IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.3552/2005

1] Mr. Shakir Khan Khalil Khan Pathan,
Aged – Major, Occ. Nil.
R/o Adiwasi Nagar, Badnera.
District Amravati.

2] Bhartiya Janata Kamgar Mahasangh,
Maharashtra, Tilak Putla, Mahal,
Nagpur.
Reg.No.NGP/4153 through General Secretary
for itself and for the petitioner no.1 as power of
Attorney holder. .... **PETITIONERS**

...V E R S U S...

1] Maharashtra State Textile Corporation Ltd.
Lotus House, Sir Vithaldas Thackersey Marg,
Mumbai-400 020, through its Managing Director,

2] State of Maharashtra,
through its Chief Secretary,
Mantralaya, Mumbai. .... **RESPONDENTS**

Shri S.A.Kalbande, Advocate for petitioners.
Shri M.R.Puranik, Advocate for respondent no.1.
Ms. N. P. Mehta, Assistant Government Pleader for respondent no. 2.

CORAM : A.S.CHANDURKAR and PUSHPA V. GANEDIWALA, JJ.
THE ARGUMENTS WERE HEARD ON 6th JANUARY, 2022.
THE JUDGMENT IS PRONOUNCED ON 19th JANUARY, 2022.

JUDGMENT (Per A.S.Chandurkar, J.)

The petitioner no.1 and other members of the Bhartiya Janata Kamgar Mahasangh - the petitioner no.2 which is a registered trade union comprising of employees of the erstwhile Vijay Mills, Badnera seek a declaration that the policy decision of the State Government - the respondent no.2 in the matter of payment of ex-gratia amount on the closure of textile mills be declared to be binding on the respondents by granting the petitioners who were employees of Vijay Mills, Badnera ex-gratia amount on the lines of Gujrat Pattern which provides for higher amount of compensation. The petitioners seek implementation of the decision taken by the State Cabinet of the Government of Maharashtra on 10.01.2001 by extending such benefits to the petitioners who had opted for the same by submitting their resignations. The amount of compensation is claimed with interest @12% per annum from 2001 and a challenge is raised to the decision of the State Government dated 10.03.2006 refusing to grant such compensation on the Gujrat Pattern to the members of the petitioner no. 2 -Union.

2] The facts relevant for considering the prayers made in the writ petition are that it is the case of the members of the petitioner no.2-Union that they were working at Vijay Mills, Badnera. An application under Section 25 O of the Industrial Disputes Act, 1947 (for short, 'the said Act') was made before the Labour Commissioner on 07.02.1997 seeking permission to close down said mill. The Labour Commissioner rejected that application on 02.05.1997 and the order was challenged by the respondent no.1. This Court on 19.06.2001 allowed the writ petition preferred by the respondent no.1 and consequentially allowed the closure application made by the respondent no.1 under Section 25 O of the said Act. The judgment of this Court was challenged before the Hon'ble Supreme Court by Rashtriya Sut Girni Mazdoor Sangh, a representative Union. In the meanwhile, the petitioner no.1 and other members of the petitioner no.2 totalling about 43 members submitted their resignations on the advise of the Management as it is their case that they were promised that the benefits as per Gujrat Pattern would be extended to them. As per this pattern ex-gratia amount was to be calculated by granting 35 days salary for each completed year of service and 25 days salary for the remaining years of service till the employee attained the age of 60 years alongwith gratuity being the salary for a period of 15 days. The petitioners claim ex-gratia amount on this basis which known as 'Gujrat Pattern'. Pursuant to the permission granted under Section 25 O of the said Act, Vijay Mills was closed on 12.08.2001 and closure compensation was given to each employee as per the provisions of Section 25 O (8) of the said Act. The petitioners state that this amount was received under protest and steps were taken to seek higher ex-gratia amount on the Gujrat Pattern. According to the petitioners the State of Maharashtra on 10.01.2001 took a policy decision to close down the Maharashtra State Textile Corporation Limited as well as its subsidiary Units. The Voluntary Retirement Scheme on the lines of Gujrat Pattern was to be implemented in mills situated at Mumbai and this was to be extended and made applicable to all workers working in the mills that came under the purview of the respondent no.1-Corporation. According to the petitioners the said policy decision was implemented with regard to employees of all mills except Vijay Mills, Badnera. On 10.03.2006 the State of Maharashtra through its authorized representative issued a communication refusing to extend the benefit of Gujrat Pattern in the matter of payment of ex-gratia amount to the employees of Vijay Mills, Badnera. It is in the aforesaid backdrop that the petitioners have filed this writ petition. By amending the same a declaration is sought that the policy decision dated 10.01.2001 is binding on the respondents and the employees of Vijay Mills, Badnera are entitled to ex-gratia amount as per Gujrat Pattern. The order dated 10.03.2006 refusing to grant such benefit has been challenged.

3] Shri S.A.Kalbande, learned counsel for the petitioners after referring to the aforesaid factual aspects submitted that there was no legal justification on the part of the respondents in refusing to grant ex-gratia amount based on the Gujrat Pattern especially when such higher ex-gratia amount was granted to all workers of mills under the respondent no.1-Corporation. Inviting attention to the decision taken by the State Government in its meeting held on 10.01.2001 by which it was resolved to close down the respondent no.1-Corporation and its subsidiary Units and thereafter pay ex-gratia amount based on the Gujrat Pattern by applying the Voluntary Retirement Scheme, it was submitted that there was no reason whatsoever to exclude the members of the petitioner no.2-Union from receiving such benefits. There was also no reason contained in the communication dated 10.03.2006 for refusing to grant such higher ex-gratia amount. Since the resolution dated 10.01.2001 was of a beneficial nature, it ought to have been applied to the members of the petitioner no.2-Union but the same was not done. The learned counsel submitted that pursuant to the assurance that was given by the respondent no.1-Corporation, the members of the petitioner no.2-Union had submitted their voluntary resignations. Despite various representations being made, the respondents were discriminating between workers who received ex-gratia amount as per Gujrat Pattern and the members of the petitioner no.2-Union by denying such benefits to them though they were similarly situated. On the principle of promissory estoppel the respondents were precluded from making such discrimination and hence it was prayed that the reliefs sought in the writ petition be granted as such denial was violative of Article 14 of the Constitution of India. In support of his submissions the learned counsel placed reliance on the following decisions:

1. Union of India and others vs. N.S.Rathnam and sons (2015) 10 SCC 681.
2. Dr.Ashok Kumar Maheshwari vs. State of U.P.and another (1998) 2 SCC 502.
3. Jagdish Rai and brothers Vs. Union of India (1999) 3 SCC 257.
4. Shobha Ram Raturi vs. Haryana Vidyut Prasaran Nigam Limited and others. (2016) 16 SCC 663.

4] Shri M.R.Puranik, learned counsel for the respondent no.1-Corporation opposed the aforesaid submissions. He submitted that in the year 1996 itself the State Government had taken a policy decision to close down Vijay Mills, Badnera as it was running in losses since long. This was opposed by the representative Union. The Management was therefore required to seek permission under Section 25 O of the said Act for closing down the said Mills. As such permission was not granted by the Labour Commissioner, the Management had approached this Court which ultimately allowed that application on 19.06.2001. This Court held in clear terms that the closure as sought under Section 25 O of the said Act was legal. Once such permission was granted, closure of the mills would relate back to 07.02.1997 which was the date on which such permission was sought. He submitted that the said judgment was upheld by the Hon'ble Supreme Court on 06.08.2011. As a result actual closure of the mills took place on 02.08.2001. Pursuant thereto, orders of termination were issued to the employees and benefits admissible under Section 25 O(8) of the said Act were paid to the employees. Since the order of status-quo was operating during pendency of the proceedings before this Court, the Management had paid idle wages to all employees despite the fact that the mill was closed long back. It was denied that the members of the petitioner no.2-Union had submitted their voluntary resignations but in fact their services had been put to an end as a consequence of closure of the mills.

The petitioner no.2 was not a representative Union under the relevant statute and it was only Rashtriya Sut Girni Mazdoor Sangh that was the representative Union. It was denied that there was any discrimination on the part of the respondents in paying ex-gratia amount. The benefits as per Gujrat Pattern was given to employees of the mills under the respondent no.1-Corporation and since Vijay Mills, Badnera was closed down long back, its employees such as the petitioners were not entitled for such benefits. In fact, the members of the petitioner no.2-Union had received closure compensation as well as idle wages for the period from February 1997 to 12.08.2001. Considering all these facts, the State Government on 10.03.2006 had found that similar benefit as per Gujrat Pattern could not be extended to the members of the petitioner no.2-Union. It was thus submitted that there was no merit whatsoever in the prayers made by the petitioners and the writ petition was liable to be dismissed. The learned counsel placed reliance on the following decisions in support of his submissions:

1. Bank of India and others vs. O. P. Swarnakar and others (2003) 2 SCC 721.
2. A.K.Bindal and another vs. Union of India and others (2003) 5 SCC 163.
3. General Manager Vs. State of M.P. and another, 2007(3) M.P.L.J. 83.
4. J.K.Cotton Spinning and Weaving Mills Co.Ltd. Vs. State of U.P. and others. AIR 1961 SC 1170.

On behalf of the respondent no.2, Ms. N. P. Mehta, learned Assistant Government Pleader supported the stand taken by the respondent no.1 and reiterated that the case of members of the petitioner no.2-Union stood on a different footing than the case of those employees who were found entitled to ex-gratia amount as under the Gujrat Pattern.

5. We have heard the learned counsel for the parties at length and with their assistance we have also perused the documents placed on record. The petitioners seek to be treated similarly as the employees who are governed by the Government Resolution dated 10.01.2001 in the matter of grant of ex-gratia amount as per the Gujrat Pattern. They contend that as Vijay Mills, Badnera was closed down on 12.08.2001 after being declared sick, they are entitled to higher amount of ex-gratia amount as has been granted to the employees of other such mills by the respondents. On the other hand according to the respondents the case of closure of Vijay Mills, Badnera is distinct from the closure of other mills referred to by the petitioners. The respondents state that the mills referred to by the petitioners wherein the Gujrat Pattern in the matter of grant of ex-gratia amount was adopted were governed by separate agreements entered into while effecting closure. Hence the case of the petitioners cannot be equated with the case of employees of such other mills that were closed down.

6. It is seen from the record that there are various distinguishing features in the case of the petitioners and that of the employees of other mills

that were subsequently closed down. In the case of Vijay Mills, Badnera the State cabinet took a decision on 24.12.1996 to close down the same as it was non-viable and was running in losses. The representative Union however opposed this policy decision as a result of which the respondent no.1 filed an application under Section 25 O of the said Act on 07.02.1997 seeking permission of closure. Such permission was not granted by the Labour Commissioner and hence the matter had come up before this Court at the instance of both the parties. By the judgment dated 19.06.2001 the writ petition preferred by the respondent no.1 was allowed and the permission of closure under Section 25 O of the said Act came to be granted. Immediately thereafter the forty three employees whose cause is being espoused in this writ petition submitted their resignations to the Management. At that point of time there were about two hundred and sixteen employees in employment of Vijay Mills, Badnera. Some other employees besides the present forty three employees did not submit their resignations and they attained superannuation subsequently. Some employees submitted their resignations under the old Voluntary Retirement Scheme. The respondent no.1 did not accept the resignations of the said forty three employees. For the period from February 1997 to 12.08.2001 on which date Vijay Mills, Badnera was closed pursuant to the orders passed under Section 25 O of the said Act, idle wages were paid to these forty three employees. Besides these idle wages, the said forty three employees were also paid closure compensation that was statutorily required to be paid under Section 25 O of the said Act. The petitioners have received that amount too. Perusal of Annexure-R-5 which is a statement showing the amount of idle wages as well as retrenchment compensation paid to the petitioners as compared to the amount payable under the Gujrat Pattern indicates that the amounts received by these forty three employees exceeds the amount that would have been payable to them under the Gujrat Pattern in the case of majority of the employees. In the case of some employees, the difference is marginal. It is also to be noted that according to the respondents application of the Gujrat Pattern in the matter of payment of ex-gratia amount pre-supposes closure of the concerned mill on a single day. Same is not so in the present case. Further insofar as the employees of Empress Mills are concerned, the Commissioner of Labour while granting permission under Section 25 O of the said Act to close down that mill on 07.09.2002 granted closure permission subject to paying those employees compensation as per the Gujrat Pattern. In the present case, there is no such order passed in proceedings under Section 25 O of the said Act in favour of the petitioners.

7. Yet another distinguishing feature pointed out by the respondents with regard to Pulgaon Cotton Mills, Narsinghgirijee Mills, Solapur and Empress Mills, Nagpur is that the employees therein were never paid idle wages as were paid to the employees of Vijay Mills, Badnera. In the case of Narsinghgirijee Mills production activities continued till the date of closure

which was 30.06.2002. With regard to Empress Mills also production activities continued till 14.09.2002 and the closure took place on 15.10.2002. In the case of Pulgaon Cotton Mills production was discontinued from April 2003 and the mill was closed from 31.08.2003. The closure of Vijay Mills would relate back to 07.02.1997 while its production activities ceased in February, 1969 when it went into liquidation. We find from the aforesaid distinguishing features that the same would not enable the Court to record a finding that the employees of Vijay Mills, Badnera were similarly situated as the employees of other mills referred to hereinabove.

8] As regards the reference made by the petitioners to the case of two employees receiving benefits despite being in employment of Vijay Mills, Badnera, this aspect has been clarified by the respondent no.1 by stating that both the employees namely S/Shri S.S.Thakur and R.S.Dalvi were grade officers with the respondent no.1. They were therefore granted benefit as admissible to the employees of the respondent no.1. They had merely being deputed to Vijay Mills, Badnera to oversee the aspect of closure. This aspect is thus not relevant and the petitioners cannot rely upon the instances as given by them by referring to these two employees. In the aforesaid backdrop, the State Government on 10.02.2006 expressed its opinion that it would not be possible to grant ex-gratia amount to employees of Vijay Mills, Badnera on the Gujrat Pattern. We find that this decision of the State Government cannot result in any discrimination between the employees of Vijay Mills, Badnera and the employees of other mills. The said cases cannot be said to be similar in nature and they have their own peculiarities. The State Government by filing a fresh affidavit on 14.01.2020 has further pointed out that the closure of Vijay Mills was pursuant to a Cabinet decision taken on 24.12.1996 for which application for closure was required to be made on 07.02.1997. In the case of other mills referred to by the petitioners closure came into effect much after the Government decision dated 10.01.2001 referred to above. In these facts therefore the question of invoking the doctrine of promissory estoppel by the petitioners does not arise especially when there is no promise by the respondents shown to be made to the petitioners on the basis of which they contend that they had tendered their resignations. It is therefore not necessary to refer to the decisions in that regard. There are various distinguishing features on the basis of which the claim of the petitioners for being similarly treated cannot be accepted. We do not find that by failing to apply the Gujrat Pattern in the matter of grant of ex-gratia amount to the petitioners and also by refusing to apply the policy decision dated 10.01.2001 to the petitioners, the same has resulted in violation of Article 14 of the Constitution of India qua the employees of other mills that were also closed down.

9] For the aforesaid reasons, we do not find that the petitioners would be entitled to any relief whatsoever. The writ petition is accordingly dismissed. Rule stands discharged with no order as to costs.

(PUSHPA V GANEDIWALA, J.) **(A.S.CHANDURKAR, J.)**

Andurkar..