

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION NO. 752 OF 2016**

Suryakant Ramchandra Mahadik

...Petitioner

VS.

Khatau Makanji Spinning and Weaving Mills Ltd.

....Respondent

Mr.Pankaj M. Patel for Petitioner.

Mr.Sudhir Talsania, Senior Advocate with R.N. Shah and A.G. Gopalan I/b.

Haresh Mehta & Co. for Respondent.

CORAM : S.C. GUPTE, J.**24 JUNE 2016****ORAL JUDGMENT :**

The writ petition filed by an erstwhile employee of the Respondent mills seeks to challenge an appellate order passed by the Industrial Court at Mumbai. By the impugned order, which was passed in a group of appeals, the Industrial Court dismissed the appeals of the employees, including the Petitioner herein, and allowed the appeals of the Respondent herein, challenging the order passed by the Controlling Authority under the Payment of Gratuity Act.

2 The Respondent was engaged in running a composite textile mill with spinning and weaving activities. It had two units in Mumbai, namely, at Byculla and Borivali, and one unit at Mahad in the State of Maharashtra. The establishments of the Respondent in Mumbai, both at Byculla and Borivali, were covered under the Maharashtra Industrial Relations Act, 1946 as also other labour legislations, including Payment of Gratuity Act. In 1989, the mills became a sick industrial company within the meaning of Section 3(1)(o) of the Sick Industrial Companies (Special Provisions) Act 1985 ("SICA"). During the pendency of the proceedings under SICA before BIFR, the Respondent entered into Memoranda of Understanding with two unions of its employees, namely, Rashtriya Mill Mazdoor Sangh ("RMMS") and Girni Kamgar Sangharsha Samiti

('GKSS'). The memoranda were tripartite agreements between the Respondent, the unions and a developer / investor. Under the tripartite agreement, the Respondent and the developer / investor agreed to settle all legal dues of the employees of the Respondent so that the land of the mills could be developed. The memoranda contemplated a Voluntary Retirement Scheme ("VRS") under which the workmen were to tender resignations. The memoranda were included as part of a rehabilitation scheme sanctioned by BIFR on 11 January 2007. In pursuance of the sanctioned scheme, which provided for a cut-off date of 31 March 2000 for payment of salaries and other dues of workmen of the Respondent, the Respondent proceeded to pay the dues of workmen, including gratuity. Nearly 5803 out of 6020 workmen of the Respondent accepted the scheme and payment of dues in accordance therewith. Some others subsequently accepted cheques sent to them towards payment of dues as per the scheme. About 98 workmen did not accept the scheme. Some of these workmen *inter alia* applied to the Competent Authority under the Payment of Gratuity Act (11th Labour Court at Mumbai) for gratuity dues. These included the Petitioner herein. The Labour Court, by its order dated 13 August 2013, partly allowed the applications of the workmen, directing the Respondent to pay the difference of simple interest at the rate of 3% per annum on the respective gratuity amounts from 1 June 2006 till the date of offer of payment of gratuity. This order was challenged both by the Applicant workmen and the Respondent mills before the Industrial Court, Mumbai. The appeals of the Applicant employees, including the Petitioner herein, were dismissed by the Industrial Court while the appeals of the Respondent mills were allowed. The Industrial Court held that the scheme sanctioned by BIFR, upon becoming final, was binding on all concerned, including the employees of the Respondent mills; that the scheme under SICA had an overriding effect on the Payment of Gratuity Act by virtue of Section 32 of SICA; that the cut-off date for cessation of employment of the employees and calculation of gratuity was 31 March 2000; and that there was no difference of gratuity or interest payable to the Applicant workmen. This order is challenged in the present petition.

continuous employment of the Respondent without any break in service since his appointment and till the closure of the mills in pursuance of a sanction obtained from the Competent Authority. It is submitted by Mr. Patel, learned Counsel for the Petitioner, that neither the scheme nor the settlement agreements between the Respondent mills and the two unions can override the statutory rights of workmen to receive gratuity in accordance with law. Learned Counsel relies on judgments of this court in the cases of **Swan Mills Ltd. Vs. Shri Umashankar M. Kumbhar**¹ as well as **Sarva Shramik Sangh vs. Swan Mills Ltd.**² in support of his contention. He also relies on a judgment of this court in the case of **Allahabad Bank vs. All India Allahabad Bank Retired Employees' Association**³ and a judgment of the Supreme Court in the case of **Modistone Ltd. Vs. Deputy Commissioner of Labour, Mumbai**⁴, and submits that statutory rights of workmen under the Payment of Gratuity Act cannot be defeated by any instrument or contract. Learned Counsel, in the alternative, also submits that the settlement agreements, which form part of the scheme, themselves contemplate payment of gratuity in accordance with law. He submits that the cut-off date of 31 March 2000 is only for payment of back wages and not for working out gratuity dues of workmen. He submits that those workmen, who do not opt for retirement under the scheme and tender their resignation, have to be terminated either by retrenchment or by closure of the undertaking, respectively, under Sections 25-N and 25-O of the Industrial Disputes Act. It is submitted that the Petitioner herein did not accept the VRS or tender his resignation in pursuance of the settlement agreements. It is submitted that there was no retrenchment or closure at any time prior to 23 October 2007. It is submitted that in the premises, the Petitioner is entitled to be paid gratuity on the basis that 23 October 2007 (the date of sanction of closure by the appropriate Government under Section 25-O) was the date of cessation of his service. Learned Counsel relies on a judgment of the Supreme Court in the case of **Oswal Agro Furane Ltd. Vs. Oswal Agro Furane Workers Union**⁵ in support of his contentions.

1 WP No.2341-2003 and other petitions decided on 25 July 2006

2 2014 III CLR 81

3 2010 I CLR 1

4 1999 II CLR 371

5 2005 I CLR 816

4 On the other hand, the case of the Respondent mills is that the scheme contemplates cessation of employments of all employees of the mills with effect from the cut-off date, namely, 31 March 2000. Mr. Talsania, learned Senior Counsel appearing for the Petitioner, submits that the scheme read as a whole provides for such cessation and closure of undertaking in pursuance thereof. He submits that the cut-off date of 31 March 2000 operates for all purposes, that is to say, for payment of wages as well as all other dues of workmen, including gratuity. Learned Counsel submits that a scheme sanctioned by BIFR is binding on all stakeholders, including the sick industrial company and its employees on and from the date of coming into operation of the sanctioned scheme. He submits that the provisions of SICA and any scheme made thereunder have an overriding effect over all other laws, including the Payment of Gratuity Act and other relevant labour legislations.

5 The central question, which arises for the consideration of this court in the present petition, is whether or not the employment of the Petitioner continued beyond the cut-off date of 31 March 2000. This question, in turn, depends on the answer to two other subsidiary questions – first, what is the effect of the sanctioned scheme, whether the employment of any employee of the Respondent mills, by reason of his refusal to actually accept the VRS or tender his resignation, continues beyond the cut-off date of 31 March 2000 and second, whether the provisions of the Industrial Disputes Act, particularly Sections 25-N and 25-O, as also the Payment of Gratuity Act, prevail over the provisions of SICA and the scheme sanctioned thereunder.

6 Insofar as the scheme itself is concerned, it is clear that it contemplates closure of the mills and cessation of the employment of all workmen of the mills (i.e. those who have not superannuated earlier) with effect from the cut-off date of 31 March 2000. In the first place, the two agreements dated 5 December 2005 and 6 December 2005 signed by the Mills with the workers' unions, namely, RMMS and GKSS, respectively, form part of the sanctioned scheme as its annexures. These tripartite memoranda of

understanding contemplate that all permanent and badli employees of Byculla and Borivali units of the Respondent mills would be paid their legal dues as provided therein on the basis of the cut-off date of 31 March 2000. The various stipulations of the memoranda have to be read together to bring out the purport of the scheme. The scheme firstly acknowledges the fact that the mills were closed from April 1997, and contemplate payment of all legal dues, including ad-hoc payment from April 1997 till 31 March 2000 in lieu of back wages at a particular rate corresponding to last drawn salary / wages. Those employees, who had obtained superannuation during the period from 1 March 1999 to December 2000 were not to be considered for the VRS, but were offered payments as provided in the memoranda. Those who had resigned / expired during the period from April 1997 and December 1999 were to be paid ex-gratia payment of Rs.15,000/- each including gratuity and other dues. Those employees who had resigned / expired during the year 2000 were to be paid ex-gratia amount of Rs.30,000/- each including their gratuity and other dues. All other employees, who were required to resign under the scheme, were to submit their resignations through their union to the employer. The dues of workers / staff were to be settled by the developer named in the scheme by making payment as per the terms of the two MOUs entered into with RMMS and GKSS. The sanctioned scheme envisaged a total payment of about Rs.120.14 crores towards full and final settlement of liability towards back wages, VRS payment, terminal dues including gratuity, etc. within one month from the sanction of the scheme. The scheme also provided that upon the sanction of the scheme and vesting of liabilities of the workmen to the developer / third party investor (SRPL), the workers / staff liabilities would stand extinguished and released. The scheme contemplated that upon such payment, the Government was to grant permission for closure of the Mumbai units and facilitate development of the land by the demerged company (SRTL) in accordance with DCR 58 framed for the purpose. In other words, the scheme contemplated acceptance of VRS and retirement benefits in accordance with the scheme read with the two memoranda of settlement as a concession duly made by the workmen of the Respondent mills.

sanctioned under Section 18 of SICA, after taking into account the concessions made by various stakeholders including the company, and its workmen, shareholders and creditors, sub-section (8) of Section 18 provides that on and from the date of coming into operation of the sanction, the scheme and its provisions shall be binding on the sick industrial company and also on the shareholders, creditors and employees of the company. Under Section 32 of SICA, the provisions of that Act and any rules or schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law except the provisions specifically referred to in Section 32. This position is reiterated by the Supreme Court in the case of **Raheja Universal Limited Vs. NRC Limited**⁶. The court has upheld the primacy of SICA and the scheme framed thereunder, and the unambiguous principle of law that its provisions shall normally override all other laws except the laws specifically excluded under Section 32 of SICA. The Court held SICA to be a special statute *vis-à-vis* the other laws.

8 Mr.Patel, learned Counsel appearing for the Petitioner, relied on the case of **Sarva Shramik Sangh** (supra) to submit that a scheme sanctioned under the provisions of SICA does not override the Payment of Gratuity Act or the provisions of Sections 25-N and 25-O of the Industrial Disputes Act. The decision in **Sarva Shramik Sangh** relies on a decision of a learned Single Judge of this Court in the case of **Swan Mills Ltd.** (supra). That decision, rendered prior to the Supreme Court judgment in the case of **Raheja Universal Ltd.** (supra), concerned the very industrial establishment, namely, Swan Mills Ltd., which was before the court in **Sarva Shramik Sangh** (supra). The court relied on clause (da) of Sub-section (1) of Section 18, which provides for incorporation of various measures for rationalisation of managerial personnel, suppressory staff and workmen in accordance with law. The Court held that by means of this provision, which was clarificatory in nature, the Parliament had reiterated the basic premise that rationalisation of personnel, staff and workmen must be in accordance with law. The Court noted that the scheme in the particular case provided for grant of certain benefits to workmen who were prepared to resign from service. As for the

6 AIR 2012 SUPREME COURT 1440

rest, the Court held, it was only evident that the severance of their status as workmen had to be brought about in accordance with law. The Court, accordingly, held that the scheme sanctioned in that case, consistent with the provisions contained in SICA, did not override the lawful entitlement of the workmen, other than those who offered to resign in accordance with the scheme. In their case, their services had to be dispensed with in accordance with the substantive provisions contained in the Industrial disputes Act, 1947. There is no general proposition in **Swan Mills'** case that a scheme sanctioned under SICA cannot override the provisions of Industrial Disputes Act. If and to the extent it is contended that the judgment does lay down such general proposition, it is doubtful whether such proposition would hold good after the Supreme Court judgment in the case of **Raheja Universal Ltd.** It is, however, submitted by Mr. Patel that even this aspect has been considered by our court in **Sarva Shramik Sangh** case (Per Jamdar, J.), where the learned Judge distinguished the judgment in the case of **Raheja Universal Ltd.** The learned Judge has come to the conclusion that in the case of **Raheja**, the Supreme Court was considering implementation of a commercial agreement between two parties, which was sought to be enforced contrary to the provisions of Section 22 of SICA and that the case of workmen, insofar as their claim for wages was concerned, stood on a different footing. Though I have doubts about whether this aspect considered by the learned Single Judge, can really distinguish the facts of the case before him from those of **Raheja Universal Ltd.**, I am not inclined to go into this larger question as to whether or not that the scheme sanctioned under Section 18 has an overriding effect over the provisions of labour laws generally, or the Payment of Gratuity Act and Industrial Disputes Act particularly, since I am convinced that the scheme squarely provides for cessation of employment of all employees of the Respondent mills with effect from the cut-off date of 31 March 2000 as a concession made by workmen and that there is no conflict between the provisions of the scheme and the Payment of Gratuity Act or the Industrial Disputes Act. Once it is held that the employees have ceased to be in the employment of the mills with effect from 31 March 2000 (which question has really nothing to do with the provisions of the Payment of Gratuity Act), the actual calculation of their dues would abide by the provisions of the Payment of Gratuity

Act. So also, workmen of an establishment having to resign or be treated as terminated as part of a settlement between the recognized union and the establishment is perfectly consistent with the provisions of Industrial Disputes Act. A scheme sanctioned under SICA making such settlement its part, does not conflict with those provisions. On the other hand, in the case of **Swam Mills Ltd.**, considered by the Chandrachud, J., as the learned Judge then was, the scheme provided for grant of certain benefits only to workmen who were prepared to resign from service. The learned Judge came to the conclusion that as for the rest, it was evident that the severance of their status as workmen had to be brought about in accordance with law. In other words, the learned Judge came to an express conclusion that there was nothing in the scheme, based as it was on the relevant provisions of SICA, to evince an intent to override the lawful entitlement of the body of workmen whose services could not be continued as a result of the closure of their departments, otherwise than by following the provisions of law. In our case, however, as held by me, the intention and purport of the scheme are clear, namely, that all employees have offered to accept the VRS and in any event, have ceased to be in the employment of the Respondent mills with effect from the cut-off date of 31 March 2000. This was an express concession made by the employees through their recognized unions as part of a settlement to form part of the sanctioned scheme. The scheme reflecting such concession, which is neither in breach of the Payment of Gratuity Act nor the provisions of Sections 25-N or 25-O of the Industrial Disputes Act, 1947, is binding on all workmen of the Respondent mills.

9 In the case of **Allahabad Bank** (supra), the question before the court was whether the employees, having exercised their option to avail of the benefits under the pension scheme, were estopped from claiming gratuity under the provisions of Payment of Gratuity Act. The Court held that the right to receive gratuity under the provisions of the Act could not be defeated by any instrument or contract. We are not concerned in the present case with a bilateral contract between the respondent mills and the employees including the Petitioner doing away with the workmen's claim of gratuity. We are concerned here with a concession made by the employees expressly as part of a scheme of

rehabilitation sanctioned by BIFR under the provisions of Section 18 of SICA. A scheme so sanctioned, as I have noted above, has a statutory force and is binding on the employees. Besides, it is nobody's case that reckoning the date of cessation of services as 31 March 2000, the employees are not paid gratuity in accordance with the Payment of Gratuity Act.

10 The case of **Modistone Ltd.** (supra) referred to by learned Counsel for the Petitioner also does not take his case any further. That was a case where the court was concerned with the bar of proceedings under Section 22 of SICA. After considering various judgments on the point, the court came to the conclusion that it was not open for the industrial company to take shelter of Section 22 in respect of workers' wages and other dues. Section 22 of SICA provides for suspension of proceedings. These proceedings include proceedings for winding up of the industrial company or for execution or distress or the like against any of the properties of the industrial company or for appointment of a receiver in respect therein. These proceedings also include a suit for recovery of money or enforcement of any security against the industrial company or of any guarantee in respect of any loans or advances made to it. The Court came to the conclusion that these proceedings do not include proceedings for enforcing legitimate claims of workmen for wages and other dues. We are not concerned here with the effect of Section 22 or suspension of legal proceedings provided for therein. We are concerned here with the effect of a sanction to a scheme under Section 18 of SICA, which is binding on all stakeholders including the employees of the industrial company. The judgment of **Modistone** (supra), thus, has no significance from our standpoint.

11 The sanctioned scheme in the present case was sought to be challenged by workmen who opposed the scheme. That challenge was repelled by a Division Bench of this Court (see order of Rebello & Kumbhakoni, JJ. Dated 15 October 2008 in Writ Petition No.1755 of 2008). Another unsuccessful attempt was made by a couple of workmen, one of them being the present petitioner himself, to claim wages on the basis that since they did not accept the VRS, they continued to be in the employment of the Respondent. That was by fling

applications before BIFR, which were rejected. This Court repelled a challenge to that rejection, refusing to interfere with the findings of the court below that the settlement / MOU signed by the Unions was binding on all employees working in the mills and that there was no challenge to the MOU. This Court also held that the petitioners had failed to establish that the MOU signed by the two Unions was against the public policy or against any provision of the Contract Act, and that since the establishment of the Respondent herein was not in existence, it having already been closed down, there was no question of directing the Respondent to provide any work to the petitioners. (See order dated 31 March 2015 in Writ Petition Nos.3113 of 2014 and 3114 of 2014.)

12 In short, the Courts have not found any merit in the claim that any workman of the Respondent was entitled to employment or payment of wages beyond the cut-off date of 31 March 2000. If the employment itself did not continue beyond 31 March 2000, there is no substance in the contention that any workman is entitled to payment of gratuity with effect from any date after 31 March 2000.

13 In the premises, there is no merit in the petition and the same is dismissed.

(S.C. Gupte, J.)