

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

WRIT PETITION NO. 11624 OF 2014

Shramik General Kamgar Union
Vs
1.M/s Standard batteries Limited
and Anr.
Petitioner
.. Respondents

Mr. A.S.Peerzada, Advocate for Petitioner.

Mr. R.V.Paranjape, Advocate for Respondent No.1.

Mr.Kiran Bapat i/b M/s Desai & Desai Associates, Advocate for
respondent no.2.

CORAM : R.G.KETKAR,J.
DATE : 26/02/2015

PC:

1. Heard Mr.A.S.Peerzada, learned counsel for the petitioner, Mr. R.V.Paranjape, learned counsel for respondent no.1 and Mr Kiran Bapat, learned counsel for respondent no.2 at length.
2. Rule. Learned counsel for the respondents waive service. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.
3. By this Petition under Articles 226 and 227 of the Constitution of India, the petitioner-Union has challenged the Judgment and order dated 29.3.2014 passed by the learned Presiding Officer, Industrial Tribunal, Mumbai (for short, 'Tribunal') below Exhibit C-14 in Reference (IT) No.16 of 2011. By that order, the Tribunal directed the employees of the petitioner-second

party who have accepted the amounts to return those amounts and interest at the rate of 7.5 percent from the date of receipt of that amount till depositing that amount within four months from the order. It was further made clear that if the amount is not deposited, the Reference will be liable to be disposed of in view of the decision.

4. In support of this Petition, Mr. Peerzada submitted that the following demands were referred by the Addl. Commissioner of Labour Mumbai for adjudication by the Tribunal:

- 1) To declare the agreement dated 23.10.2000 entered into between the management of M/s Standard Batteries Ltd and Mr P.M.Mangaonkar, Mr C.M.Mangaonkar and Mr Anant Tamore is illegal, bad in law, invalid, void ab-initio.
- 2) The workmen whose names have been shown in Annexure A to the justification should be reinstated with continuity of service and with full back wages w.e.f. 1st June,1993.

Or in alternate

- 3) The workman whose names have been shown in Annexure A to the justification should be extended the benefits of agreement dated 15.7.1997 and 12.8.1997 i.e. of 90 days per year for V.R.S. with 18% interest thereon till the payment the said amount.
- 4) Restrain M/s Standard Batteries Ltd from

disposing/selling or creating third party interest in respect of property situated at (Furakawa) opp.Podar Hospital, Annie Beasant Road, Worli, Mumbai 400 018.

5. The petitioner sought declaration that the agreement dated 23.10.2000 entered into between the first respondent and S/Shri P.M.Mangaonkar, C.M.Mangaonkar and Anant Tamore is illegal, bad in law, invalid, void ab initio and that in the alternative the workmen whose names have been shown in Annexure A to the justification should be extended the benefits of agreement dated 15.7.1997 and 12.8.1997, i.e. of 90 days per year for V.R.S. With 18% interest thereon till the payment of the said amount. By demand no.2, the petitioner also claimed that the workmen whose names have been shown in Annexure A to the justification should be reinstated with continuity of service and with full back wages with effect from 1st June, 1993. The Tribunal passed the impugned order relying upon the decision of the Apex Court in the case of Man Singh Vs. Maruti Suzuki India Ltd, JT 2011 (9) SC 558. He submitted that in that case Reference was made in respect of the following terms:

“Whether the termination of service of Shri Man Singh on the basis of VRS Scheme by the Management was justified and correct, if not, to what relief is he entitled?”

In view of that decision, the Tribunal directed the petitioner to refund the amounts accepted by the employees of the petitioner-

union together with interest at the rate of 7.5 % as they are claiming reinstatement with continuity of service and back wages. He has placed on record photo copy of communication dated 23.2.2015 addressed by the instructing Advocate Mr. L.R.Mohite to him. The same is marked 'x' for identification. In view of this, Mr Peezada has given up challenge to the following demands:

- 1) To declare the agreement dated 23.10.2000 entered into between the management of M/s Standard Batteries Ltd and Mr P.M.Mangaonkar, Mr C.M.Mangaonkar and Mr Anant Tamore is illegal, bad in law, invalid, void ab-initio.
- 2) The workmen whose names have been shown in Annexure A to the justification should be reinstated with continuity of service and with full back wages w.e.f. 1st June,1993.

In other words, the petitioner will not agitate demand no.1 seeking declaration that the agreement dated 23.10.2000 is illegal and bad in law and that they will also not claim reinstatement with continuity of service and full back wages with effect from 1.1.1993 in respect of the workmen whose names have been shown in Annexure "A".

6. Mr.Bapat submits that in view of the petitioner giving up challenge to demand no.2, respondent no.2 may be deleted from the Reference. He states that respondent no.2 will take out

appropriate application before the Industrial Tribunal for deleting it from the Reference.

7. In view of the stand taken by the petitioner-Union giving up challenge to demands 1 and 2 in this Court, the Tribunal will now proceed to decide demands 3 and 4 only as extracted herein above. Since the petitioner is now giving up the claim of reinstatement with continuity of service and full back wages, the impugned order deserves to be set aside.

8. In view thereof, the Petition succeeds in the following terms:

- (i) The impugned order is quashed and set aside.
- (ii) The Industrial Tribunal will decide the following demands:
 - (i) The workman whose names have been shown in Annexure A to the justification should be extended the benefits of agreement dated 15.7.1997 and 12.8.1997 i.e. of 90 days per year for V.R.S. with 18% interest thereon till the payment the said amount.
 - (ii) Restrain M/s Standard Batteries Ltd from disposing/selling or creating third party interest in respect of property situated at (Furakawa) opp.Podar Hospital, Annie Beasant Road, Worli, Mumbai 400 018.

Respondent no.2 is at liberty to take out appropriate application for deleting it from the Reference. If such application is taken out, the Tribunal will decide the same on its own merits and in

accordance with law. The Tribunal will now decide the Reference in respect of the demands (i) and (ii) in accordance with law. All contentions of the parties on merits are expressly kept open. Liberty is reserved to the parties to move the Industrial Tribunal for expeditious disposal of the Reference. Rule is made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)