IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 419 OF 2017

RASHTRIYA MULA PRAVARA VIJ KAMGAR SANGH THROUGH ITS SECRETARY B S KHAVRE
VERSUS
MULA PRAVARA ELECTRICITY CO OPERATIVE SOCIETY LTD THROUGH ITS MANAGING DIRECTOR

WITH WP/420/2017 WITH WP/421/2017 WITH WP/422/2017 WITH WP/423/2017 WITH WP/424/2017 WITH WP/425/2017 WITH WP/426/2017 WITH WP/427/2017 WITH WP/428/2017 WITH WP/429/2017 WITH WP/430/2017 WITH WP/431/2017 WITH WP/432/2017 WITH WP/433/2017 WITH WP/434/2017 WITH WP/435/2017 WITH WP/436/2017 WITH WP/437/2017 WITH WP/438/2017 WITH WP/439/2017 WITH WP/440/2017 WITH WP/441/2017 WITH WP/442/2017 WITH WP/443/2017 WITH WP/444/2017 WITH WP/445/2017 WITH WP/446/2017 WITH WP/447/2017 WITH WP/448/2017 WITH WP/449/2017 WITH WP/450/2017 WITH WP/451/2017 WITH WP/452/2017 WITH WP/453/2017 WITH WP/454/2017 WITH WP/455/2017 WITH WP/456/2017 WITH WP/457/2017 WITH WP/458/2017 WITH WP/459/2017 WITH WP/460/2017 WITH WP/462/2017 WITH WP/463/2017 WITH WP/464/2017 WITH WP/465/2017 WITH WP/466/2017 WITH WP/467/2017 WITH WP/468/2017 WITH WP/469/2017 WITH WP/470/2017 WITH WP/471/2017 WITH WP/472/2017 WITH WP/473/2017 WITH WP/474/2017 WITH WP/475/2017 WITH WP/476/2017 WITH WP/477/2017 WITH WP/478/2017 WITH WP/479/2017 WITH WP/480/2017 WITH WP/481/2017 WITH WP/482/2017 WITH WP/483/2017 WITH WP/484/2017 WITH WP/485/2017 WITH WP/486/2017 WITH WP/487/2017 WITH WP/488/2017 WITH WP/489/2017 WITH WP/490/2017 WITH WP/491/2017 WITH WP/492/2017 WITH WP/493/2017 WITH WP/494/2017 WITH WP/495/2017 WITH WP/496/2017 WITH WP/497/2017 WITH WP/498/2017 WITH WP/499/2017

Mr.P.V.Barde, Advocate for the petitioners.
Mr.V.D.Hon, Senior Counsel h/f Mr.A.V.Hon, Advocate for respondent No.1.
Mr.U.S.Malte, Advocate for respondent No.2.
Respondent No.3 served.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 01/03/2017

PER COURT :

1. In all these matters, the petitioners have challenged the common judgment dated 09/11/2016 delivered by the Industrial Court, Ahmednagar by which complaint (ULP) Nos.1/2012 and connected identical complaints have been dismissed.

2. I have considered the strenuous submissions of Mr.Barde, learned Advocate for the petitioners, Mr.Hon, the learned Senior Advocate on behalf of respondent No.1 / Co-operative Society and Mr.Malte, learned Advocate appearing on behalf of respondent No.2. None appears for respondent No.3 MERC though served. With the assistance of the learned Advocates, I have gone through the petition paper books.

3. The undisputed factors in all these identical cases are as under :-

[a] In 1971, the Government of Maharashtra issued a license to respondent No.1 Mula Pravara Electricity Co-operative Society Ltd., (hereinafter referred to as the 'Society') for distribution of electricity in some parts of the Ahmednagar

District.

[b] The Society would purchase electricity from the erstwhile Maharashtra State Electricity Board, presently respondent No.2 / Electricity Distribution Co. (hereinafter referred to as the Company) and supply it to agriculturists.

[c] About 1500 workers were engaged by the Society.

[d] The work allotted to such workers was with regard to ensuring the distribution of electricity, maintenance of machines and meters and connected affairs.

[e] Considering the policy of the Government at the relevant time, no meters were installed with agriculturists in the said Ahmednagar District.

[f] There was no method for precisely measuring the actual consumption of electricity by the agriculturists.

[g] The standard method of approximately assessing the consumption of electricity by the agriculturists, was on the basis of the capacity of the motors and electrical equipments used by the agriculturists for agriculture purposes.

[h] The Society had to pay the charges for consumption of electricity as per actual consumption, to the company.

[i] Considering the above imbalance, in 2010, the Society owed about Rs.2,300 crores to the Government as it ran into losses.

[j] One of the reasons for non-renewal of the license w.e.f. 31/01/2011 was the high arrears of payments by the Society.

[k] From 31/01/2011, the State Government refused to renew the Electricity Distribution License to the Society.

[l] The company was one of the applicants for seeking distribution license in 2011.

[m] The MERC/respondent No.3 granted the distribution license to the Company for distribution of electricity.

[n] The MERC has worked out the modalities though litigation in this regard is pending before the Hon'ble Supreme Court.

[o] From 01/02/2011, the Society was left with no work and all the workers became idle.

[p] The Society had no work to offer to these workers as its contract of distribution of electricity was brought to an end.

[q] There were 3 unions of workers active in the Society namely the (1) Mula Pravara Veej Kamgar Sangh, (2) Ahmednagar Zilla Shramik Sabha and the petitioner (3) Rashtriya Mula Pravara Veej Kamgar Sangh.

[r] The first two unions represented about 1300 workers and the third union represented less than 200 workers.

[s] There was a voluntary retirement scheme floated in 2008 which had subsequently been concluded.

[t] It appears that these workers had approached the Society for seeking a solution to the loss of work and the Society agreed to entertain applications for VRS.

[u] The VRS floated on 26/07/2011 was offered on the same terms and all the workers notwithstanding their Union affiliations, applied for acceptance of the VRS. However, the dead lock continued.

[v] On 12/12/2012, a settlement was signed under section 2(p) and 18 of the Industrial Disputes Act, 1947 (wrongly typed as 1948), with the first two unions representing the majority who agreed to accept the benefits of the VRS with the cut-off date 31/05/2012 for the purpose of calculating the payments.

[w] Those employees, who were on the rolls of the Society as on 31/05/2012, were held eligible for the VRS.

[x] It was specifically agreed that all the employees would stand disengaged and employer-employee relationship would come to an end on 31/05/2012.

[y] Each of the VRS beneficiary would be paid provident fund accumulations, sick leave encashment, gratuity and 25% of the basic pay with dearness allowance for the period from the cut-off date till their date of superannuation as per the records.

[z] PF contributions and gratuity for the period from the cut-off date till superannuation would not be available.

[aa] The petitioner/Union which represents about 150 workers approximately before this Court and who were before the Industrial Court, was not a party to the settlement dated 12/12/2012.

[bb] The Society issued a circular / notice on 18/12/2012 indicating that the applications for VRS filed by the workers were accepted and if they desire to obtain any copy of the said order, they could meet the Management. These petitioners did not raise any objection.

[cc] The salient feature of the settlement dated 12/12/2012 was that the amounts would be paid to the beneficiaries as and when the Government would render its financial assistance.

[dd] The petitioner/Union and some of the workers who are before this Court, filed ULP complaints before the Industrial Court contending that they were not agreeing with the VRS, they are compelled to accept the VRS and the wages have not been paid to them.

[ee] All these original complainants have filed their complaints after the Society began the payments of the VRS amounts on 12/01/2013.

[ff] The complaint filed by the third Union is also dated 20/01/2013, when the payments of the VRS commenced on 12/01/2013.

[gg] It is stated that only 1 or two complaints were filed one day prior to the commencement of the disbursement of the VRS amounts.

[hh] All these petitioners have accepted all the amounts under the VRS scheme with the cut-off date of 31/05/2012 and have continued with the litigation on the ground that they are not accepting the said cut off date.

4. In the light of the above, I have considered the strenuous submissions of all the learned Advocates.

5. There is no dispute that all these complainants before the Industrial Court accepted the VRS benefits which were paid to them by the Society on the basis of the cut-off date 31/05/2012. They have raised a grievance in their complaints that the Society should have granted them the VRS benefits upto 18/12/2012 when the notice declaring acceptance of the VRS applications was put up by the Society. Contention is that though these complainants may not canvass against the VRS, they are not agreeing to accept the VRS

with the cut-off date 31/05/2012.

6. It is trite law that the employer is the master of the Voluntary Retirement Scheme. He would frame the conditions in the said scheme. All the workers may not find favour with the modalities of the VRS and may decline to accept the VRS. Those who accept the terms of the VRS, receive its benefits. Acceptance of the money package is indicative of acceptance of the VRS.

7. The fact situation before this Court is that all these complainants have taken all the benefits of the VRS upto the cut-off date 31/05/2012 and are litigating against the Society in their ULP complaints on the ground that they should get the benefits upto 18/12/2012 and they are not aggreable to accept the benefits upto the cut off date 31/05/2012.

8. I find that these complainants have shrewdly accepted the entire benefits under the VRS and the payments made by the Society, as and when the funds were made available by the Government. Only these employees are litigating against the Society for seeking enhancement in financial benefits on the plea that because the notice of acceptance of VRS was announced on 18/12/2012, these

workers should get their entire salary from 01/06/2012 till 18/12/2012.

9. As such, on the one hand, these complainants have taken all the benefits under the VRS and on the other, they claimed that they should be getting wages till 18/12/2012 though they were sitting idle from 01/02/2011 till 18/12/2012. It is not disputed that the Society paid salary to these complainants upto 31/05/2012 though they were sitting idle without work and the Society had no business activity for revenue generation.

10. It cannot be ignored and is admitted that the Society factually lost all business from 01/02/2011 and was left with no work to be allotted to all the 1500 employees. It was in this backdrop that more than 1300 workers represented by the two major unions entered into a settlement and agreed to accept all benefits under the VRS and unpaid salaries till 31/05/2012 though they were sitting idle from 01/02/2011 till 31/05/2012. As this settlement was signed on 12/12/2012, the Society issued the notice on 18/12/2012 accepting the VRS applications. None of the petitioners have withdrawn their applications. All accepted the benefits.

11. The Hon'ble Apex Court, in dealing with a somewhat similar situation in the case of Man Singh Vs. Maruti Suzuki India Limited and another [2011(14) SCC 662], noticed that the workers who had accepted the VRS, had challenged the same and were demanding more benefits by criticizing the said VRS. The Hon'ble Apex Court in paragraph Nos. 6 to 9 in the Man Singh judgment (supra) has observed as under :-

> "*6. In Ramesh Chandra Sankla and Ors. v. Vikram Cement and Ors. a number of workmen of Vikram Cement Company who had ceased to be the employees of Company after accepting full benefits under the scheme of voluntary retirement moved the Labour Court under Section 31 of the Madhya Pradesh Industrial Relations Act, 1960 making the same allegations against the Company as the Appellant in this case. In that case, the Labour Court declined to decide certain issues framed at the instance of the management as preliminary issues. The management's appeal against the decision of the Labour Court not to decide those issues as preliminary issues was rejected by the Industrial Court. The writ petition filed by the management was dismissed by a learned single Judge on the ground that the orders passed by the Labour Court and affirmed by the Industrial Court were interlocutory in nature. The management took the matter before the Division Bench which held that the writ petitions filed by the Company were under Article 227 of the Constitution and the single Judge was exercising supervisory jurisdiction; hence, intra-court appeals were not maintainable*

and the appeals filed by the Company were liable to be dismissed on that score alone. Even while holding that the management's appeals were liable to be dismissed as not maintainable, the Division Bench went on to hold that since the workmen had approached the Labour Court after having received the benefits under the scheme, it would be equitable to direct the concerned employees to return the benefits so received to the employer subject to the undertaking by the Company that in the event the Labour Court allowed the claim and granted benefits to the workmen, the same would be restored to them by the Company with interest at the rate of 6% per annum.

7. The workmen challenged the order of the Division Bench before this Court inter alia on the ground that having held that the management's appeals were not maintainable, the Division Bench had No. jurisdiction to make the impugned direction. This Court repelled the workmen's contention and in paragraphs 100 and 101 of the decision held and observed as follows:

> *"100. Even otherwise, according to the workmen, they were compelled to accept the amount and they received such amount under coercion and duress. In our considered opinion, they cannot retain the benefit if they want to prosecute claim petitions instituted by them with the Labour Court. Hence, the order passed by the Division Bench of the High Court as to refund of amount cannot be termed unjust, inequitable or improper. Hence, even if it is held that a "technical" contention raised by the workmen has some force,*

this Court which again exercises discretionary and equitable jurisdiction under Article 136 of the Constitution, will not interfere with a direction which is in consonance with the doctrine of equity. It has been rightly said that a person "who seeks equity must do equity". Here the workmen claim benefits as workmen of the Company, but they do not want to part with the benefit they have received towards retirement and severance of relationship of master and servant. It simply cannot be permitted. In our judgment, therefore, the final direction issued by the Division Bench needs No. interference, particularly when the Company has also approached this Court under Article 136 of the Constitution.

101. For the foregoing reasons, in our opinion, the order passed by the Division Bench of the High Court deserves to be confirmed and is hereby confirmed. The payment which is required to be made as per the said order should be made by the applicants intending to prosecute their claims before the Labour Court, Mandsour. In view of the fact, however, that the said period is by now over, ends of justice would be served if we extend the time so as to enable the applicants to refund the amount. We, therefore, extend the time up to 31-12-2008 to make such payment. We may, however, clarify that the claim petitions will not be proceeded with till such payment

is made. If the payment is not made within the period stipulated above, the claim petitions of those applicants will automatically stand dismissed. The Labour Court will take up the claim petitions after 31-12-2008."

8. The present case is squarely covered by the decision of this Court in Ramesh Chandra Sankla (supra). We, thus, find no merit in the submission made on behalf of the Appellant that the High Court had no jurisdiction to make a direction for refund of the entire amount received by the Appellant as a condition precedent for the reference to proceed.

9. We, however, feel that the imposition of interest @ 7.5% per annum was a little harsh and unwarranted. Having regard to the fact that the appellant is no longer in service, we feel that the ends of justice would meet if the direction for refund is confined only to the principal amount received by the appellant under VRS. We, accordingly, modify the order of the High Court to this limited extent and direct the appellant to refund the amount received by him under VRS, without any interest. In case the amount, as directed, is deposited by the appellant by 30-11-2011, the reference shall proceed in accordance with law, otherwise it would stand quashed."

12. The Hon'ble Apex Court in the matter of Ramesh Chandra Sankla etc. Vs. Vikram Cement Etc.[(2008) 14 SCC 58] has observed

as under :-

> *" In our considered opinion, taking into account facts and circumstances in their entirety, the order passed and direction issued by the Division Bench of the High Court was in furtherance of justice. Not only it has not resulted in miscarriage of justice, in fact it has attempted to put status quo ante by balancing interests and leaving the matter to be decided by a Competent Authority in accordance with law.*
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> *Even otherwise, according to the workmen, they were compelled to accept the amount and they received such amount under coercion and duress. In our considered opinion, they cannot retain the benefit if they want to prosecute Claim Petitions instituted by them with the Labour Court. Hence, the order passed by the Division Bench of the High Court as to refund of amount cannot be termed unjust, inequitable or improper. Hence, even if it is held that a `technical' contention raised by the workmen has some force, this Court which again exercises discretionary and equitable jurisdiction under Article 136 of the Constitution, will not interfere with a direction which is in consonance with the doctrine of equity. It has been rightly said that a person "who seeks equity must do equity". Here the workmen claim benefits as workmen of the Company, but they do not want to part with the benefit they have received towards retirement and severance of relationship of master and servant. It simply cannot be permitted. In our judgment, therefore, the final direction issued by the Division Bench needs no interference, particularly when the Company has also*

approached this Court under Article 136 of the Constitution."

13. There is no dispute that the Society in these cases, has paid all the legal dues of all the workers in the light of the settlement dated 12/12/2012 and upto the cut-off date agreed between the parties which is 31/05/2012. If these complainants/petitioners herein were not agreeable with the modalities of the settlement and the cut-off date 31/05/2012, they could have rejected the VRS and they could have said so in their complaints that they are not agreeable to accept any benefit in the light of the cut-off date 31/05/2012. What has been done is that they accepted all the benefits under the VRS and at the same time, continued in litigation practically demanding that the cut-off date introduced by the Management should be altered and that should be further extended upto 18/12/2012.

14. The Industrial Court or even this Court cannot direct the employer to modify its VRS only to suit the convenience of a handful of workers when the two unions representing the majority workmen of about 1300 workers had agreed to the terms of the settlement and accepted the VRS by the cut-off date. None of these petitioners before this Court are agreeable to deposit their entire benefits of the VRS without interest in order to litigate against the VRS cut-off date

seeking more benefits under the orders of the Industrial Court.

15. Learned Advocate for the petitioners clearly stated that, *"Why should these petitioners deposit their VRS benefits in the Court."* This stand of the original complainants cannot be entertained keeping in view the law laid down by the Hon'ble Apex Court in the matter of Ramesh Chandra and Man Singh (supra).

16. The Industrial Court has dismissed the ULP complaints by the impugned judgments after concluding that once these employees have accepted the benefits of the VRS, they cannot claim service benefits upto 18/12/2012 on the ground that they were sitting idle till the said date and they are not agreeing with the settlement signed by the majority unions. In my view, once these complainants before the Industrial Court have taken all the benefits of the VRS as like the entire lot of 1500 workers, they cannot be permitted to seek a direction from the Industrial Court for extending the date of VRS to 18/12/2012 and seek all salary benefits for the period of June 2012 to December 2012.

17. In the light of the above, I do not find that these petitions deserve to be entertained. Keeping in view the law laid down by the

Hon'ble Apex Court in the matter of Syed Yakoob Vs.K.S.Radhakrishnan and others [AIR 1964 SC 477] and Surya Dev Rai Vs. Ram Chander Rai [2003(6) SCC 682], I do not find that the impugned judgment of the Industrial Court could be termed as being perverse or erroneous. These petitions are, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)