

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 132 OF 2019

WORKMEN, REP. BY THE GENERAL
SECRETARY.

... Petitioner

Versus

CFL PHARMACEUTICALS LTD., THR. ITS
DIRECTOR.

... Respondent

Shri Shivraj Gaonkar, Advocate for the petitioner.

Shri P. Chawdikar, Advocate for the respondent.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 29th January 2019

ORAL ORDER:

1. Heard Shri Shivraj Gaonkar, learned Advocate for the petitioner while Shri P. Chawdikar, learned Advocate waives service of notice on behalf of the respondent.

2. i have considered the impugned order and judgment in the **Saint Gobain Sekurit India Ltd, Pune v/s. Kuyesh Durjan Yadav** [2016(1) Mh.L.J. 822] in particular wherein another learned Single Judge of this Court observed and considered the contention on behalf of the petitioner therein

that whenever a workman desires to challenge a Voluntary Retirement Scheme, having received all benefits under it, no enquiry on the legality of the scheme is permissible unless the amount received is first deposited. The learned Single Judge considering this contention observed that it was not impermissible to challenge a Voluntary Retirement Scheme on the ground of fraud even though it is signed. It was also found that there was no question regarding the precondition of deposit as there was no statutory provision mandating such precondition requiring the petitioner to predeposit the amount before offering challenge. The learned Single Judge had found on a consideration of the judgments of the High Court that the High Court had passed orders in its equitable jurisdiction, after considering the facts and circumstances of the case before it and held that such direction regarding predeposit was within jurisdiction. The learned Judge observed at paragraph 14 as follows :

“14. That such power to direct predeposit exists, cannot be doubted. But from the existence of this power, an sequator does not automatically follow that it is a mandatory precondition. That, it is permissible,

even equitable, does not necessarily mean it is automatic, irrespective of the fact situation. The Apex Court, in both these decisions, has not laid down any such absolute proposition of law. Whether such a direction is justified or otherwise, would depend on facts of each case and various parameters would therefore come in play. The Court may consider the time taken for challenge, the amount received, nature of challenge and other relevant parameters. The Court may find that it is equitable to direct to deposit the amount before the challenge is considered.”

3. Coming to the facts of the case, the closure of the unit was ordered sometime in December,2002 while the scheme of retirement and payment of compensation was worked out pursuant to the settlement between the parties sometime in February,2003 pursuant to which the workmen had received the closure compensation as per the case of the petitioner unlike that of the respondent that it was compensation under the Voluntary Retirement Scheme. The reference came to be made to the Industrial Tribunal in 2007 while the application for the deposit of the so called Voluntary Retirement Scheme compensation was made on behalf of

the respondent only in the last year i.e. 2018 i.e. after a period of more than 11 years.

4. Considering this fact and also the contention of Shri Shivraj Gaonkar, learned Advocate for the petitioner that most of the workmen had retired and had attained the age of 70years or thereabout and having spent a considerable amount towards the family expenditure including weddings in the family, it was not possible for the petitioner workmen to make the deposit. This aspect of the matter of the passage of time was also not considered by the Industrial Tribunal while making the impugned order mandatory for the workmen to deposit the amount received by them within 45 days from the day of the order dated 05/12/2018. In the circumstances, therefore, this order cannot be allowed to stand. The same is quashed and set aside. The parties are relegated to the Court of the Industrial Tribunal which is proceeding with the matter on the strength of its own merits which would be without prejudice to the rights and contentions of the parties which they may canvass before

the Industrial Tribunal.

5. Writ Petition accordingly stands disposed off.

NUTAN D. SARDESSAI, J.

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