however denied him reinstatement in service on the ground that respondent is permanently closed from 4th March, 2003. The respondent was directed to pay to the petitioner full back wages and other benefits till the date of closure of the company. Aggrieved by denial of reinstatement, the petitioner preferred Appeal No.37 of 2009 to the Industrial Court. One of the arguments of the petitioner before the Industrial Court in the appeal, which was without prejudice to the claim in the appeal, was that the petitioner be granted same benefits of Voluntary Retirement Scheme as his other colleagues. The

Industrial Court by its order dated 28th March, 2014 partly allowed the appeal and directed the respondent to pay the petitioner monetary benefits of the Voluntary Retirement Scheme.

4] About two months after the order of the Industrial Court the petitioner by his Advocate's letter dated 7th May, 2014 addressed to the Directors of the respondent, demanded to know the total amount payable to him under the impugned order by way of back wages, voluntary retirement scheme dues, interest and the costs and payment of the same to him. The letter mentioned that the amount due under the impugned order would be accepted without prejudice to the rights and contentions of the petitioner. The respondent immediately replied by its letter dated 10th May, 2014 stating in clear terms that the question of acceptance of amount by the petitioner without prejudice to his rights and contentions did not arise and that the respondent was ready and willing to make the payment as per the order provided, it was accepted in full and final settlement of all demands, claims and disputes under the impugned order. The petitioner was further informed that he would be paid the amount due under the order to him within a period of seven days from the date of his submission of an application / letter unconditionally accepting the monetary benefits in full and final settlement of the dispute. By its another letter dated 9th July, 2014, it was pointed out to Advocate for the petitioner that the petitioner had neither

submitted an application nor approached the respondent for accepting the monetary benefits and reiterated it's offer of payment in full and final settlement of the dispute. By his own letter dated 4th August, 2014 the petitioner then informed the respondent that he was willing to accept the amount in accordance with the respondent's letter dated 9th July, 2014. Accordingly, on 13th August, 2014 the petitioner was issued cheque dated 7th August, 2014 in the sum of Rs.2,58,532.40 ps. towards his dues under the impugned order. The petitioner accepted the sum and signed receipt cum declaration stating that in view of receipt of the amount, his claims and demands in Application (BIR) No.24 of 2002 and Appeal (IC) No.37 of 2009 stands fully settled. Despite above, the petitioner on 30th September, 2014 filed the present petition challenging the orders of the Courts below denying reinstatement to him.

5] Mr. Deshpande, the learned Advocate for the petitioner submits that the petitioner cannot be precluded from challenging orders of the Courts below merely because he has accepted the amount due under the impugned order. According to him, it would cause serious prejudice to the petitioner. Mr. Deshpande relies upon following three decisions of the Apex Court and one decision of the High Court of Andhra Pradesh in support of the arguments advanced by him.

1] *Ariane Orgachem Private Ltd. Vs. Wyeth Employees*

Union & ors. reported in 2015 II CLR S.C.478.

- 2] Workmen of Subong Tea Estate Vs. Subong Tea Estate and another reported in 196 4 I.L.L.J. S.C. 333 (341).***
- 3] Central Inland Water Transport Corpn. Vs. B. N. Ganguli & Anr. reported in 1986 II C.L.R. S.C. 322 (371).***
- 4] Management of Oasis School, Hyderabad Vs. Labour Court, Himayatnagar, Hyderabad & Ors. reported in 1990 II C.L.R. High Court of Andhra Pradesh.***

6] In the first decision, the Apex Court was considering the order of refusal by Deputy Commissioner of Labour, to make reference of an industrial dispute, on the ground that, the workmen had accepted the benefits under Voluntary Retirement Scheme. After payment of the Voluntary Retirement Scheme benefits, the workmen were relieved from their services by the employer. In that case, allegations had been made by the workmen that the voluntary retirement of the concerned workmen was obtained by the management by resorting the undue influence, coercion, fraud etc. In view of these facts, the Apex Court held that the State Government had failed to take into consideration the submission on behalf of the workmen that coercion and fear had compelled the workmen to sign on the blank papers and purported voluntary retirement letters had been allegedly prepared. As such, the question that arose for consideration was whether the contract of voluntary retirement was void or voidable, in these circumstances the Apex Court observed that estoppel is a principle of equity, which deals

with the effect of contract and not with its cause. It does not mean that a void or voidable contract cannot be adjudicated by the Industrial Tribunal / Courts merely because the concern workmen have accepted the voluntary retirement as pleaded by them and other benefits accepted.

7] In ***Subong Tea Estate*** (supra) case also there were allegations of use of force to accept the retrenchment compensation. Allegedly the employees were told that if they did not accept the compensation, they would not receive their wages for the month of August, for which they had worked. In these circumstances, the Apex Court refused to entertain the technical plea that the concerned workmen were estopped from challenging the validity of the retrenchment as they had accepted retrenchment compensation.

8] In the case of ***Central Inland Water Transport Corp.*** (Supra), the rules governing the services of the employees contained Rule 9(i), which was for termination of employment for acts other than Misdemeanour under which an employee could be terminated by issuing notice of three months or payment equivalent to three months basic pay and dearness allowance in lieu of notice, when the workman challenges his termination from service by giving notice under Rule 9(i) of the Rules. A contention was raised on behalf of employer that in view of Rule 9(i) the employee was estopped from challenging his termination. The Apex Court observed that Rule 9(i)

conferred an absolute, arbitrary and guided power to the employer. It violated one of the two great rules of natural justice i.e. the audi alteram partem rule. It was not just arbitrary but also discriminatory for it enabled the employer to discriminate between employee and employee for the purpose of termination. On the background of these facts, the Apex Court held that, Rule 9(i) was harmful and injurious to public interest. The clause being opposed to public policy was void under Section 23 of the Indian Contract Act. Therefore, there is no question of it acting as estoppel.

9] In the facts of the case before Andhra Pradesh High Court in **Oasis School** matter, the receipt of retrenchment compensation was during the course of conciliation proceedings. In the circumstance, the Andhra Pradesh High Court held that : Initial invalidity cannot be cured by subsequent offer by the employer and receipt by the workman of any sum 'in full and final settlement' of his account, nor will that disentitle the workman to challenge the order of retrenchment on the ground of non-compliance with the statutory requirements at the time of the offending termination of service. It is competent for the retrenched workman to challenge the validity of the retrenchment even after receiving retrenchment compensation during the course of conciliation proceedings.

10] In the facts of the case on hand, there is no such infirmity in the payment and acceptance of the Voluntary Retirement

Scheme benefits by the petitioner. As already mentioned above, after the decision of the Industrial Tribunal dtd.28th March, 2014 passed in Appeal (IC) Nos.37 and 38 of 2009, the advocate for the petitioner by his letter dtd. 7th May, 2014 demanded the Voluntary Retirement Scheme dues stating that the same would be accepted without prejudice to the rights and contentions of the petitioner. The respondent had by it's letter dtd. 10th May, 2014, in specific and clear terms, replied that the question of acceptance of Voluntary Retirement Scheme dues by the petitioner without prejudice to his rights and contentions did not arise and that the petitioner had to accept the order in it's entirety. The letter made it further clear that the respondents were ready and willing to make the payment as per the order of the Industrial Tribunal provided it is accepted in full and final settlement of all the demands, claims, disputes etc. by the petitioner. The same offer was repeated by the respondent by it's letter dtd. 9th July, 2014, by which it was communicated that the petitioner could collect the amount as per the order of the Industrial Tribunal "after executing the full and final settlement of Receipt-cum-Declaration within two weeks of receipt of this letter". About a month thereafter the petitioner directly approached the respondent by his letter dtd 4th August, 2014, whereby he communicated that he was willing to accept the amount in accordance with the respondent's letter dtd. 9th July, 2014. Then on 13th August, 2014,

the respondent paid amount of Rs.2,58,532.40 ps., by cheque to the petitioner and the petitioner signed Receipt-cum-Declaration declaring:

"I declare that in view of receiving the above mentioned amount, I have left with no claim either of any legal dues or notice pay, closure compensation, earned wages, privilege leave, gratuity, bonus/ex-gratia, medical allowance, back-wages, voluntary retirement compensation, provident fund, reinstatement, reemployment etc. whether applicable or otherwise at all for the entire period of my service or any part thereof against the said M/s The Hindustan Spg. & Wvg. Mills Ltd. and its successors. I say that my claims and demands in Application (BIR-Rein) No.24 of 2002 and Appeals (IC) No.37 of 2009 also fully stand settled and withdrawn."

11] The above facts made it clear that after execution of the impugned order at the instance of the petitioner himself, he has sought to challenge it by filing the present petition. In view of receipt of the amount due under the impugned order on issuance of declaration by the petitioner, it is not open for him to challenge the order. Therefore, the petition filed by him for the purpose is not maintainable and the same must be dismissed as not maintainable. The petition is therefore dismissed.

[Smt. R. P. SondurBaldota, J.]