**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

*214(1)*

**CWP No.23519 of 2015 (O&M)**
**DATE OF DECISION: 29th NOVEMBER, 2022**

**Badam Singh**

…. **Petitioner**

**Versus**

**M/s Bhartia Industries Limited and another**

…. **Respondents**

**CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

Present : Mr. Ashwani Bakshi, Advocates
for the petitioner.

Mr. Adarsh Jain, Advocate,
for respondent No.1.

Service upon respondent No.2 dispensed with
vide order dated 04.11.2015.

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**RAJBIR SEHRAWAT, J. (Oral)**

This is a petition filed under Articles 226/227 of the Constitution of India for issuance of writ, order or direction; especially in the nature of Certiorari for quashing the award dated 01.10.2014 (Annexure P-12), passed by the Industrial Tribunal-cum-Labour Court-II, Faridabad, rejecting the reference of the petitioner-workman.

The brief facts, as asserted in the present petition; are that the petitioner had been working with the respondent-Management since 27.11.1973 and was drawing salary of Rs.5,500/- per month. On 31.08.2000, the respondent-Management illegally terminated the service of the petitioner by forcibly obtaining his resignation and retiring him

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under Voluntary Retirement Scheme (for short, VRS). Even, under that scheme, the amount of VRS had not been paid as was agreed by the respondent-Management with the workman in the settlement arrived at under Section 12 (3) of the Industrial Disputes Act, 1947 (for shot, the Act). Therefore, the action of the respondent-Management amounted to illegal termination of the service of the petitioner. Asserting these facts, the petitioner had raised an industrial dispute. The appropriate government made a reference to the Labour Court. However, that reference has been answered against the petitioner. Hence, the present petition has been filed.

Arguing the case, learned counsel for the petitioner has submitted that the respondent-Management has disguised their illegal action in the form of VRS. In fact, this was an exercise carried out by the respondent with the help of some anti-social elements, who used to visit the factory premises to threaten the work-force so as to make them sign certain papers. In the said process, the petitioner was also forced to sign the papers of his retirement. Therefore, the petitioner had never accepted the VRS; as such. The counsel has further submitted that the fact that the VR scheme was not voluntary accepted by the petitioner, is clarified by the fact that on the very next day of his forced retirement, the petitioner had approached the police by way of complaint against the respondent. Once the petitioner had disputed the factum of the acceptance of VRS being a voluntary act, the same creates an industrial dispute. The counsel has relied upon the judgment rendered by Hon'ble the Supreme Court in the case of ***Nar Singh Pal Versus Union of India, 2000 (3) SCC 588***. Therefore, the Labour Court should have decided upon the voluntary

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nature of the retirement of the petitioner. There is no material to show that VRS was accepted by the petitioner voluntarily. However, the Labour Court has wrongly appreciated the material to hold that the petitioner has voluntary accepted the VR scheme. The counsel has further submitted that even under the VR scheme, the petitioner was not paid the benefits to which he was entitled as per the settlement arrived at between the workman and the respondent-Management.

On the other hand, learned counsel for respondent No.1-Management has submitted that the petitioner had availed the benefits of VRS retirement. For that purpose, he had made an application in the prescribed performa. Accordingly, he was given two separate cheques, one for voluntary retirement scheme and another for amount of gratuity. Both the cheques have duly been encashed by the petitioner. The fact that the petitioner made a complaint to the police and started raising the dispute qua the acceptance of VRS is only an afterthought. Moreover, the petitioner has not led any evidence on file to prove any involvement of force or fraud in the process of VRS. The petitioner has not even led any evidence to show that the terms offered to the petitioner; and as accepted by him; were less favourable than the entitlement. Having accepted the money under the VRS, the petitioner cannot be permitted to take a turn-around and to start disputing the very factum of the VRS being voluntary. The counsel has further submitted that the voluntary nature of the acceptance of VRS by the petitioner; was not even disputed by the petitioner in the demand notice. The ground for branding the termination as illegal in the demand notice was other than the forced imposition of

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voluntary scheme upon the petitioner. Hence, the findings recorded by the Labour Court are perfectly legal.

Having heard learned counsel for the parties and having perused the record, this Court does not find any substance in the arguments raised by the counsel for the petitioner. It is not even in dispute that the petitioner had made an application for VRS retirement in the prescribed performa. The petitioner had also accepted two separate cheques, on account of VRS scheme, as well as, on account of the payment of gratuity. Although the petitioner claims to have raised the dispute regarding the retirement being forced upon him, however, the fact remains that the petitioner had encashed both the cheques thereafter and had appropriated the said amount. Moreover, no grievance was ever raised regarding the non-payment or lesser payment of the gratuity by him. That means, he was satisfied with the amount of gratuity. Not only that, although the findings recorded by the Labour Court is that the petitioner has not led any evidence to show as to what was his last monthly salary, however, even taking the monthly salary of Rs.5,500/-, as claimed by him, the amount paid to the petitioner satisfies the requirement of the VR scheme. Rather, the said money paid to the petitioner is even more than the amount of retrenchment compensation; which the petitioner would have been entitled; had the respondent-Management chosen to retrench the petitioner by paying the statutory compensation. Needless to say that under the Industrial Disputes Act the right of the employer to retrench an employee is not restricted in any manner in terms of taking decision to retrench as such, though there are certain procedural requirement and the requirement of payment of

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statutory benefits. Therefore, even if the petitioner is permitted to brand the factum of his retirement being without his consent, though not substantiated on record, the payment of compensation, satisfies the requirement of the retrenchment; as prescribed under the Act. There is only Section 25 F which prescribes the conditions precedent for retrenchment of an employee. The said conditions as prescribed in Section 25 F of the Act is to pay prescribed amount of compensation. The petitioner is not in a position even now to allege that the amount paid to him was, in any manner, lesser than the statutory amount; required to be paid to him for retrenching his service. There is no gain-saying that there is no other fact alleged by the petitioner which could have vitiated the retrenchment of the petitioner.

Although the petitioner has alleged fraud and force in the process of his retirement, however, no evidence has been led by the petitioner on file to substantiate the allegations of the fraud and force. Even a co-employee was not examined in the case to corroborate the allegations of the petitioner. *De hors* the bare allegations of force, the retirement of the petitioner is a subject-matter of documents. All documents available on record amply suggest the voluntary nature of the retirement of the petitioner. Qua the fact which is a subject-matter of the documents, oral evidence is otherwise also excluded. Therefore, un-corroborated verbal version of the petitioner cannot stand the scrutiny in the face of plethora of the contrary documents on record and accompanied by the fact that the petitioner had himself encashed the cheques of the amount paid to him by the respondent-Management. The Labour Court has rightly recorded the finding that the assertions made by

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the petitioner qua the force and fraud remain un-substantiated due to lack of any evidence thereon. This Court does not find any illegality or perversity in the findings recorded by the Labour Court.

Although the counsel for the petitioner has submitted that the voluntary nature of the retirement is to be independently assessed by the Labour Court and in case it is proved that the retirement was not voluntary, then the termination would be totally illegal, however, the record clearly shows that the said aspect has duly been considered by the Labour Court and it has been recorded that the retirement taken by the petitioner was voluntary. Therefore, even this argument of the counsel for the petitioner and his reliance upon the judgment rendered by Hon'ble the Supreme Court in the case of ***Nar Singh Pal (supra)*** is of no significance, at this stage.

In view of the above, finding no merit in the present petition, the same is dismissed.

The pending miscellaneous application, if any, is also disposed of as such.

**29th NOVEMBER, 2022** **(RAJBIR SEHRAWAT)**
*'sandeep'* **JUDGE**

*Whether speaking/reasoned:* *Yes*
*Whether Reportable:* *Yes*

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