

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3113 OF 2014

Subhash Sakharam Narke		Petitioner
V/s.		
Khatau Makanji Spinning and Weaving Mills Limited		Respondent

ALONGWITH
WRIT PETITION NO. 3114 OF 2014

Suryakant Ramchandra Mahadik		Petitioner
V/s.		
Khatau Makanji Spinning and Weaving Mills Limited		Respondent

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Mr. Pankaj M. Patel, Advocate for the petitioner.
Mr. Sudhir Talsania, Senior Counsel a/w. Mr. R.N. Shah
a/w. Mr. Hemant Telkar i/by. Haresh Mehta & Co.,
Advocate for the respondent.

CORAM :- SMT. R.P. SONDURBALDOTA, J.

31ST MARCH, 2015.

P.C. :-

1). These petitions are yet another desperate attempt on the part of the petitioners in securing some relief or the other against the respondent in connection with their service. The applicants have filed Application (BIFR) No. 64 of 2007 and Application (BIFR) No. 69 of 2007 for a declaration that the petitioners are in the employment of the respondent and for a direction to the respondent to provide them

with work. The other direction sought against the respondent is for payment of wages from April, 1997 till date or until the attainment of age of 63 years. The applications were filed on 10th August, 2005 and 5th December, 2005 respectively. The application is a short one page application claiming that the petitioners are working in the GM Department of the respondent since 17th February, 1973 and they have not been assigned any work since 1st April, 1997. The application next states that, the voluntary retirement scheme declared by the respondent has not been accepted by the petitioners and as such they continued to be in the employment of the respondent. After gap of ten years, the applicants sent letter dated 25th June, 2007 to the respondent demanding work. The respondent sent it's reply setting out details of the facts relating to the employment of the petitioners.

2). According to the respondents, the applications filed are misconceived, malafide and not maintainable in law. The application also suffers from suppression of material facts of the case. According to the respondents, pursuant to the orders passed by the Board of Industrial and Financial Reconstruction ("BIFR" for short) and the scheme framed and duly sanctioned by it, settlement was signed between the respondents and representatives of the "approved union" under the provisions of the Bombay Industrial Relations Act, i.e.

“Rashtriya Mill Mazdoor Sangh”. The petitioners were offered all their dues which they refused to accept. The activities of the establishment of the respondent have been discontinued and all the 6020 employees employed with the respondent are no longer working with it. Out of those employees, 5803 have accepted the dues offered to them and 217 employees did not come forward to accept their dues. Then, the cheques were sent by Registered Post A.D. to their individual addresses. Out of those 217 cheques, 5 cheques returned with remark as “persons expired” and 123 cheques were returned with remark “address not found/wrong”, 23 cheques were returned with remark “not accepted by the receiver”. Remaining 5 cheques were not yet returned at the time of filing of the written statement.

3). The detailed factual background of the employment of the petitioners as seen from the record is as follows :-

. Due to heavy financial losses, the activities of the respondents were required to be discontinued totally. The efforts made by the respondent to revive the establishment did not succeed and ultimately it was declared a sick unit with reference made to BIFR under The Sick Industrial Companies (Provisions) Act, 1985. Considering the financial position of the respondent, the representative of the respondent and the approved Union of the workers entered into

settlement dated 6th December, 2005 on behalf of the 6020 employees including the petitioners. The settlement was approved by the BIFR and the Competent Authority granted permission for closure of the establishment. Some of the employees including the petitioner did not accept the dues with full knowledge of the above facts.

4). On the application of the respondents, Commissioner of Labour by his order dated 23rd October, 2007 permitted closure of the Company. Since the respondent was a sick industry, proceedings were initiated before the BIFR and the draft rehabilitation scheme under the Sick Industries Special Provisions Act, 1985 was given. The scheme accepted the MOU dated 5th December, 2005 and 6th December, 2005 with Union, Rashtriya Mill Mazdoor Sangha (RMMS), as well as, Girni Kamgar Sangharsha Samiti (GKSS) relating to the VRS. The petitioners challenged the scheme of BIFR through, Khatau Mills Kamgar Committee by filing petition in this Court. The petition was dismissed on the ground of availability of alternate remedy of approaching the appellate authority of Industrial and Financial Reconstruction. The petitioners did not take the challenge to that authority. With these undisputed facts, the Courts below held that the settlement/MOU signed by RMMS was binding on all the employees working in the Mill and that there was no challenge to that MOU. In

the absence of challenge, no relief could be provided to the petitioners. Further, the petitioners had failed to establish that the MOU signed by RMSS or GKSS was against the public policy or against any provision of the Contract Act. Since the establishment of the respondent is not in existence, it having already been closed down, there was no question of directing the respondent to provide any work to the petitioners.

5). It appears that pursuant to the directions given by this Court in the petition to challenge the permission granted to the respondent to develop the property owned by it, the dues of all the remaining 217 workers were deposited in this Court and pursuant to the liberty granted to them, the petitioners alongwith other employees have already withdrawn the same. Thus, even on the financial aspect nothing remains to be given to the petitioners.

6). The petitioners are undoubtedly guilty of suppression of all the material facts in their application. In the facts and circumstances of the case, the application filed by them was clearly malafide and not maintainable. Hence, there is no infirmity whatsoever in the orders impugned in the petition. The petitions are therefore dismissed.

(SMT. R.P. SONDURBALDOTA, J)