

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION NO.490 OF 2015
IN
COMPANY PETITION NO.385 OF 2002

Vishwanath Namdeo Patil & Ors.	...	Applicants
<i>In the matter between</i>		
B.I.F.R.	...	Petitioner
<i>Vs.</i>		
Swadeshi Mills Co. Ltd. (In Liquidation) & Ors.	...	Respondents

Ms. Jane Cox, i/by Mr. Manmohan Amonkar, for the Applicants.

Mr. Vishal Kanade, a/w. Mr. Tapan Deshpande and Ms. Priya Patwa, i/by Cyril Amarchand Mangaldas Advts., for Respondent No.2.

Mr. Mohit Arora, a/w. Mr. S.A.K. Najam-es-Sani, i/by M/s. Maneksha & Sethna, for Respondent No.3.

CORAM : A.S. GADKARI, J.

DATE : 14TH JULY, 2017.

P.C. :

1. Heard learned counsel for the respective parties.
2. By the present application, the Applicants have prayed for the following reliefs :-

“(a) For an order of this Hon’ble Court setting aside the re-adjudication by the Official Liquidator of the Notices of Admission of Proof issued to the workmen pursuant to the order of this Hon’ble Court dated 28.10.2013 in Company Application No.487 of 2012 to the extent that the claim for bonus at the rate of 8.33% has not been

allowed and the age of retirement has been held to be 60 years and not 63 years;

(b) For an order of this Hon'ble Court directing the Official Liquidator to allow as a preferential claim u/s. 529A of the Companies Act, 1956, the claim of bonus for the period 01/01/2000 to 30/09/2000 and bonus as non-preferential claim for the period 01/10/2000 to 05/09/2005 and to treat the age of retirement 63 years."

3. At the outset, learned counsel appearing for the Applicants, on instructions, submitted that Applicants are not pressing prayer clause (a). In view thereof, prayer clause (a) is not taken into consideration.

4. In the earlier round of litigation, i.e. in Company Application No.487 of 2012 preferred by the Applicants, this Court has held the date "5th September 2005", on which the final order of winding-up, in the Company Petition, was passed by this Court, as the date of severance of the services of the Applicants.

5. By now, it is the settled position of law that the workers cannot have preferential claim under Section 529A of the Companies Act, 1956, to claim bonus. It is the case of the Applicants that the Official Liquidator, by its order dated 13th April 2014, has wrongly rejected their claim for bonus, as it is not admissible as priority under Section 529A of the Companies Act, 1956.

6. The record indicates that the Official Liquidator has not calculated claim of the Applicants for bonus for the period for which they are entitled as non-preferential claim. The Official Liquidator is hereby directed to calculate the claim of the Applicants for bonus as non-preferential claim for the period for which they are entitled for.

7. As far as age of the members of the Applicants is concerned, according to me, a blanket order, *that their age of retirement be treated as 63 years*, cannot be passed and the individual worker will have to establish his case before the Official Liquidator at the time of adjudication of the said claim. The members of the Applicants are granted liberty to prove their said claim before the Official Liquidator.

8. The learned counsel for the Applicants, on instructions, submitted that the Applicants will submit a fresh chart of calculation of each of its members, which would include the period for which the bonus is claimed and the quantum of bonus. The Official Liquidator shall verify the said fact before releasing any amount of bonus to the concerned worker.

9. The present application is disposed off in the aforesaid terms.

[A.S. GADKARI, J.]