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

COMPANY APPLICATION NO. 617 OF 2016
IN
COMPANY PETITION NO. 642 OF 1983

Sarva Shramik Sanghatana (KV) & Ors. .. Applicants

In the matter between :

Reliance Textile Industries Limited .. Petitioner
Vs.
The Official Liquidator of
Shrineevas Cotton Mills & Anr. .. Respondents

WITH
COMPANY APPLICATION NO. 1065 OF 2015
IN
COMPANY PETITION NO. 642 OF 1983

Satyanarayan Karwa .. Applicant

In the matter between :

Reliance Textile Industries Limited .. Petitioner
Vs.
The Official Liquidator of
Shrineevas Cotton Mills & Anr. .. Respondents

WITH
COMPANY APPLICATION NO. 242 OF 2017
IN
COMPANY PETITION NO. 642 OF 1983

Shri Satyanarayan Jhawar & Ors. .. Applicants

In the matter between :

Reliance Textile Industries Limited .. Petitioner
Vs.
The Official Liquidator of
Shrineevas Cotton Mills & Anr. .. Respondents

Ms. Jane Cox for applicants.

Mr. Mahendhar Aithe, company prosecutor for official liquidator for respondent no.1.

Mr. Janak Dwarkadas, senior advocate a/w. Mr. Cyrus Ardeshir and Mr. Shyam Gopal i/b Veritas Legal for respondent no.2.

CORAM : K.R.SHRIRAM, J.
DATE : 10TH APRIL 2018

P.C.

COMPANY APPLICATION NO. 617 OF 2016

1. The application is filed by Sarva Shramik Sanghatana (KV)-a Union with two others for an order directing the official liquidator to pay to applicants-workmen listed at Exh.'A' to the affidavit in support within one month with interest at commercial rate with effect from 3rd August 2009 till realization; ex-gratia compensation of Rs.2,00,000/- plus all legal/statutory dues including unpaid wages; bonus for the year 1980-81, gratuity, retrenchment compensation etc. upto 25th July 1984 with interest @ 12% from 25th July 1984 till realization.

2. Pursuant to an order dated 25th July 1984 passed by this Court in Company Petition No.642 of 1983, the company was ordered to be wound up and the official liquidator was appointed as liquidator thereof with usual powers under the Companies Act, 1956. Thereafter, by an order dated 14th May 2009 passed by this Court in Company Application No. 1294 of 2007, winding up order dated 25th July 1984 was temporarily

stayed and the official liquidator was directed to continue to remain in possession of the movable and immovable assets of the company (in liquidation) on the condition that the company deposits a sum of Rs.125 crores with the official liquidator. By the said order, dated 14th May 2009, the representatives of the workers Union were, *inter-alia,* directed to file list of workers to whom the legal dues were payable along with interest thereon. Accordingly, on 14th May 2009, Rashtriya Mill Mazdoor Sangh, Mumbai, forwarded to the Official Liquidator a list of workers to whom the legal dues were payable. By an order dated 3rd August 2009 passed by this Court in Company Application No.1294 of 2007 with Company Application (L) No.801 of 2009 in Company Petition No.642 of 1983, all further proceedings of winding up were permanently stayed and the Company was ordered to be taken out of liquidation. In the said order dated 3rd August 2009, this Court had recorded the statement of Mr.Dwarkadas, Senior Advocate in Company Application No.1294 of 2007 as under :-

> *"(1) All workmen employed with the company as on the date of closure viz. 25-07-1984, shall receive :*
>
> > *(a) All legal / statutory dues including unpaid wages, gratuity, retrenchment compensation, etc. upto the date of closure.*
> >
> > *(b) Interest @ 12% p.a. from 25-07-1984 to 30-05-2009.*
> >
> > *(c) Ex-gratia compensation of Rs.2,00,000/- per worker.*
> >
> > *This includes all workers of any dispensation who were*

with the company as on the date of closure.

(2) For any workers who were not employed with the Company as on the date of closure, they will be free to lodge their claims for all legal / statutory dues and the Official Liquidator shall adjudicate their status as on the date of winding up and pay the pending dues, if any. In the event of it being established that any workmen whose name does not appear as a workmen on the rolls of the company as on 25-07-1984, that his services were not terminated between 1981-1984, such workmen will be considered eligible to receive benefits as per the revival proposal. This includes workmen of any dispensation."

3. Pursuant to the order dated 3rd August 2009, the official liquidator adjudicated the claims of the workers and made payments to the eligible workmen. Workmen represented by applicant no.1 also filed their claims for legal and statutory dues, unpaid wages, bonus, gratuity and retrenchment compensation etc. and for the additional ex-gratia compensation of Rs.2 lakhs on the ground that the workmen, whose names appear as workmen in Exh.'A' to the affidavit in support, had worked as Badli Workmen for a very long time and in any event between 1981 to 1984. The official liquidator has completed the process of adjudication in some cases and from a statement given by the counsel for respondent no.2, it appears that legal dues plus ex-gratia amount of Rs.2 lakhs has been paid to 31 workmen; only legal dues paid and no ex-gratia paid to 111

workmen and in case of 1479 badli workmen all claims have been rejected.

Though various claims have been made in the prayer, the arguments were restricted to ex-gratia payment of Rs.2 lakhs mentioned in Para 1(c) of the order dated 3rd August 2009.

Therefore, the short point that comes up for consideration is whether the badli workmen are entitled to ex-gratia payment of Rs. 2 lakhs.

4. It is the case of applicants that :

(a) Badli workmen would fall under the category of 'workmen' and should be considered to have been in the employment of the company as on 25th July 1984;

(b) Since the company is unable to show that the services of badli workmen were terminated between 1981-1984; the badli workmen will be entitled to the ex-gratia compensation of Rs. 2 lakhs;

(c) Though the Apex Court in ***Prakash Cotton Mills Pvt. Ltd. Vs. Rashtriya Mills Mazdoor Sangh*** [1] has held that the badli workers are not regular employees, they do not have the guaranteed right of employment, are casual employees without any right, are not entitled to any compensation etc., still, in view of the concession made by the company, as recorded in the order dated 3rd August 2009 when the application of the ex-directors of the company under Section 466 of the Companies Act, 1956

1 (1986) 3 SCC588

was being heard, in view of which the objections raised by applicants herein were withdrawn, the company has to pay this ex-gratia compensation as well and also all legal and statutory dues to all the badli workmen.

5. Shri Dwarkadas appearing for respondent no.2 agreed that the company had made a concession because, according to his clients, these were the workmen who need to be fairly compensated and further states that the company would still pay all of their compensation and the ex-gratia amount of Rs.2 lakh, provided applicants established that the badli workmen were on the rolls of the company or in the employment of the company on 25th July 1984. Shri Dwarkadas submitted that, without going into other legal objections etc. that could be raised, if a workman by whatever nomenclature he may be called, viz., 'permanent' or 'temporary' or 'badli' workmen, was in the rolls of the company or reported to work on 25th July 1984, the company could consider the application and pay the legal dues and ex-gratia compensation.

6. Ms.Jane Cox appearing for applicants submitted that the standing orders for operatives which was approved by the Commissioner of Labour for Cotton Textile Mills, which would include the company also, in clause 19 provides that a 'badli' may be discharged from service without notice by

an officer not below the rank of Head of Department and unless the company is able to show that the badli workmen was discharged by a person not below the rank of Head of Department, the badli workmen should be presumed to have been in the employment on 25th July 1984 and therefore should be paid all requisite dues and ex-gratia compensation. Ms.Cox submitted that the standing order provided 'Operatives' means all work-people, male or female, employed in the mill or in the mill premises, whose names and ticket numbers are included in the departmental musters and the Operatives shall be classed as (1) Permanent; (2) Probationer; (3) Badlis; (4) Temporary; and (5) Apprentices. Standing order also provided that every 'Badli' shall be provided with a 'badli' card, which shall be surrendered if he obtains permanent or probationary employment.

7. Clause 19(a) provides for the method of terminating the employment of a permanent operative and clause 19(b) deals with the probationers, badali, temporary operatives and apprentices. Clause 19(a) and 19(b) of the standing order read as under :-

> *"19(a) The employment of any permanent operatives may be terminated by fourteen day's notice or by payment or thirteen days' wages in lieu of notice. If he draws wages on a piece-rate basis, the thirteen day's wages shall be computed on the average daily earnings of such operative for the days actually worked during the previous wage period. The reasons for the termination of service shall be recorded in writing and shall be communicated to the operative, if he so desires at the time of discharge, unless such communication, in the opinion of Manager may directly or indirectly lay the Company and*

the Manager or the person signing the communication open to criminal or civil proceedings at the instance of the operative.

(b) Probationers other than those transferred from permanent posts in the mill, "badli" temporary operatives and apprentices may leave or be discharged from service without notice by an Officer not below the rank of head of department."

Before we proceed further, it will be useful to reproduce Paragraphs 15 and 16 of *Prakash Cotton Mills* (Supra) which read as under :-

"15 The next question that remains to be considered is whether the Industrial Court is justified in directing payment of compensation to some of the Badli workmen. It is not in dispute that Badli workmen get work only in the absence, temporary or otherwise, of regular employees, and that they do not have any guaranteed right of employment. Their names are not borne on the muster rolls of the establishment concerned. Indeed, a Badli workman has no right to claim employment in place of any absentee employee. In any particular case, if there be some jobs to be performed and the employee concerned is absent, the Company may take in a Badli workman for the purpose. Badli workmen are really casual employees without any right to be employed. It has been rightly submitted by the learned Counsel for the appellant that the Badli employees could not be said to have been deprived of any work to which they had no right and, consequently, they are not entitled to any compensation for the closure. Indeed, the Industrial Court has itself observed that to allow the claim of Badli workmen would be tantamount to penalising the appellant. In spite of the said observation, the Industrial Court directed payment of compensation to the Badli workmen in place of certain categories of regular employees. We fail to understand how the Industrial Court can direct payment of compensation to the Badli workmen when, admittedly, such Badli workmen, as noticed already, have no right to be employed. It may be that the Company may not have to pay closure compensation to the three categories of employees, as mentioned by the Industrial Court, but that does not mean that the Company has to pay compensation to the Badli workmen in place of these categories of employees. In this connection, we may refer to Section 25C of the Industrial Disputes Act, 1947 which excludes a Badli workman or a A casual workman from the benefit of compensation in the case of layoff. In the circumstances, although we uphold the order of the Industrial Court for payment of compensation to the regular employees of the appellant at the rate fixed by it, we

are unable to subscribe to the view that the compensation which would have been payable to the three categories of employees, should be paid to the Badli workmen. In other words, we hold that Badli workmen have no right to claim compensation on account of closure.”

16 In the circumstances, although we uphold the order of the Industrial Court for payment of compensation to the regular employees of the appellant at the rate fixed by it, we are unable to subscribe to the view that the compensation which would have been payable to the three categories of employees, should be paid to the Badli workmen. In other words, we hold that Badli workmen have no right to claim compensation on account of closure.”

8. In *Prakash Cotton Mills* (Supra), the Labour Court had directed payment of compensation to regular employees and also to some of the Badli workmen. It was the case where the contention of the company was due to certain detention orders that were passed by the Assistant Collector of Central Excise detaining the goods which were essential for the manufacturing process in the company/mill, there was a disruption in the functioning of the company's mill compelling the appellant to stop the working of the mill. The Labour Court, in those facts and circumstances, held that the appellant was liable to pay closure compensation to the employees affected by the closure of the mill from 24th March 1964 to 10th June 1964 at the rate of 50% of the basic wages and dearness allowance. While upholding the order of the Industrial Court for payment of compensation to the regular employees of the appellant at the rate fixed by it, the Apex Court did not subscribe to the view that the compensation

which would have been payable to the three categories of employees, should be paid to the Badli workmen. The Apex Court held that Badli workmen have no right to claim compensation on account of closure.

9. Ms.Cox, in fairness, submitted that the Apex Court has concluded that badli workmen are not entitled to any compensation but in view of the concession made by the company, as recorded in the order dated 3rd August 2009, the company has to pay ex-gratia compensation and that has been done in some cases.

Point of contention is whether the company should show that the badli workmen was/were discharged from service by an Officer not below the rank of Head of Department? or the workman should show he had reported for work on 25th July 1984?

10. Clause 19(a) of the Standing Order provides that when an employment of any permanent operative has to be terminated, the company may terminate by giving 14 days notice or by payment of 13 days wages in lieu of notice. It also provides that the reason for termination of service shall be recorded in writing and shall be communicated to the operative. This is not so in the case of badli workmen, it has excluded. As per clause 19(b), no such notice at all is required. The Badli workmen could leave without any notice and without informing anybody. In other

words, the badli workmen can choose not to report to the company at all. If the company wants to discharge the badli workmen, the company will discharge without giving any notice. This is because badli workmen are casual employees without any right to be employed. In any particular case, if there be some jobs to be performed and the employee concerned is absent, the company may take a badli workman for the purpose. Therefore, to say that the company has to prove that the workmen has been discharged from service by an officer not below the rank of head of department, cannot be accepted. The badli workmen get work only in the absence, temporary or otherwise, of regular employees and that they do not have any guaranteed right of employment. The Apex Court in *Prakash Cotton Mills* (supra) held that Badli workmen are really casual employees without any right to be employed. Moreover, the Badli employees/ workmen could be said to have left on his/their own volition without even informing the company. Therefore, to transfer the onus upon the company to prove that the badli workmen were discharged by the Officer not below the rank of Head of Department is not correct.

11. Ms.Cox showed copies of attendance cards of certain workmen and the written contents on the reverse of the attendance cards to submit that each workman had to report everyday whether they had work or not and therefore should be presumed to have been working as on 25th July 1984

unless it is shown that their services were terminated by the Head of Department as stated above and hence onus can be shifted to the company to show that the badli workmen were discharged by a person not below the rank of Head of Department. According to Ms.Cox, the badli workmen stood in a different category as compared to other casual workmen in other industries and in Ms.Cox's view, the onus will be on the company to show that he had not been in the roll of the company or he had not reported for work on 25th July 1984. In my view, it makes no difference in whichever industry they might have been. No badli workman can claim any guaranteed right of employment and, as held by the Apex Court, is not entitled to any compensation.

12. Coming to the concession made, though applicants have filed copies of the attendance cards of some workmen to show that they worked on 20 days or 23 days per month, the company has filed a compilation of 110 badli workmen who received the legal dues but not the ex-gratia compensation. In some of those attendance cards filed in the compilation, I find that some of the workmen have not attended on any date during a particular month. For example, attendance card No. 123 of one Mr.Bhumay Chinmay for May 1984 shows the said badli workman had not even reported for work on any date for the whole of that month. Another

example will be of one Mr.Shantaram T. Jadhav for October 1984. He has reported for work only on four days. Likewise, there are many to show that they did not report for a whole month and some reported only for few days in a month. To direct the company to presume that if a workmen shows an attendance card for a particular month, to consider the said badli workmen as having worked on the cut-off date of 25th July 1984 or to make the company prove that the workman was not at work on 25th July 1984 will be very unfair. The question of a badli workman resigning or his service being terminated between 1981-84 does not arise. He is only a casual workman with no right to be employeed. The onus is on the Badli Workman. Any badli workman who is able to establish, he did not leave the employment before 25th July 1984, will be entitled for legal dues and also ex-gratia compensation.

13. The official liquidator is directed to consider the application of all the workmen and communicate his decision within three months from today. To the extent of those workmen whose claims have been adjudicated and have been issued letters, those workmen should be paid the amount as per adjudication order by 15th May 2018.

14 Application accordingly disposed.

15 Company Application Nos.1065 of 2015 and Company Application No. 242 of 2017 be listed on 14th June 2018.

(K.R. SHRIRAM, J.)