

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1715 OF 2000

Avinash Prabhakar Phad,
Age : 34 years,
R/o 2238, Vanjar Galli, Ahmednagar.

...PETITIONER

-VERSUS-

General Manager,
Videocon India Limited, Ahmednagar.

...RESPONDENT

**WITH
WRIT PETITION NO.1773 OF 2000**

Rajendrakumar Madhavrao Shinde,
Age : Major, Now residing at Nirmal Nagar,
Row Housing Society, A-86, Savedi,
Aurangabad Road, Ahmednagar.

...PETITIONER

-VERSUS-

M/s Videocon India Limited.,
Gangapurwala Gin Compound,
Station Road, Ahmednagar.

...RESPONDENT

**WITH
WRIT PETITION NO.1777 OF 2000**

Suryakant s/o Sadashiv Dani,
Age : Major,
R/o Gujar Lane,
Opp. Bhaktache Mandir, Ahmednagar.

...PETITIONER

-VERSUS-

M/s Videocon India Limited.,
Gangapurwala Gin Compound,
Station Road, Ahmednagar.

...RESPONDENT

**WITH
WRIT PETITION NO.4482 OF 2000**

Nagar Zilla Mazdoor Sangh,
Ahmednagar.
Through its General Secretary,
residing at Flat No.5/101,
Nirmal Chambers, Lal Talki Road,
Ahmednagar.

...PETITIONER

-VERSUS-

M/s Videocon India Limited.,
Gangapurwala Gin Compound,
Station Road, Ahmednagar.

...RESPONDENT

**WITH
WRIT PETITION NO.5203 OF 2000**

Nagar Zilla Mazdoor Sangh,
Shop No.4, Nirmal Chambers,
Ahmednagar, now having
the address : Flat No.5/101,
Nirmal Chambers, Lal Talki Road,
Ahmednagar.
Through its General Secretary.

...PETITIONER

-VERSUS-

M/s Videocon India Limited.,
Gangapurwala Gin Compound,

Station Road, Ahmednagar.

...RESPONDENT

...

Advocate for the Petitioners : Shri V.J.Dixit, Senior Advocate a/w Shri L.V. Sangit.

Advocate for the Respondent/ Company : Shri R.N.Dhorde, Senior Advocate a/w Shri Mobin Shaikh.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 27th March, 2018

Oral Judgment :

1 In all these identically placed matters, which have been clubbed together, the individual workers as well as the Trade Union, who are the Second Party to the reference proceedings before the Labour Court and the Industrial Tribunal, are aggrieved by the judgments and awards dated 06.10.1997 and 30.04.1998. Though the reference proceedings have been partly answered in the affirmative, these Petitioners are aggrieved as they were claiming reinstatement with continuity and full back wages on the ground that the closure effected by the Respondent/ Management is a farce and their resignations amount to forced resignations.

2 Barring the first Writ Petition No.1715/2000, wherein the Petitioner (Avinash Prabhakar Phad), has been granted lesser compensation since he was subjected to the disciplinary proceedings and

was dismissed from service, in the second and third petitions, the Labour Court and in the last two petitions, the Industrial Tribunal have granted closure compensation to each of the employees, who were parties to the litigation.

3 In the first Writ Petition No.1715/2000, the Petitioner (Avinash Phad) has been granted Rs.15,000/- as compensation by the Labour Court. In the second Writ Petition No.1773/2000, the Petitioner (Rajendrakumar Shinde) has been granted Rs.30,000/- as compensation by the Labour Court. In the third Writ Petition No.1777/2000, the Petitioner (Suryakant Dani) has been granted Rs.28,800/- as compensation by the Labour Court. In the fourth and fifth Writ Petition Nos.4482/2000 and 5203/2000, wherein the Union had challenged the closure before the Industrial Tribunal in Reference (IT) Nos.2/1991 and 3/1991, the Industrial Tribunal has granted closure compensation at the rate of Rs.40,000/- per head to those employees who were concerned in the said industrial disputes.

4 I have considered the strenuous submissions of Shri Dixit, learned Senior Advocate along with Shri Sangit, learned Advocate and Shri Dhorde, learned Senior Advocate along with Shri Shaikh, learned Advocate, appearing for the respective sides. Pursuant to the strenuous submissions of the learned Senior Advocates, I have gone through the record available with their assistance.

5 It is not in dispute that in all these cases, the Petitioners, who were the second party workman/ Union, were aggrieved by the closure declared by the Management on 10.09.1993. In the first three petitions, the individual workers had approached the Labour Court by way of references and in the last two petitions, the Union had approached the Industrial Tribunal through Reference (IT) Nos.2/1991 and 3/1991. In each of these proceedings, these workers and the Union had alleged that the workers were compelled to resign since they were associating themselves with a Trade Union. It is after a prolonged industrial dispute that they approached the Conciliation Officer under the Industrial Disputes Act, 1947 and the matter was referred to the Labour Court in the case of individual workers under Section 2-A of the Industrial Disputes Act, 1947. Insofar as the dispute raised by the Union on the same premise is concerned, as the industrial dispute was raised under Section 2(k) of the Industrial Disputes Act, 1947, the said dispute was referred to the Industrial Tribunal .

6 Individual workers as well as the Union led evidence before the Labour Court and the Industrial Tribunal, respectively. The Management also led evidence and supported its case that these workers had voluntarily resigned from service, no force or duress was exerted upon them for extracting their resignations, they have belatedly raised an industrial dispute indicating that they have raised an issue of forceful

resignation by way of an afterthought and that the Management has subsequently permanently closed down the said establishment on 15.09.1993.

7 Shri Dhorde, learned Senior Advocate appearing on behalf of the Respondent/ Management, submits that the Management has not challenged the impugned awards and after accepting the verdict of the Labour Court and the Industrial Tribunal, the compensation amounts as directed have been paid to each of the workers concerned with the industrial dispute.

8 Shri Dixit, learned Senior Advocate submits that despite communication to the individual workers as well as the Union, no instructions have been passed on to indicate as to the subsequent events post admission of these writ petitions.

9 In my view, the law is settled that if the factum of closure is proved, no employer can be forced under the orders of the Court to restart the factory (M/s Hathising Manufacturing Co. Ltd., Ahmedabad and another vs. Union of India and others, AIR 1960 SC 923). It is only in cases where the closure, if proved to be sham and bogus, that those workers, who have been discharged on account of the closure, would be entitled to reemployment under Section 25-H of the Industrial Disputes Act, 1947 and Rule 82 of the Industrial Disputes (Bombay) Rules, 1957.

10 Considering the evidence on record and the conclusions

drawn by the Labour Court as well as the Industrial Tribunal, it is apparent that the factum of closure was proved. The Labour Court as well as the Industrial Tribunal concluded that each of these workers would be entitled to the closure compensation. It was on these premises that closure compensation was directed to be paid to these workers and those who were represented by the Union.

11 It is settled law that once the factum of closure is proved, it would be beyond the jurisdiction of the Court to direct the reopening of the factory. Those workers, who may be entitled to closure compensation and have either not been paid or there is a shortfall in the payment of such compensation, that the Court can exercise its powers under Section 11-A of the Industrial Disputes Act, 1947 and suitably mould the relief.

12 Considering the above, I do not find that the impugned awards could be termed as being perverse or erroneous. Suffice it to say that the Petitioners as well as the Union representing those workers mentioned in their statements of claims, would be at liberty to consider whether, the compensation as is awarded by the Labour Court and the Industrial Tribunal, has been paid or not. If either of them is of the view that the closure compensation as directed, has not been paid, they would be at liberty to make a representation to the registered Head Office of the Respondent Company at Aurangabad within a period of TWO MONTHS from today. In the event, the Head Office of the Respondent Company

receives such a representation, it would peruse it's records and if there is any shortfall in the payment of compensation, such compensation shall be paid to such workers within TWO MONTHS therefrom.

13 Needless to state, these workers, who would make a representation, would mention their complete postal address so as to enable the Management to make the payment, if any, through a Demand Draft which could be sent to the address of the said workers.

14 In the light of the above, these Writ Petitions are, accordingly, disposed of. Rule is discharged.

kps

(RAVINDRA V. GHUGE, J.)