

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

**LETTERS PATENT APPEAL NO. 116 OF 2005
IN
WRIT PETITION NO. 728 OF 2005**

- 1] Suresh S/o. Rambhauappa Muley,
Age : 52 YEARS, Occu. Nil,
R/o. N-6 M-2, 13/1, Sinhgad Colony,
Near Terna High School,
CIDCO, Aurangabad.
 - 2] Chandrakant s/o Dhondiram Gore,
Age : 48 years, Occu. Nil,
N-12, D-17/3, Swami Vivekanand Nagar,
HUDCO, Aurangabad.
 - 3] Shivaji s/o Fakira Deore,
Age : 53 years, Occu. Nil,
R/o. N-9, H-36, Shrikrushna Nagar,
Aurangabad.
 - 4] Dnyandeo s/o Shankar Choudhary,
Age : 50 years, Occu. Nil,
R/o. N-9, L, Shivaji Nagar,
CIDCO, Aurangabad.
 - 5] Shankar s/o Rangnath Tupe,
Age : 51 years, Occu. Nil,
R/o. Mukundwadi Bus Stop,
Aurangabad.
- Appellants

Versus

- 1] The State of Maharashtra
(through its Secretary, Department of
Labour), Mantralaya, Mumbai-32.
- 2] M/s. Automobile Products of India Ltd.,
D-5, M.I.D.C. Industrial Area, Chikalthana,
Aurangabad,
through its Senior General Manager.

3] M. K. Vaishnav,
President,
A.P.I. Kamgar Sanghatna,
House No. LIG-443, Avishkar Colony,
N-6, CIDCO, Aurangabad.

4] S. R. Shelke,
General Secretary,
A.P.I. Kamgar Sanghatna,
At present Near Tandale Niwas,
Shelke Niwas, Khokadpura,
Aurangabad.

.... Respondents

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Shri. Pradeep L. Shahane, Advocate for the petitioners
Mrs. D. S. Jape, AGP for respondent No. 1
Shri. Madhav Ghode, Advocate h/f Shri. P. K. Joshi, Advocate for
respondent No. 2

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**CORAM : SUNIL P. DESHMUKH
AND
B.U. DEBADWAR, JJ.**

DATE : 13th February, 2020

ORAL JUDGMENT :- [PER SUNIL P. DESHMUKH, J.]

. This Letters Patent Appeal purports to take exception to order dated 01-03-2005 passed in writ petition no. 728 of 2005, dismissing the writ petition which has been preferred against the order of Industrial Court dismissing the complaint of petitioners under Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, alleging unfair labour practice.

2. Mr Shahane, learned counsel for appellants vehemently contends that the whole procedure followed in respect of the scheme and agreement for voluntary retirement scheme has been *de hors* the legal procedure. The appellants have never consented to the scheme nor had participated in the *modus operandi* stated to have been employed seeking voluntary retirement and that the agreement between the union and the respondent-employer had been collusive. Further referring to that the amount under cheque had been accepted under protest and duress as the petitioners had not received six months salary. He further contends that the decision in writ petition no. 7455 of 2004, which has apparently weighed with the learned single Judge, would hardly apply and the doctrine of change in circumstances is inapplicable. He purports to refer to various factual aspects and further submits that the appellants would be satisfied if the compensation is paid for the period from 13-01-2000 to 01-11-2003, as the company had been allowed to be closed down on 01-11-2003.

3. Learned counsel Mr Ghode holding for Mr P. K. Joshi, counsel for respondent no.2, however, stiffly opposes stating that the appellants are estopped from aprobating and reprobating. The so-called protest being referred to is after encashment of the

cheque. The appellants had participated in the voluntary retirement scheme as would emerge from the observations of the Industrial Court with regard to factual aspects. Appellants are not entitled to switch the stand after accepting and taking benefit of voluntary retirement scheme. He refers to that, the excess amount over and above the salary had never been returned to the respondent-employer. He submits that, it is an afterthought and is an attempt of benefit gouging, pressurising the respondent-employer under litigation. He submits that, company had not been fairing well in business. Its business had been declining and steadily the respondent-employer had been reducing its liability. The settlement entered into between the union and the employer had been legal and not opposed to any public policy.

4. Perusal of the order by learned single judge shows that, learned single judge has observed that the industrial court had rejected the complaint holding that there had been failure to prove favouritism or partiality to one set of workers, regardless of merits. The settlement arrived at between the union and the respondent-employer was not collusive and was *bona fide* nor there was any modification or variation of the settlement and the settlement subsists. It has further been observed by the learned

single judge that, in similar situation, three other employees had been before this court challenging the order of industrial court in writ petition no. 7455 of 2004 and the same had been dismissed. This court has further observed that there is no distinction between the case of appellants and the one that was involved in writ petition no. 7455 of 2004.

5. Though the learned counsel for appellants purports to raise some questions, they are factual in nature and having regard to the reasons underlying the decision of single judge, the letters patent appeal does not appear to carry any weight with the same.

6. In view of aforesaid, Letters Patent Appeal is dismissed. No order as to costs.

[B.U. DEBADWAR]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE