

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.779 OF 2019**

M/s. Menezes Chemicals (Goa) Pvt. Ltd. ... Petitioner
Versus
Ramendra D. Mayenkar & Ors. ... Respondents

Mr. Arunkumar V. Nigalye and Mr. Omkar V. Kulkarni, Advocates for the Petitioner.

Coram:- M. S. SONAK, J

Date:- 15th January 2021

P.C.

Heard Mr. A. Nigalye learned counsel for the Petitioner.

2. The challenge in this petition is to the following:-
 - (a) Award and order of the Labour Court dated 6th October 2017 made in Case No. LC-II/IT/19/2015; and
 - (b) The recovery certificate No. CLE/(REC-1)/2018/4068 dated 25th September 2018 issued by the Commissioner of Labour and Employment to recover the dues in terms of the aforesaid impugned award.
3. The operative portion of the impugned award dated 6th October 2017 reads as follows:-

“1. It is held that the action of M/s Menezes Chemicals (Goa) Private Limited, Curti, Ponda Goa, in retrenching all the 34 workmen named in the present order of reference employed at it's factory, with effect from 15/06/2014, is illegal and unjustified.

2. *It is further held that all the workmen under reference are entitled to payment of all back wages from the date of termination of their services till the date of the present order. In the event, M/s. Menezes Chemicals (Goa) Pvt. Ltd., recommences its operations or any other person whether natural or artificial succeeds to the Company and continues with the business, all the workmen under reference shall be entitled to reinstatement in service subject to their not having crossed the age of superannuation.*

3. *No Order as to Cost.
Inform the Government accordingly.”*

4. Mr. Nigalye, learned counsel for the Petitioner submits that in this case the possession of the Petitioner factory was taken over on 22nd September 2014 by the bank and financial institutions by taking resort to the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the SARFAESI Act). He, therefore, submits that this is not a case of retrenchment of any workmen but rather this is a case of closure of industry. On instructions, he concedes that the closure compensation which was required to be paid has not been paid to the workmen. However, he submits that the payment of closure compensation was never a condition precedent and this aspect has not been appreciated by the Labour Court in making the impugned award.

5. Mr. Nigalye submits that the Petitioner in paragraphs 3, 4, and 7 of its written statement had clearly pleaded and thereafter even

proved that there was no retrenchment as such but it is the workmen who themselves ceased to work in the factory. He pointed out that it is because the workmen stopped the work, the Petitioner could neither carry out any production nor pay any dues to the bank. He submits that in such a situation, there could have been no obligation for payment of retrenchment compensation or otherwise comply with the provisions of Section 25F of the Industrial Disputes Act, 1947 (the said Act). Mr. Nigalye submits that even this aspect has not been properly appreciated by the Labour Court and therefore the impugned award deserves to be set aside.

6. Mr. Nigalye submits that since the recovery certificate seeks to recover the amount based on the impugned award which is itself illegal and without jurisdiction, even the recovery certificate is required to be set aside.

7. Without prejudice Mr. Nigalye submits that there was no compliance with the principles of natural justice before issuing the recovery certificate since the notice was addressed to the factory, which to the knowledge of the Authorities was already closed. He further pointed out that a recovery certificate seeks recovery from the directors which is also not permissible.

8. For all these reasons, Mr. Nigayle submits that even the

impugned recovery certificate is required to be quashed and set aside.

9. As noted earlier, in the present case, the impugned award holds that the Petitioner has retrenched its 34 workmen and since there was no compliance whatsoever to the provisions of Section 25F of the said Act, such retrenchment is illegal and unjustified.

10. Normally the Labour Court after concluding that the retrenchment was null and void was required to grant relief of restatement with full back wages. However, in this case, the Labour Court has taken cognizance of the circumstance that presently the factory is not in operation and therefore, directed only payment of back wages till the date of the order. At the same time, the Labour Court has directed that in case the operations recommence, then, the illegally retrenched workmen were entitled to restatement in service subject to they having not crossed the prescribed age of superannuation.

11. The termination of the services of the 34 workmen in this case, clearly amounts to retrenchment as defined in section 2(oo) of the said Act. The case is not covered by any of the exempted categories. Further, in this case, it is very clear that there was no compliance whatsoever with the provisions of Section 25F of the said Act. This is a finding of fact recorded by the Labour Court. The Petitioner has placed no material whatsoever on record to establish compliance. The plea that

this was a case of closure and not a case of retrenchment was never specifically raised by the Petitioner before the Labour Court. This is quite evident from the pleadings in the form of a written statement dated 23rd January 2016. In the absence of such a plea, the Labour Court can never be faulted for not considering such a plea.

12. Mr. Nigalye, however, pointed out the pleadings in paragraphs 3, 4, and 7 of the written statement dated 23rd January 2016 to submit that the plea of closure was raised. The pleadings in paragraphs 3, 4, and 7 are transcribed below for the convenience of reference.

“3. Party II submits that having workers welfare at heart Party II took the decision to dispense with their services so that they can seek employment elsewhere after having realized that there are no chances for restarting the unit. In this manner employer Party II observed the principles of nature justice. The Party II has not violated this section 33 of the Industrial Dispute Act, 1947 therefore there is no necessity for taking permission from the court. The stand taken by the management is not illegal.

4. Party II submits that takeover of the unit by Bank itself for non payment of its dues resulted in untold sufferings to Party II. The Party II submit that workman themselves has stopped the work in the factory which is illegal due to which production came to stand still and the company was not able to produce its finished goods to cater to any orders which were there with the company. The Party II submit that it is not liable to pay any retrenchment compensation to the workman or any legal dues to the workman under Section 25F of ID Act 1947.

7. Party II submits that in case the situation improves and the unit is restarted Party II will consider to re-employ them and pay them their legal dues payable if any.”

13. From the aforesaid, it is difficult to agree with Mr. Nigalye that the plea of closure was raised. No doubt a plea was raised that it is the workmen who themselves stopped working and therefore, the workmen cannot insist upon any compliance with the provisions of Section 25F of the said Act. Such a plea was not at all proved by the Petitioner by leading any cogent evidence. Mere raising a vague plea is never enough. There is a requirement of proving such a plea by leading appropriate evidence.

14. In the present case, the Petitioner has failed to lead any clear and cogent evidence in support of pleas in the written statement including, in particular, the pleas in paragraphs 3, 4, and 7 of the written statement dated 23rd January 2016. Accordingly, it is not possible to accept Mr. Nigalye's contention that this was a case of closure and not a case of retrenchment. Admittedly, even the procedure in so far as the closure is concerned was never complied with by the Petitioner. Admittedly, even the closure compensation has never been paid by the Petitioner to the workmen. Thus, it is clear that the plea now sought to be advanced is not only in the nature of an afterthought, but, a malafide plea only to defeat the rights of the workmen who it appears, were summarily terminated without compliance with any legal procedures.

15. The circumstance that the Petitioner failed to pay its dues to the bank and the circumstance that the bank took over the possession was not even pleaded in the written statement. In any case, such a circumstance does not obviate the necessity of compliance with the law including compliance with the provisions of Section 25F of the said Act.

16. Accordingly, there is no infirmity in the impugned award to warrant interference with the same.

17. Now coming to the recovery certificate, again there is no infirmity in the recovery certificate or the manner of its issuance. The plea of failure of natural justice is quite half-hearted and it is not backed by any material on record. Besides, it is not sufficient to merely raise such a technical plea without establishing even an iota of prejudice. Since the direction in the impugned award for payment to the workmen was not complied with by the Petitioner, the workmen were left with no other alternative than to seek execution through the recovery proceedings. A recovery certificate in such circumstances has been correctly issued and there is no reason to interfere with the same. The writ jurisdiction of this Court is to be exercised to promote justice. The Petitioner having summarily terminated the services of the 34 workmen without compliance with the provisions of law, cannot now be permitted to stall or delay recovery proceedings in this manner. In the facts and circumstances of the present case, it is only appropriate that the recovery proceedings are expedited and disposed of at the earliest.

18. For the aforesaid reasons, this petition is dismissed. There shall be no order as to costs.

M. S. SONAK, J

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