

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3556 OF 2016

1. Vinay s/o. Narayan Bhat,
Age : 58 years, Occu.: Service,
(Retired Employee of
Devgiri Textile Mills),
Tq. & Dist. Aurangabad
2. Pratap s/o. Baburao Patil,
Age : 54 years, Occu.: Service,
(Retired Employee of
Pratap Textile Mills),
3. Nagnath s/o. Mahadeo Pawar,
Age : 47 years, Occu.: Service,
(Rtd Employee of
Shri Shahu Chatrapati Textile Mills),
4. Tushar s/o. Madhukar Kulkarni,
Age : 52 years, Occu.: Service,
(Retired Employee of
Devgiri Textile Mills),
5. Dayanand s/o. Bandappa Khot,
Age : 56 years, Occu.: Service,
(Retired Employee of
Narsing Textile Mills),
6. Vitthal s/o. Shankar Malvatkar,
Age : 56 years, Occu.: Service,
(Retired Employee of
Narsing Textile Mills),
7. Sunil s/o. Shripat Aitwade,
Age : 57 years, Occu.: Service,
(Rtd Employee of
Shri Shahu Chatrapati Textile Mills),

All the petitioner nos. 2 to 7 are
Through their G.P.A. Petitioner
no.1 Vinay s/o. Narayan Bhat

..PETITIONERS

VERSUS

1. The Maharashtra State Textile Corporation Ltd.,
(A Government of Maharashtra undertaking)
303, Kshamalaya, 37, New Marine Lines,
Opp. S.N.D.P. Patkar Hall,
Mumbai – 400 020.
Through the Managing Director/Manager.
2. The State of Maharashtra,
Textile Department, Mantralaya,
Mumbai – 32
Through the Secretary.
3. Sant Rohidas Charmodyog &
Charmakar Vikas Mahamandal
Maryadit (LIDCOM),
(A Government of Maharashtra undertaking)
Bombay life building, 5th Floor,
45, Vir Nariman Marg,
Mumbai – 01.
Through the Managing Director.
4. The State of Maharashtra,
Social Justice and Special Asst.
Division, Mantralaya,
Mumbai – 32.
Through the Secretary.

..RESPONDENTS

Mr. P.P. Mandlik, Advocate for the petitioners
 Mr. Sachin V. Dankh, Advocate for respondent no.1
 Mr. S.A. Dhumal, Advocate for respondent no.3
 Mr. S.B. Yawalkar, A.G.P. for respondent no.4/State
 None for respondent no. 2 though served.

**CORAM : R.M. BORDE AND
 SANGITRAO S. PATIL, JJ.**

**RESERVED ON : 29th NOVEMBER, 2016
 PRONOUNCED ON: 15th DECEMBER, 2016**

JUDGMENT (PER : SANGITRAO S. PATIL, J.):

Rule, returnable forthwith. With the consent of the parties, heard finally.

2. The petitioners, who are ex-employees of respondent no.1—Maharashtra State Textile Corporation Limited, (a Government of Maharashtra Undertaking), have sought refund of the ex-gratia amounts, which were received by them from respondent no.1, while taking voluntary retirement from service and which were repaid by them to respondent no.1, while getting re-employment with respondent no.3 LIDCOM.

3. The petitioners were employed by respondent no.1. Respondent no.1 wanted to close its mills, as it was sustaining losses. Respondent no.1 floated the Voluntary Retirement Scheme (for short, "V.R.S.") and offered its employees certain amounts by way of ex-gratia/compensation, in lieu of their retiring from the service voluntarily. The petitioners accepted that offer and sought V.R.S. on receiving the amounts of ex-gratia. Respondent no.1 issued a Circular dated 28.10.2002, informing its employees that in case they

showed willingness to take employment in other Corporations of the Government of Maharashtra, they would be absorbed in those Corporations on being selected. However, in that event they would be required to refund to respondent no.1 the ex-gratia amounts received by them earlier while taking V.R.S. The employees were called upon to send their Bio-Datas, in case they were willing to be absorbed in other Corporations on the above terms. After receiving the requests from the ex-employees, including the present petitioners, for re-employment, respondent no.1 recommended their names for being appointed with respondent no.3 – Corporation (LIDCOM). Accordingly, they were selected and appointed by respondent no.3. The petitioners refunded the amounts of ex-gratia to respondent no.1 on the following dates :-

Peti- tioner Nos.	Names of the Petitioners	Amount of V.R.S. ex-gratia	Date of Refund to respondent no.1
1	V.N. Bhat	5,75,000	14/09/2006
2	P.B. Patil	2,00,302	07/08/2006
3	N.M. Pawar	2,38,202	14/08/2006
4	T.M. Kulkarni	2,43,006	07/04/2008
5	D.B. Khot	1,83,220	14/08/2006
6	V.S. Malwadkar	1,69,667	02/12/2006
7	S.S. Aitwade	2,28,260	10/08/2006

4. The learned counsel for the petitioners submits that the petitioners were subjected to due process of selection by respondent no.3 and, thereafter, they came to be appointed afresh. Their previous services were not to be considered for seniority or for any other purposes. Respondent no.3 had made it clear that they would not be responsible for any dues and payments in respect of their previous services with respondent no.1. The service conditions of the petitioners were to be governed by the Rules framed by respondent no.3. The services of the petitioners with respondent no.1 had no nexus with their previous services with respondent no.1. Therefore, according to him, the petitioners were not liable to refund to respondent no.1 the amounts of ex-gratia received by them while taking V.R.S. However, due to threats and pressure exerted by respondent no.1, the petitioners were compelled to refund the amounts of ex-gratia to respondent no.1. He further submits that the petitioners are entitled to get the said amounts refunded from respondent no.1. He submits that the similarly situated employees had filed **Writ Petition No.1013 of 2010 (Hiralal s/o Dagduji Gatkane and**

another Vs. LIDCOM Sant Rohidas Charmodyog and Charmakar Vikas Mahamandal Maryadit and others), decided on ***10.07.2015***, wherein this Court held that respondent no.1 was not entitled to get back the amounts of ex-gratia from its ex-employees, who had taken V.R.S., on their getting re-employed in other Corporation. Therefore, relying on the said judgment, he submits that the amounts refunded by the petitioners may be ordered to be given back to them by issuing necessary writ or directions against respondent no.1.

5. One Mr.Ratnakar Ganpatrao Chegade, Senior Consultant (Personnel and Administration) of respondent no.1 filed affidavit-in-reply on behalf of respondent no.1 and opposed the petition. On the basis of the contents of the said reply, the learned counsel for respondent no.1 submits that the petitioners at their free-will resigned from the employment of respondent no.1. They accepted the benefits of V.R.S. based on the Gujrath Pattern. Accordingly, they were paid compensation towards full and final settlement of their claims while seeking V.R.S. They further voluntarily agreed to pay back the amounts of compensation in case

they got employment with any other Corporations of the Government of Maharashtra. Accordingly, on the recommendations of respondent no.1, the petitioners got re-employed with respondent no.3. Therefore, they voluntarily repaid the amounts of compensation received by them from respondent no.1 at the time of taking V.R.S. In the circumstances, they are estopped from claiming refund of the said amounts of compensation. He further submits that in case the petitioners had any grievance about refund of the amounts of compensation against respondent no.1, they should have approached the Civil Court or the Labour Court, where an alternate remedy was available for them for claiming back from respondent no.1 the amounts of compensation repaid by them. According to him, the remedy that was available to the petitioners for refund of the amounts of compensation has been lost due to lapse of time. He further submits that the employees similarly situated with the present petitioners had filed **Writ Petition No.2870 of 2009 (Padmakar P. Moon and Ors Vs. State and Ors.)**, decided on 19.11.2009, seeking refund of the V.R.S. benefits received by them from respondent No.1 with interest. However, the said petition came to be

disposed of by Nagpur Bench of this Court. He submits that the judgment in the case of **Hiralal Dagdu Gatkane (Supra)**, is not applicable to the facts of the present case. On these grounds, he submits that the petition may be dismissed.

6. Indisputably, the petitioners, who were in the employment of respondent no.1, accepted V.R.S., on receiving the amounts of ex-gratia/compensation offered by respondent no.1. Respondent no.1 issued a circular dated 28.10.2002 (Exh.R-3) informing the other Corporations of the Government of Maharashtra that due to closure of the Mills of respondent no.1, the Officers, Supervisors and Clerks have rendered jobless. It was further mentioned that in case they were willing to have employment in other Corporations, they would be absorbed on being selected in those Corporations provided, they should refund to respondent no.1 the amounts of compensation received from respondent no.1 while taking V.R.S. The said circular was displayed on the notice board of the Headquarters of respondent no.1 as well.

7. It seems that the petitioners applied for re-employment in response to the circular issued by respondent no.1. Accordingly their names were recommended by respondent no.1 to respondent no.3 for being absorbed in the services of respondent no.3. Considering the recommendations of respondent no.1, the letters were issued by respondent no.3 to the petitioners, stating the terms and conditions of employment and calling upon them to appear for interview along with their original certificates of eligibility along with true copies thereof. Accordingly, the petitioners appeared for interview. The petitioners came to be selected and appointed by respondent no.3 to the posts as suitable to their eligibility. The orders of appointment of the petitioners were sent by respondent no.3 to respondent no.1.

8. Thereafter, respondent no.1 sent letters dated 08.08.2006 to the petitioners informing that they were selected by respondent no.3 for the posts mentioned in the said letters. It was specifically mentioned in those letters that their appointments by respondent no.3 were fresh ones and the services rendered by them with

respondent no.1 would not be considered by respondent no.3 for the purpose of seniority or for any other purposes. It was further mentioned that since the petitioners were appointed by the Public Sector Corporation, it was obligatory on their part to refund to respondent no.1 the ex-gratia amounts received by them while taking V.R.S. The petitioners were called upon to deposit ex-gratia amounts, without interest, with respondent no.1 and on depositing the said amounts, collect their respective appointment letters to enable themselves to join the services with respondent no.3. The said letters are produced by the petitioners at Exh."B" (Colly.). Accordingly, the petitioners re-paid the amounts of ex-gratia. They have produced the receipts showing that they re-paid the ex-gratia amounts to respondent no.1 in response to the letters dated 08.08.2006. It seems that after repayment of the amounts of ex-gratia, the petitioners were given appointment orders by respondent no.1 in order to enable them to join employment with respondent no.3.

9. The above referred facts clearly disclose that the petitioners voluntarily deposited the amounts of

ex-gratia/compensation with respondent no.1 with a view to get employment with respondent no.3. The interview call letters as well as letters issued by respondent no.1 were sufficiently clear to indicate that the petitioners were going to be employed with respondent no.3 as freshers and their previous services rendered with respondent no.1 were not to be tagged with their new services for any purposes. Despite knowing this factual position, the petitioners voluntarily refunded the ex-gratia amounts to respondent no.1. If the petitioners had any grievance against the claim of respondent no.1 for refund of ex-gratia amounts, they should have approached the appropriate forum for redressal of their grievance prior to depositing the ex-gratia amounts with respondent no.1. There is nothing on record to show that the petitioners repaid the amounts of ex-gratia/compensation to respondent no.1 under protest. It is for the first time that on 24.08.2015 and then on 25.09.2015, that they raised grievance about re-payment of the amounts of ex-gratia/compensation made by them in the year 2006 to respondent no.1.

10. It is obvious that the petitioners have lost the remedy to recover the amounts of ex-gratia repaid by them to respondent no.1 by lapse of time. Moreover, the facts of the matter clearly disclose that the amounts of ex-gratia were refunded by the petitioners to respondent no.1 voluntarily, obviously with a view to get employment with respondent no.3. Respondent no.1 has produced a Chart (Exh.R-9) showing the benefits earned by the petitioners, after getting employment with respondent no.3, which are approximately ranging from Rs.25 Lakh to Rs.68 Lakh. In the circumstances, the petitioners are estopped from claiming refund of the amounts deposited by them with respondent no.1. The claim of the petitioners for refund of the said amounts is palpably beyond the period of limitation. In the circumstances, they are not entitled to get the relief sought from this Court in exercise of extraordinary jurisdiction under the Article 226 of the Constitution of India.

11. The judgment in the case of **Hiralal Dagduji Gatkane (supra)**, is distinguishable in view of the facts of the present matter. In that case, the

petitioners had not deposited the amount of ex-gratia/compensation with respondent no.1 while taking V.R.S. The claim for refund of the amounts of ex-gratia/compensation of the V.R.S. was made by respondent no.1 from the said petitioners vide letter dated 19.01.2010, i.e. after about four years of re-employment of the petitioners therein with respondent no.3. In the circumstances, it was held that respondent no.1 was not entitled to ask for refund of the amounts of ex-gratia/compensation from the petitioners therein.

12. As stated above, the petitioners herein had voluntarily deposited the amount of ex-gratia with respondent no.1 in order to seek employment with respondent no.3. In the circumstances, the above cited judgment would be of no help to the petitioners to claim refund of ex-gratia/compensation amounts from respondent no.1.

13. In the above circumstances, we are not inclined to allow the claim of the petitioners for refund of the amounts of ex-gratia/compensation from

respondent no.1. The petition is devoid of any substance and is liable to be dismissed. In the result, we pass the following order:

O R D E R

- (i) The writ petition is dismissed.
- (ii) Rule is discharged accordingly.
- (iii) The parties shall bear their own costs.

[SANGITRAO S. PATIL]
JUDGE

[R.M. BORDE]
JUDGE