



**IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION (REVIEW) NO.10 OF 2019
IN
WRIT PETITION NO.132 OF 2019**

M/s. CFL Pharmaceuticals Ltd.Applicant
Nirankal Road, Curti, Ponda- Goa,
represented herein by its Authorised
Signatory, Mr. Uday Deshpande,
having office at 5th Floor, Dempo
Tower, Patto Plaza, Panaji- Goa 403
001.

Versus

Workmen
Rep. By the General Secretary of
Gomantak Mazdoor Sangh, ShetyeRespondent
Sankul, 3rd Floor, Tisk, Ponda Goa.

Mr. G.K. Sardessai with Ms. Smrati Bangera, Advocates for the
Applicant.

Mr. Shivraj Gaonkar with Mr. Prabhav Pravin Sirvoicar, Advocates
for the Respondent.

CORAM: **BHARAT P. DESHPANDE, J**

RESERVED ON: **24th July, 2024.**

PRONOUNCED ON: **2nd August, 2024.**

O R D E R:

1. Heard Mr. G.K. Sardessai with Ms. Smrati Bangera, learned
Counsel for the Applicant and Mr. Shivraj Gaonkar with Mr.
Prabhav Pravin Sirvoicar, learned Counsel for the Respondent.

2. The present proceedings are filed with a prayer to review order passed by this Court on 29/01/2019 in Writ Petition No.132 of 2019 basically on the ground that there is error apparent on the face of record and that the material aspects have not been considered properly. It is also claimed that the impugned order is contrary to judgment in the case of **Gurunath Mahashetty and ors v/s. Saint Gobain Sekurit India Ltd.** [Writ Petition No.13395 of 2016] and **Man Singh v/s. Maruti Suzuki India Ltd and anr.** [2011 (III) CLR 390].

3. Mr. Sardesai would submit that review is required on equitable principles since some judgments are not properly considered while disposing of the petition. He submits that this Court while deciding the Writ Petition considered the judgment in the case of **Saint Gobain Sekurit India Ltd. V/s. Kuyesh Durjan Yadav**[2016(1) Mh.L.J. 822] as guidelines but according to him the same cannot be considered as directions.

4. Mr. Sardesai submits that the settlement effected between the parties was towards full and final settlement of the dues and therefore reference made thereafter was not at all maintainable. He submits that two decisions of the Apex Court were not considered. He would submit that there was no question of

remanding the matter to the learned Tribunal as the matter was considered as settled on the basis of settlement terms and thus there is error on the face of record which needs to be reviewed.

5. Mr. Gaonkar, on the contrary, claimed that there is no error apparent on the face of record and subsequent judgment of the Courts cannot be considered as a ground for review. The dispute before the Tribunal was in fact not with regard to the Voluntary Retirement Scheme extended to the workmen but it was regarding closure notice which amounts to retrenchment. He submits that the settlement was with regard to the monetary benefits and the contention that before considering the dispute, the workmen or the Union is required to refund all the benefits received, cannot be considered as mandatory. He submits the power to grant such relief is discretionary and on the principles of equity which has been exercised by this Court and therefore no case is made out for grant of review.

6. Writ Petition No.144 of 2019 was filed by the workmen represented by their General Secretary /Respondent herein thereby challenging the impugned order passed by the Tribunal dated 05/12/2018 on an application filed by the employer/Applicant at Exh.63. The learned Tribunal partly

allowed such application and directed the workmen to deposit the entire amount received by them towards the settlement, within 45 days and the dispute/reference shall be treated as annulled in respect of those workmen who failed to deposit such amount.

7. While deciding such petition, this Court (Kum. Nutan D. Sardessai,J) considered the decision in the case of **Saint Gobain Sekurit India Ltd.**(supra) and allowed the said petition by quashing and setting aside the directions of Industrial Tribunal about deposit of entire benefit within 45 days and directing the Tribunal to consider the reference on its own merits.

8. The decision in **Saint Gobain Sekurit India Ltd.**(supra) delivered by the learned Single Judge of this Court on 08/12/2015 by considering the Apex Court's decisions including **Man Singh**(supra), **Ramesh Chandra Sankla and ors v/s. Vikram Cement and Ors** [(2008) 14 SCC 58] etc. and thereafter observing that the power to direct pre- deposit exists, cannot be doubted. However, from the existence of such power, an sequator does not automatically follow that it is a mandatory precondition. It is permissible in certain given circumstances to consider whether such directions could be issued or not. It depends upon facts of each case.

9. Mr. Sardessai while placing reliance in the case of **Ramesh Chandra Sankla** (supra) would submit that a workmen cannot be allowed to reagitate and claim benefits after receiving the amount towards full and final settlement unless such amount is deposited with the concerned Court with interest. The decision of **Ramesh Chandra Sankla**(supra) is admittedly considered in the case of **Saint Gobain Sekurit India Ltd.**(supra) wherein this Court has already discussed that such aspect will have to be decided on case to case basis and it cannot be considered as a precondition for the purpose of entertaining any reference.

10. **Man Singh**(supra) was also considered in the case of **Saint Gobain Sekurit India Ltd.**(supra) which is clear from paragraph No.12 and accordingly it has been interpreted that observations of the Apex Court in both these matters cannot be considered as mandatory provision directing pre-deposit before entertaining any reference challenging such settlement.

11. In the case of **Gurunath** (supra) the learned Single Judge of this Court while dealing with the similar issue also considered the case of **Mansingh, Rameshchandra** along with **Arun Dattatraya Gore v/s. Manu Graph Industries Ltd.**[WP **No.129 of 2012**], observed in paragraph 15 that the directions to

repay the amounts received by the workmen to the company is not justified at the interim stage.

12. In the case of **Depot Manager Andhra Pradesh State Road Transport Corporation v/s. M. Maruthi** [(2020) 14 SCC 619], the Apex Court was considering the aspect of review, wherein it was observed that when attention of the Court was drawn to the facts that the case on hand and the distinguishing facts in both the cases, the Court ought to have reviewed and recalled its order. However, this decision will not help the Petitioner/Applicant since the decisions which are now cited by Mr. Sardesai were not placed before this Court while passing order which he is sought to be reviewed in the present proceedings.

13. In the case of **Phulabai Prakash Pawar v/s. SKF India Limited & Anr** [2016 SCC OnLine Bom 10721] which is delivered in the year 2016 is now sought to be relied upon. However, the matter clearly shows that such judgment was not referred to while deciding the present petition. Similarly the case with regard to **Babubhai Ramjibhai Dabhi v/s. Truetzschler India Private Limited** [Special Civil Application No.17459 of 2022]

which is a recent judgment of Gujarat High Court decided on 29/03/2023.

14. In case of **Dokka Samuel v/s. Dr. Jacob Lazarus Chelly** [(1997) 4 SCC 478], the Apex Court observed that omission to cite authority of law is not a ground for reviewing prior judgment by saying that there is an error apparent on the face of record, since the Counsel has committed an error in not bringing to the notice of the Court the relevant precedents.

15. While disposing of the petition on 29/01/2019, this Court basically relied upon observations in the case of **Gobain Sekurit India Ltd.** (supra) and also the fact that the workmen who challenged the VRS after few years, cannot be asked to deposit entire benefits for entertaining such reference since such amount was received by them as a closure compensation and that only the benefits of the VRS was extended. Similarly this Court observed that the reference was made to the Industrial Tribunal in the year 2007 while application was filed by the Applicant seeking deposit of the so called VRS compensation only in the year 2018 i.e. after a period of more than 11 years. Thus, it was further observed that some of the workmen had retired and attained the age more than 70years and that most of them have spent consideration amount

towards their family expenditure, it would not be possible for them to return such benefits as a precondition for entertaining their reference.

16. From the above observations, the contentions raised on behalf of the Applicant and that too by way of review, are of no substance. The contentions raised cannot be looked into in Review Petition and thus application deserves to be rejected and accordingly stands rejected.

BHARAT P. DESHPANDE, J.