

HON'BLE SRI JUSTICE S.V.BHATT

COMPANY APPEAL No.26 OF 2017

ORDER:

Heard Mr.Ravinder Rao, learned senior counsel for appellants and Mr.Anil Kumar for respondent.

The Company Appeal challenges Form-69 read with order dated 16.03.2017 of the Official Liquidator whereunder the claims made by one D.Raju for himself and on behalf of 68 workmen of erstwhile Allwyn Watches Mazdoor Sangh were substantially rejected. Before adverting to the averments in the present claim or appeal, the following dates and events are stated for convenience and also appreciate the enormous delay occurring in adjudication of claims.

The 69 workmen/appellants were working in Allwyn Watches Limited. Allwyn Watches Limited, the company in liquidation, in the year 1998 offered Voluntary Retirement Scheme (VRS) to the employees working in Allwyn Watches Limited. On 25.06.1999, the employees who accepted the offer under VRS were relieved from the service. The appellants herein did not accept the VRS scheme and continued to work in the company. On 25.01.2000, G.O.Rt. No.174 was issued by the Government granting permission under Section 25(O) of the Industrial Disputes Act (for short 'the I.D. Act') for closure with effect from 29.02.2000. Allwyn Watches Limited, it is alleged on 29.02.2000 was closed. The complaint of workmen is that without following the procedure contemplated under Section 25FFF of I.D. Act the services of the workmen who chosen to stay

back in employment, without accepting VRS, were terminated. W.P. No.3599 of 2000 and batch of writ petitions were filed challenging termination of workmen from service. On 04.08.2010 W.P.No.3599 of 2000 and batch were disposed of. Admittedly, the gist of the order of this Court is that G.O.Rt.No.174 dated 25.01.2000 was held as valid, however, the termination of services of workmen/appellants herein on 29.02.2000 was found to be illegal, contrary to Section 25F and 25FFF of I.D. Act. It was further held by this Court that the petitioners therein are entitled to consequential benefits such as reinstatement into service etc. The order in W.P. No.3599 of 2000 and batch dated 04.08.2010 had become final. On 11.12.2006, i.e. in the interregnum between termination and the order of this Court in C.P. No.108 of 2001, Allwyn Watches Limited in liquidation was ordered to be wound up.

The appellants filed Company Appeal Nos. 3 and 10 of 2016 and Company Appeal (SR) No.8465 of 2016 against the order of Official Liquidator accepting the claim of workmen/appellants to the extent of Rs.2,31,05,982/- as secured debt and sum of Rs.46,25,029/- as unsecured debt and rejecting the balance claim as inadmissible. On 27.12.2016, the appeals were disposed of by setting aside the order dated 29.02.2016 and claims were remanded to Official Liquidator for passing fresh order. The Official Liquidator through notice of admission and rejection order dated 16.03.2017, a total sum of Rs.14,47,864/- has been adjudicated as admitted.

Mr.Ravinder Rao appearing for appellants challenges the order under appeal, firstly, by contending that while disposing of Company Appeal Nos. 3,10 of 2016 etc. on 27.12.2016, this Court was pleased to set aside the order dated 29.02.2016 and remanded the case to Official Liquidator for passing fresh order in accordance with law. Therefore, he contends by laying emphasis on the direction of this Court viz. that after remand the direction was to Official Liquidator to hear and adjudicate the claims of the appellants. Now the grievance of appellants is that the Official Liquidator did not hear the claims, but has merely accepted the report given by Hon'ble Sri Justice B.Seshasayana Reddy (Retired) who was appointed as Adjudicator to decide the claims pending before the Official Liquidator. The first objection in this behalf is the Adjudicator who has heard the objections could not have disposed of the claims in view of the direction issued by this Court and secondly, in law it is only the Official Liquidator who should hear and adjudicate the claims of workmen. According to Mr.Ravinder Rao on this short ground alone, the order under appeal is liable to be set aside and matter remanded to Official Liquidator for consideration and disposal afresh strictly in accordance with law. He further contends that the rejection of claim for a sum of Rs.8,58,48,931/- is completely illegal, untenable and contrary to the order passed by this Court in W.P. No.3599 of 2000 and batch dated 04.08.2010, for according to him, once the termination is found to be not conforming to Section 25FFF of I.D. Act and a person is reinstated the person is deemed to be continuously employed in the Industry

and is entitled for wages from the date of termination till the date of winding up order passed by this Court i.e. 11.12.2006. He contends that the workmen are entitled to wages etc. till the order of winding up was passed and for this proposition he relied on Bank of Maharashtra v. Pandurang Keshav Gorwardkar¹ which reads as follows:

“This provision follows adjudication of claims made by a bank or financial institution. It comes into play where a certificate of recovery is issued against a company registered under the Companies Act which is in winding up. Where the debtor company is not in liquidation, Section 19(19) does not come into operation at all.

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Once the company is in winding up, the only competent authority to determine the workmen's dues and quantify workmen's portion is the liquidator. The liquidator has the responsibility and competence to determine the workmen's dues where the debtor company is in liquidation.

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The relevant date for arriving at the ratio at which the sale proceeds are to be distributed amongst workmen and secured creditors of the debtor company is the date of the winding-up order and not the date of sale.”

According to him, the appellants are entitled for wages up to the date of winding up order. The Official Liquidator has reconsidered the allowed portion and reduced the same through the orders impugned in the appeal. According to him, the procedure followed is illegal and untenable. He further contends that the workmen/appellants are entitled for Provident Fund, ESI, Gratuity, Bonus etc. Non-consideration of the case from right

¹ (2013) 7 SCC 754

perspective denied to workers/appellants the statutory benefits as well. He prays for allowing the appeal.

Mr. Anil Kumar appearing for Official Liquidator does not dispute the chronology, dates and events referred to above. As a view is taken by the Official Liquidator firstly he tries to justify the order by contending that the order dated 27.12.2016 in C.P.Nos.3, 10 of 2016 and C.P.(SR) No.8465 of 2016 was passed on an affidavit filed by the Official Liquidator and in the affidavit Official Liquidator has gone on record by saying that the workmen/appellants are entitled only to four months' salary. Coming to the period up to which the workmen are entitled for wages, he does not dispute the binding precedent in Pandurang Keshav Gorwardkar case (supra).

I have heard the learned counsel and perused the record.

The Official Liquidator was also present during and in the course of hearing. The Official Liquidator has stated that to the extent of adjudication of claims either in law or as per the directions issued by this Court Official Liquidator is primarily responsible and Official Liquidator can only take assistance of Chartered Accountant, Company Secretary etc.

The Official Liquidator and the counsel representing Official Liquidator have noticed the defect in the order passed by Official Liquidator and have consented to setting aside the order and remit the claim back to Official Liquidator for consideration and adjudication strictly in accordance with law. The statement is placed on record and accepted.

The Official Liquidator further agrees to pass orders on the claims filed by the workmen/appellants within three weeks from the date of receipt of a copy of this order. The issue of workmen's entitlement is pending either in this Court or before the Official Liquidator for considerable period. This Court is of the view that the Official Liquidator who has accepted the delay in the matter would complete adjudication within the time stipulated by this Court.

Accordingly, the Company Appeal is allowed and remanded.

S.V.BHATT,J

Date:09.02.2018
Note:
C.C. in one week.
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