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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**WRIT PETITION NO. 13395 OF 2016**

Shri Gurunath Annappa Mahashetty & Ors. ... Petitioners  
vs.  
Saint Gobain Sekurit India Ltd & Ors. ... Respondents

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Ms. Jane Cox a/w. Ms. Karishma Rao i/b. Mr. Rajmohan A. Amonkar for the  
Petitioner.

Mr. K. M. Naik, Senior Advocate i/b. Ms. Priyanka for the Respondent.

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**CORAM : A.K. MENON, J.**  
**DATE : 20<sup>th</sup> FEBRUARY, 2018**

**JUDGMENT**

1. By this Writ Petition the petitioners who are former employees of the respondent company challenge an order dated 11<sup>th</sup> July, 2016 passed by the Industrial Court, Pune in Complaint (ULP) 41 of 2011 by which the complainants were directed to deposit the entire sum of money received by them under the Voluntary Retirement Scheme in the Industrial Court. In the alternative to repay the amount to the company within one month failing which the complaint was to stand dismissed. It will be pertinent to mention that although the petitioners herein are four in number, the complainants before the Industrial Court were 54 in number. Only 4 of these complainants have chosen to file this petition. It is the petitioners case that the petition is filed for themselves and on behalf of all the complainants who were before the Industrial Court.

The facts in brief are as follows :

2. The petitioners were employed with respondent no. 1 – company. The petitioners and other complainants were permanent workmen of the company which manufactured toughened glass for automobile companies. Respondent no. 2 is a trade union which came to a settlement with respondent no. 1 – company in respect of Voluntary Separation Scheme (VSS). The petitioners had contended that the said VSS was imposed upon the petitioners. In other words, they did not participate in the scheme voluntarily.

3. On 11<sup>th</sup> December, 2006 a VSS was announced in the Bhosari plant. The said VSS proposed that due to various issues raised which were beyond the control of the company, the plant at Bhosari was rendered economically unviable. Over the past two years the plant was facing difficulties and as of December, 2006 it had reached a stage whereby plant was not able to meet the expectation of quality, cost and productivity and therefore the company introduced the VSS for those employees who opted for an early separation. Salient features of the VSS were set out in notice dated 11<sup>th</sup> December, 2006. A window period was provided within which the employees concerned would have to opt for VSS. It was open to all the employees of the plant who had completed ten years of service or 40 years in age and only applicable to those employees who were on the rolls of the company as on 1<sup>st</sup> December, 2006. The VSS was open for workmen upto 29<sup>th</sup> December, 2006. Under the VSS the maximum compensation of Rs. 5 lakhs was payable subject to specific terms. In cases where the employee had qualified in terms of number of

years of service or age the VSS was to be computed on the basis of 90 days salary/wages consisting of basic, FDA and VDA for every completed year of service or salary for remaining months of service subject to the aforesaid maximum i.e. the lower of the two figures would be paid over. Income Tax exemption would be applicable as per Income Tax Act, 1961. A Memorandum of settlement came to be signed on 28<sup>th</sup> December, 2006 by the company acting through its Head-Human Resources and Assistant Manager – Human Resources. Among union Committee members was Mr. Gurunath Mahashetty and Mr. Dnyaneshwar Bhagoji Kudale who are also petitioners.

4. In the meantime the company filed an application on 19<sup>th</sup> December, 2011 in the same Complaint (ULP) No. 41 of 2011 seeking deposit of the amounts paid to the petitioners / complainants. The petitioners contested this application which came to be rejected by the Industrial Court on 17<sup>th</sup> April, 2012. Being aggrieved the petitioner approached this Court in its Writ Jurisdiction and filed Writ Petition No. 4261 of 2012 along with Writ Petition No. 4260 of 2012. The single judge disposed of the Writ Petition on 8<sup>th</sup> December, 2015 observing that the Industrial Court has not given reasons and therefore remanded the matter. The Industrial Court after hearing parties came to the conclusion that workmen were seeking to be re-employed and that the sums received by them under the VSS from the respondent-company be deposited in the Court. This order is impugned in this petition.

5. Ms. Cox, learned Counsel appearing on behalf of the petitioners submitted that the representation made to the workmen by the management was incorrect and misleading. According to her the consent of the workmen was obtained forcefully, as were their resignations. Allegations of coercion and misrepresentation are made. She submitted that although the company represented the plant had become unviable and thereby led the employees into entering into this agreement, the company restarted the plant at Chakan location at Pune employing contract labour and this led workers to believe that they had been deceived into participating in the VSS. According to Ms. Cox, learned Counsel for the petitioner, the company having induced the workmen to resign, the company restarted the plant engaging in temporary workers, contract labour and had made fresh recruitments. It is stated that the petitioners approached the company, but they were never taken back on duty since by then their jobs had been taken up by the fresh recruits. Ms. Cox submitted that pursuant to the application made under the RTI Act, 2005 on 3<sup>rd</sup> September, 2015 the petitioners obtained a copy of Registration Certificate of the company which would indicate that until 2015 the company was employing more than 200 contract workers in the plant.

6. Ms. Cox, learned counsel for the petitioner submits that respondent no. 1 is guilty of unfair labour practices under Section 28(1), item 9 and 10 of schedule IV and item 5 of Schedule II of the MRTU & PULP, 1971. Ms. Cox further contended that under the guise of the VSS, what the company had achieved was indirect retrenchment. That the company had pressurized its employees and that consent of

the scheme was not free consent. Besides respondent had not obtained permission of the Registrar of Companies and that under section 25F the conditions precedent had to be complied with. She submitted that no appropriate notice was given nor did the company comply with the requirement of paying 15 days average pay for several completed years in excess of 6 months. Furthermore, notice on the appropriate government had not been served and the VSS was only a scheme to obtain consent of the workmen.

7. It was contended that the settlement agreement was arrived at illegally. Ms. Cox therefore submitted that there was no justification in passing the impugned order requiring the petitioner workmen to deposit these amounts. She further submitted that the respondent had cheated the petitioners by rendering them unemployed and now insisted on the employees depositing back the amount received as compensation. She submitted that the members of the petitioners were not in a position to deposit these amounts since they have also used up these sums for different expenses. She therefore submitted that the impugned order is liable to be set aside. She further submitted that the Memorandum of understanding dated 11<sup>th</sup> December, 2006 is liable to be canceled. The workmen concerned are required to be provided with employment. She relied upon provision of 25H of the Act and submitted that the respondent were bound to offer reemployment of the retrenched workers. This is not been done. And for this reason also the impugned order was bad.

8. Mr. Naik, learned Senior Counsel appearing on behalf of the respondent company submitted that there was no substance in the challenge and there are binding precedents which would require such deposits to be made. Reliance was placed inter alia in the case of ***Mansingh vs. Maruti Suzuki India Ltd. [2011 III CLR 390]*** in which a voluntary retirement scheme was challenged by the appellant on the ground that appellant's consent to the option was under duress and in reality, his removal from service was illegal and unjustified. A Reference was made in respect of the termination of the services which was contested on behalf of the employer and the single judge who disposed of the petition directed that the Labour Court should insist on the workmen depositing the amount that was received with interest before the Reference could be taken up for adjudication. This aspect was challenged before the Supreme Court which followed its own decision in ***Ramesh Chandra Sankla and Ors vs. Vikram Cement and Ors [(2008) 14 SCC 58]*** and rejected the submission that the High Court had no jurisdiction to direct refund of the amount. The Supreme Court therefore in essence upheld the requirement of depositing the amount in Court. In this present case it is submitted that since workmen were desirous of prosecuting their complaints, it would be appropriate that the petitioner is put to terms.

9. At the time of hearing this petition, I am informed that the respondent company has stopped manufacturing activities as of January 2016 and that the company is in the process of being taken over by SIKA A.G. and the Pune plant will be used for manufacturing of chemicals. Reliance is placed on an online article

(Exh – N) in the Washington Post in respect of the takeover. Mr.Naik, learned Senior Counsel appearing on behalf of respondent no. 1 submitted that there was no substance in this challenge, since the entire amount was to be deposited, if the employees were desirous of seeking re-employment. In the written statement filed by the respondent it is contended that the allegation of retrenchment are baseless and that some of the workers are having second thoughts after enjoying the fruits of VSS. It is therefore not proper for these workers to agitate the same issue once having given up the challenge before the Industrial Court. In the affidavit in reply filed by one Mr. Ravi Shankar, Branch Manager of Chakan Factory of Pune district has contended that the labour court has correctly directed deposit of the amount following decision of the Apex Court in *Maruti Suzuki (supra)*.

10. Mr. Naik contended that the impugned order is a just and reasonable order. Instance of similar order to deposit had been sought in the case of ***Arun Dattatraya Gore vs. Manu Graph Industries Ltd (Writ Petition No. 129 of 2012)***. The affidavit in reply sets out that due to recession and competition production volumes were less and plant which operated in three shifts was constrained to operate in one shift and only 20 to 25 workmen who had some work and that others were sitting idle. That the decrease in a production which caused the Bhosari plant to become unviable and the company was unable to sustain productivity. That initially a sum of Rs. 4,00,000/- was offered by way of all inclusive compensation which was increased to Rs.5,00,000/-. Discussions resulted in the settlement agreement dated 28<sup>th</sup> December, 2006. The deponent set out that

under the agreement, out of 173 workmen, 119 had opted for VSS on 29<sup>th</sup> December, 2006. Of the remaining 54, wherein three had been promoted to managerial cadre, 2 persons had expired and the services of the remaining 49 had been terminated due to closure of the plant on 30<sup>th</sup> November, 2015. According to the deponent on 5<sup>th</sup> January, 2007 payment of the VSS amounts were made including the salary, gratuity, leave encashment, notice pay and bonus., as a result of which workmen received about Rs.5,79,000/-. The deponent has stated on oath that the company has not carried out any manufacturing activities through contract labour and relied upon the Registration Certificate referred to by the petitioners under the Contract Labour Act is in respect to the Chakan Plant whereas the complaints are in relation to Bhosari plant.

11. According to the Mr. Naik, petitioners statement that 200 Contract labourers were engaged in place of the employees who opted for VSS is incorrect. It is further stated that the Bhosari plant was partially operational only till November, 2015 and those employees who had not opted for VSS continued to be employed. However, eventually the services of those 49 persons were terminated and no manufacturing activities are being carried out at the said plant. The factory is thus closed since 30<sup>th</sup> November, 2015. It appears that the concerned authorities under labour legislation including Dy. Director, Industrial Safety, Pune had been apprised about this fact. Mr. Naik relies on decision of this Court in Writ Petition No. 129 of 2012 wherein in similar circumstances the Court held that while it is not impermissible to challenge a VRS scheme on the ground of fraud even though it is signed, whether

the challenge is successful depends on facts of each case and in the matter of balancing interest and equities a direction to deposit would not be totally out of place.

12. Mr. Naik placed reliance on letter dated 23<sup>rd</sup> March, 2016 addressed by the company to the Dy. Director Industrial Health and Safety intimating closure of the plant. Perusal of the letter reveals that the Factory manager had intimated the Dy. Director of Industrial and Safety that the company had suspended operations from 1<sup>st</sup> September, 2015 but closed the plant from 30<sup>th</sup> November, 2015. That several wage settlements had been signed from time to time. The parties held discussions for the closure settlement and on January 22, 2016 a settlement had been arrived at and full and final payments under the settlement were made on 30<sup>th</sup> January, 2016.

13. Although Ms. Cox submitted that the closure was only an eyewash and in fact the plant had been operational, the affidavit filed by Shri Ravi Shankar, Plant Manager is to the effect that the plant had been closed effective November, 30, 2015 and that contract labourers had been engaged at the Chakan plant. All that remains to be seen is whether workers would retain their rights for re-employment u/s 25H even when the Bhosari plant whereat they were employed had been closed and whether respondent company was liable to re-employ retrenched workmen at their other plants. In my view since the Bhosari plant appears to have been closed in accordance with law and there is no grievance that due process had not been followed.

14. All we are concerned about is whether the impugned order is unsustainable on account of illegality or perversity. In my view the answer must be in the negative inasmuch as the workers concerned have received benefit of VSS. It is stated on oath that the plant at Bhosari has been closed down and that contract labourers had been employed at the plant at Chakan. Prima facie it does appear that the company's version may be correct. However, today since the only issue before the Court is whether the order directing deposit is in any manner perverse, perusal of the order reveals that Industrial Court has taken note of the observation of the Supreme Court in the case of *Maruti Suzuki (supra)* in which it reiterated the view in *Ramesh Chandra (supra)*. The Court has considered the law on the subject and has exercised its discretion.

15. I am of the view that the direction to repay the amounts received by the workmen to the company is not justified at this interim stage. The impugned order is therefore liable to be modified to that extent. It is also pertinent to mention that out of the 54 original complainants only 4 have chosen to approach this Court. It is also seen from the record that Certificate of Registration issued under the Maharashtra Contract Labour (Regulation & Abolition) Rules, 1971 is issued to the respondent no. 1 company on its Pune Chakan address clearly indicating the fact that the workmen had been employed there. The contention that the VSS was opted for by workmen in the Bhosari plant which had since shutdown does not entail the workers must be re-employed at the very plant. Suffice it to say that the complaint is bereft of any particulars of fraud, suppression or false suggestions made by the company. There are also no particulars of how the workers came to be cheated. It

is open for the complainant to lead evidence on this aspect and I am of the view that decision of depositing the amounts received by the workers is just fair and proper and equitable in the facts of the case.

16. Accordingly, I pass the following order :

- (i) The petitioner and such of the complainants who are prosecuting the Complaint No.(ULP) 41 of 2011 shall deposit with the Industrial Court, Pune such sums received by them under the Voluntary Separation Scheme notified on 11<sup>th</sup> December, 2006 within a period of two months from today.
- (ii) In the event the deposit is so made the complaint No.(ULP) 41 of 2011 will proceed against the respondents only on the behalf of those complainants who have deposited the amounts.
- (iii) In respect of those complainants who have not deposited the amounts, the complaint would stand dismissed upon expiry of the aforesaid period of two months
- (iv) In the event of such deposit being made the amount shall be invested in a nationalised bank for an appropriate period.
- (v) Parties shall be at liberty to lead evidence in the Court on merits of the complaint.
- (vi) Rule made absolute in the above terms.
- (vii) No order as to costs.

(A. K. MENON, J.)