

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.7813/2017

The Manager, Coal Mines (Western Coalfields Ltd.), Pipla Colliery, Tah.
Saoner, Distt. Nagpur
..Vs..
Kaka S/o Gulab Dhodade

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri A.M. Ghare, Advocate for the petitioner.
Shri S.G. Nigot, Advocate for the respondent.

CORAM : Z.A. HAQ, J.

DATE : 8.3.2019.

1. The respondent / employee approached the Labour Court under Section 33C(2) of the Industrial Disputes Act making grievance that the offer given by the employee for voluntary retirement was wrongly rejected by the employer and it has to be declared that the respondent / employee is entitled for the benefits of voluntary retirement scheme floated by the employer. The employer had opposed the claim of the employee. After considering the rival submissions, the Labour Court has allowed the complaint filed by the employee by the impugned order and has directed the employer to pay an amount of Rs.3,48,775/- to the employee.

2. The contention of the petitioner / employer is that the Labour Court, while considering the application under Section 33C(2) of the Industrial Disputes Act could not have examined whether the decision of the employer to reject the offer given by the employee for

voluntary retirement was proper or not. According to the employer, the impugned order is passed by the Labour Court without there being any jurisdiction to adjudicate the dispute / controversy. To support the submission, learned Advocate for the petitioner relied on the judgment given by the Hon'ble Supreme Court in the case of *Municipal Corporation of Delhi v/s. Ganesh Razak an another* reported in **1994 AIR SCW 5000** and the judgment given in the case of *State of U.P. and another V/s. Brijpal Singh* reported in **(2005)8 SCC 58**.

On merits also, learned Advocate for the petitioner / employer argued that the decision of the employer to reject the offer given by the employee for voluntary retirement was proper and cannot be faulted with.

3. Learned Advocate for the respondent / employee has pointed out the copy of communication dated 12th April, 1999 sent by the employee to the Manager of Coal Mines, Pipala Colliery requesting that he be permitted to retire as per the voluntary retirement scheme. The document on which the petitioner / employer relies to contend that the offer given by the employee for voluntary retirement was rejected by communication dated 8th July, 1999, refers to some application alleged to have been submitted by the respondent / employee on 14th May, 1999. Learned Advocate for the respondent / employee has pointed out that the respondent / employee had not submitted

any application on 14th May, 1999 but on 14th May, 1999 notice was issued by the respondent / employee through his Advocate to the petitioner / employer.

4. The order issued by the Manager of Coal Mines, Pipla Colliery on 19th/20th August, 2000 stated that the resignation submitted by the respondent / employee was accepted. The copy of the alleged resignation letter is not placed on record. The copy of communication issued by the Manager, Pipla Colliery on 8th July, 1999 to the respondent / employee (placed on record alongwith the written submission of respondent / employee at page No.58 of the paper book) shows that the application of respondent / employee for voluntary retirement was not considered for the following reasons:

(i) *Due to habitual / unauthorized absenteeism of the employee,*

(ii) *The attendance of respondent / employee in the 12 preceding months was poor,*

(iii) *The respondent / employee was charge-sheeted for unauthorized / habitual absenteeism and for other misconduct, and*

(iii) *Departmental proceedings were pending against the respondent / employee.*

5. In paragraph No.14 of the impugned order, the Labour Court has observed that the witness examined on behalf of the employer stated in cross-examination that he was not having knowledge about habitual and

unauthorized absenteeism of the respondent / employee and about issuance of charge-sheet to the respondent / employee. The petitioner / employer has not produced any material on record to show that the respondent / employee was not entitled for the benefits of voluntary retirement scheme on the ground of habitual and unauthorized absenteeism and as the attendance of the respondent / employee during the preceding 12 months was poor. The petitioner / employer has not produced any material on record to show that charge-sheet was given to the respondent / employee and departmental proceedings were pending against him, for habitual / unauthorized absenteeism and other misconduct.

6. The respondent / employee has denied the above allegations.

7. Considering the above facts, I am not inclined to accept the technical objection raised on behalf of the petitioner / employer that the Labour Court should not have exercised jurisdiction under Section 33C(2) of the Industrial Disputes Act as the respondent / employee failed to establish pre-existing right.

8. The judgments relied upon by the learned Advocate for the petitioner / employer are not of any assistance to him as in the present case it cannot be said that the respondent / employee did not have any pre-existing right to claim the benefits of voluntary

retirement scheme.

9. I find that the Labour Court has properly appreciated the material on record. I see no reason to interfere with the impugned order. The writ petition is **dismissed** with costs quantified at Rs.20,000/- (Rs. Twenty Thousand) to be paid by the petitioner to the respondent / employee. The receipt showing the payment of costs shall be produced on record of this petition within two months.

10. At this stage, learned Advocate for the petitioner requested that the interim order granted by this Court on 12th December, 2017 be continued for 8 weeks to enable the petitioner to take appropriate steps in the matter. Considering the facts of the case, the request is rejected.

JUDGE