



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL JURISDICTION

WRIT PETITION (L) NO. 14887 OF 2023

1. Esselworld Leisure Pvt. Ltd.
14th floor, Times Tower, Kamala City,
Senapati Bapat Marg, Lower Parel,
Mumbai-400 013.

2. Shri Ramesh Jamdhade,
Human Resources & Administration Head,
M/s. Esselworld Leisure Pvt. Ltd.
14th floor, Times Tower, Kamala City,
Senapati Bapat Marg, Lower Parel,
Mumbai-400 013.

3. Shri Ashok Goel, Director,
M/s. Esselworld Leisure Pvt. Ltd.
14th floor, Times Tower, Kamala City,
Senapati Bapat Marg, Lower Parel,
Mumbai-400 013.

...Petitioners

Versus

1. Syam Kashinath Koli
2. Shaila Albert Tuscano
3. Sunita N. D'souza
4. Albert J. Pereira
5. Jairam S. Yadav
6. Dharmraj B. Jaiswar
7. Pitambar G. Ganguvde
8. Gopal M. Medar
9. Sanjay B. Patel
10. Hanuman R. Pandey
11. Vincent D. Kinny
12. Anita Dilip Vaity
13. Manoj J. Bhandari
14. Prasad J. Kurup
15. Arvind A. Salvi
16. Dilip C. Vaity
17. Naresh M. Das
18. Ramesh W. Koli
19. Subhash J. Koli

20. Jagdish B. Bhandari
21. Ramesh S. Mahadik
22. Santosh T. Parab
23. Jagdish Mhalsakar
24. Hemant Koli
25. Chandrakant Koli

All C/o R.S. Upadhyay,
4-A, Laxmi Dutt Sadan T.P.S. III, 4th
Road, Golibar, Santacruz (East),
Mumbai-400 055.

...Respondents

Mr. Kiran Bapat, Senior Advocate with Mr. Sachin Pathak i/by Mr. Niraj Prajapati, for the Petitioners.

Mr. R. S. Upadhyay, Advocate for Respondents.

CORAM : N. J. JAMADAR, J.
RESERVED ON : 3rd AUGUST 2023
PRONOUNCED ON : 29th SEPTEMBER 2023

JUDGMENT :-

1. Rule. Rule made returnable forthwith. With the consent of the learned Counsel for the Parties, heard finally.
2. By this Petition under Article 226 of the Constitution of India, the petitioners take exception to an order passed in an Interim Application (Exhibit U-10 in complaint ULP) No. 41 of 2022 dated 24th April 2023 by the learned Member, Industrial Court at Mumbai whereby the Petitioners have been restrained from selling, disposing and removing the machineries, equipments and properties of the petitioner No.1-Company.

3. Background facts leading to this Petition can be summarised as under: -

Petitioner No.1 is a Private Limited Company. The Petitioner Nos. 2 and 3 are the Human Resources and Administration Head, and Director of Petitioner No.1, respectively. Petitioner No.1 has three divisions, namely (1) Ride and Amusement Park, (2) Water Kingdom; and (3) Bird park. The Petitioner No.1 had 134 employees working in its Ride and Amusement Park Division. Respondent Nos. 1 to 25 were amongst those 134 employees.

4. With the outbreak of Covid-19 pandemic, the petitioners assert, all three units were closed since 22nd March 2020. Even otherwise, according to the petitioners, the petitioners were incurring heavy losses since the year 2016-2017. The Petitioners, thus, contemplated approaching the authorities under the Industrial Disputes Act, 1947 for seeking permission to retrench the workmen. Recognized union was informed about the said initiative. Thereupon, negotiations were held between the petitioners-employers and the office bearers of the union and other representatives of the workmen over a period of time. After protracted deliberations and negotiations, according to the petitioners, the employers and the recognized union agreed to enter into a settlement which was far more beneficial to the workmen

than the amount which the workmen would have otherwise got in the event of retrenchment. Thus, a settlement under Section 2(P) read with Section 18(1) of the Industrial Disputes Act, 1947 and Rule 62 of the Industrial Disputes (Maharashtra) Rules, 1957 came to be executed between the representatives of the employer and the representatives of the union and workers on 14th April 2021.

5. Under the terms of settlement, it was agreed, *inter alia*, that, each of the workmen covered by the said settlement will submit resignation from employment with effect from 1st April 2021 in lieu of compensation in the form of *ex-gratia* and other dues such as leave balance, gratuity, bonus and notice pay, which included salary for 1st April 2021. Pursuant to the settlement, the amounts were credited to the accounts of all 134 workmen. Each of them, in turn, tendered resignation, made a declaration and passed receipt in acknowledgment of the amount paid towards full and final settlement of the claim. The petitioner's claim that an aggregate amount of Rs.3,19,36,870/- was paid to the Respondents under the terms of the settlement and it was far more than the legal dues otherwise payable to the workmen.

6. The Respondent Nos. 1 to 25-Complainants filed a complaint of Unfair Labour Practices under Items 9 and 10 of Scheduled IV of the Maharashtra Recognition Of Trade Unions And Prevention Of

Unfair Labor Practices Act, 1971 (the Act, 1971) alleging that, the petitioners had brought about a closure of the Petitioner No.1's establishment in breach of the mandate contained in Section 25-O of the Industrial Disputes Act, 1947. The closure of the establishment without following the mandate of Section 25-O of the Act constituted an Unfair Labour Practice under Item 9 of Scheduled IV of the Act, 1971. It was further alleged that neither the employer nor the union had disclosed the terms and conditions of the settlement before obtaining the signatures of the workmen on blank papers. The credit of the amount to the accounts of the workmen without disclosing the purpose and computation thereof constituted an act of force within the meaning of Item 10 of Scheduled IV of the Act, 1971.

7. It is further asserted when the complainants realized the alleged fraud, they sought the copies of the settlement executed by and between the employer and the recognized union. As the employer and the recognized union did not furnish copies of the settlement, they approached the Assistant Labour Commissioner. Even before the Assistant Labour Commissioner, neither the employer nor the representatives of the recognized union furnished the copies of the settlement. Hence, the complainants were constrained to approach the Industrial Court with a complaint

seeking a declaration that the petitioners engaged in Unfair Labour Practices under Items 9 and 10 of Scheduled IV of the Act, 1971, the closure of the establishment by the petitioners on 1st April 2021 was illegal and in breach of Section 25-O of the Industrial Disputes Act, 1947 and that the settlement arrived at between the employer and the recognized Union was void and illegal. A consequential relief of direction to the petitioners to allow the complainants to join the duty and pay full back wages with effect from 1st April 2021 was also sought.

8. The complainants filed an application for interim relief seeking directions to allow the complainants to resume the duty during the pendency of the complaint. However, on 20th January 2023, the complainants sought leave to withdraw of Interim Application (Exhibit U-2) asserting that the complainants desired to proceed with the main complaint. The said application thus came to be disposed.

9. The complainants preferred another application for interim relief on 17th February 2023 (Exhibit U-10) seeking to restrain the employers from selling, disposing and removing the machineries, equipments and properties of the Petitioner No.1. It was *inter alia* asserted that the complainant learnt that the petitioner No.1 had resorted to the sale of equipments and the machineries and had

already sold six rides and one ride corosal and was in the process of selling the balance rides.

10. The petitioners, who had resisted the complaint by filing written statement, filed an affidavit-in-reply opposing the prayers in the second interim application. It was contended that the complainants were fully aware that they had resigned from their services after accepting sumptuous amount towards full and final settlement of their claims and the instant application was preferred to arm-twist the employer with a design to extort additional and undeserving money from the employer. The employer further contended that as the machineries and equipments had not been in use for more than three years and were getting rust, the employer had no other option but to sell those equipments and machineries to realize whatever value they could fetch. Grant of interim relief, as sought by the complainants, would cause irreparable loss to the employer.

11. By the impugned order, the learned Member, Industrial Court was persuaded to allow the application and restrain the employer from selling, disposing and removing the machineries, equipments and properties. The learned Member, Industrial Court was of the view that the question as to whether the settlement arrived at between the employer and the recognized union and whether the

cessation of the employment on the basis of the resignation allegedly tendered by the workmen, were legal and proper can only be adjudicated at the final hearing of the complaint, after the parties adduced the evidence. However, since the non-compliance of the provisions contained in Section 25-O and 25-N of the Industrial Disputes Act, 1947 was evident, a *prima facie* case for grant of injunction was made out. The learned Member, Industrial Court was also of the view that the balance of convenience tilted in favour of the complainants and they would suffer irreparable loss if injunction was not granted as with the sale of the assets of the petitioner No.1 the workmen would come on the street.

12. Being aggrieved, the petitioners have invoked the writ jurisdiction.

13. I have heard Mr. Kiran Bapat, the learned Senior Advocate for the Petitioners, and Mr. R. S. Upadhyay, the learned Counsel for the Respondents/Complainants at some length. With the assistance of the learned Counsel for the parties, I have also perused the pleadings, documents and material on record.

14. Mr. Bapat, the learned Senior Advocate for the Petitioners would urge that the learned Member, Industrial Court committed a grave error in restraining the employer from selling the

machineries and equipments, without keeping in view the principles which govern the grant of temporary injunction and totally ignoring the equitable consideration. Mr. Bapat, submitted that out of 134 workmen, only 25 have lodged the complaint, and that too belatedly. Initially, the complainants preferred an application for interim relief in the nature of reinstatement during the pendency of the complaint and after keeping the said application pending for more than eight months, withdrew the same and, thereafter, with an oblique motive, preferred the instant application. This motive behind the litigation ought to have entered the judicial verdict.

15. Mr. Bapat, strenuously submitted that the case was not at all evaluated on parameters of balance of convenience and irreparable loss. The Petitioners having parted with huge compensation of Rs.3 Crores, have been restrained from selling its assets, which would further diminish their value substantially. In the peculiar facts of the case, according to Mr. Bapat, the impugned order operates to the grave prejudice of the employer. Mr. Bapat submitted that, the principal contention of the complainants that they were unaware of the terms of the settlement is belied by the documents executed by each of the complainants in the presence of witnesses and the fact that sumptuous amount was credited to the accounts of the each of

the complainants.

16. Mr. Bapat would further urge that since the complainants had tendered resignation, it would not amount to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act, 1947. In a situation of this nature, where all the employees, after accepting their legal dues, have tendered resignation and that resulted in closure of the establishment, the mandate of Section 25-O was not required to be followed. The learned Member, Industrial Court, thus, committed a manifest error in holding that the complainants had made out a *prima facie* case.

17. In any event, the complainants having accepted an average amount of Rs.12 to 13 lakhs, and not shown any inclination to bring back the said amount, could not have been granted equitable relief, submitted Mr. Bapat.

18. In opposition to this Mr. Upadhyay, the learned Counsel for the complainants stoutly submitted that the very settlement itself records that the process of retrenchment would have been time consuming and thereby indicates that the said settlement was a subterfuge. Taking the Court through the intrinsic evidence of the terms of settlement and comparing and contrasting the two copies of the settlement executed on two different stamp papers,

Mr.Upadhyay would urge that the settlement is a fabricated document. It was urged that the workmen were made to put signatures on blank papers and thereafter the documents were scribed to suit the convenience of the employer.

19. Mr.Upadhyay would further urge that even if it is assumed that the settlement is genuine yet since the settlement is in teeth of the provisions of Section 25-O and 25-N of the Industrial Disputes Act, 1947, it is illegal and unlawful. Such illegal and unlawful closure does not disrupt the employer–employee relationship. The Court, therefore, cannot grant its imprimature to such illegal settlement. To bolster up this submission, Mr. Upadhyay placed a very strong reliance on the decision of the Supreme Court in the case of Oswal Agro Furane Ltd. and Anr. Vs. Oswal Agro Furane Workers Union and Ors.¹.

20. Mr.Upadhay would urge that if the employer disposes of all its assets, the complaint would be rendered infructuous and the workmen would be left in the lurch. Therefore, in exercise of writ jurisdiction no interference is warranted with the impugned order which essentially protects the substance of the dispute till the final adjudication of the complaint, submitted Mr.Upadhyay.

1 (2005) (1) CLR 816

21. I have given anxious consideration to the rival submissions canvassed across the bar. Before adverting to appreciate those submissions, it may be opposite to note few uncontroverted facts. One, there is not much controversy that there were 134 workers employed in the Ride and Amusement Park Division. Two, the existence of recognized union in the said establishment is also not much in contest. Three, the fact that the workmen including the complainants ceased to work with the employer with effect from 1st April 2021 is also indisputable. Four, execution of the terms of settlement purportedly under Section 2(p) read with Section 18(1) of the Industrial Disputes Act, 1947 by and between the employer and the recognized union is also rather incontrovertible. Five, payment of the amount under the said settlement including payment of an amount of Rs.3,19,36,870/- to the complainants, with the highest being Rs.14,15,118/- and the lowest being Rs.10,58,389/- appears to be incontestable. Six, by and large, the execution of the documents by each of the complainants namely resignation letter, authority letter to the union, no dues/no liability/ no objection certificate, declaration of acceptance of the amount towards full and final settlement and a receipt are also not in contest. However, the complainants allege that they were made to execute aforesaid documents fraudulently.

22. As the thrust of the submission on behalf of the complainants was the non-compliance of the statutory mandate contained in Section 25-O of the Industrial Disputes Act, 1947, and as a necessary corollary, alleged retrenchment brought about in breach of Section 25-N of the Industrial Disputes Act, 1947, it may be appropriate to have a brief resume of the provisions contained in the Industrial Disputes Act, 1947. Under clause (cc) of Section 2 of the Industrial Disputes Act, 1947, "closure" means the permanent closing down of a place of employment or part thereof. "Retrenchment", defined under clause (oo), means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include the four eventualities, the first being, voluntary retirement of the workman. Under clause (p), "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer.

23. Section 25-N of the Act prescribes the conditions precedent to

retrenchment of workmen. Section 25-O provides for the procedure for closing down an undertaking of an industrial establishment. Under Section 25-N of the Act before retrenchment of workman can be affected two conditions must be fulfilled namely (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment or paid in lieu of such notice, wages for the said period; and (b) the prior permission of the appropriate Government has been obtained by the employer upon an application having been made. Sub-section (3) of Section 25-N vests power in the State Government to grant or refuse permission to retrench an employee. Section 25-O enjoins an employer, who intends to close down an undertaking to apply for prior permission at least ninety days before the date on which the intended closure is to become effective, setting out the reasons for the intended closure and simultaneously serve a copy of such application on the representatives of the workmen in the prescribed manner. Sub-section (9) of Section 25-O provides that where an undertaking is permitted to be closed down or permission for closure is deemed to be granted, every workman, who is employed in that undertaking immediately before the date of application for permission under the said section, shall be entitled to receive compensation which shall be equivalent to fifteen days' average pay for every completed year

of continuous service or any part thereof in excess of six months.

24. Evidently, both Section 25-N and 25-O are couched in a mandatory form. They give effect to the public policy of preventing the exploitation of labour by commanding the employer to follow the defined process for retrenchment of an individual or group of employees or for closure of the establishment as such.

25. In the case at hand, indisputably, the employer has neither resorted to the procedure for retrenchment of the employees-workmen nor applied for closure of establishment in the manner envisaged by Section 25-O of the Industrial Disputes Act, 1947. Instead the employer banks upon the settlement arrived at between parties within the meaning of Section 2(p) of the Act, 1947. It would be contextually relevant to note that under Section 18(1) of the Act, 1947 a settlement arrived at by an agreement between employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. Proviso to sub-Section (1) of Section 18, however, gives greater sanctity to the settlement between the employer and the recognized union. It provides that where there is a recognized union for any undertaking under any law for the time being in force, then such agreement (not being an agreement in respect of dismissal, discharge, removal, retrenchment, termination of service, or

suspension of an employee) shall be arrived at between the employer and the recognized union only; and such agreement shall be binding on all persons referred to in clause (c) and clause (d) of sub-Section (3) of the said Section. Under clause (d) of sub-Section (3), such settlement binds all persons, who were employed in the establishment or part of the establishment, as the case may be, to which the disputes relates on the date of the dispute and all persons who subsequently become employed in that establishment.

26. Mr.Upadhyay, the learned Counsel for the complainants urged with a degree of vehemence that the question of binding efficacy of the settlement under Section 18(1) and (3) of the Industrial Disputes Act, 1947 would arise only when the settlement is lawful. If the settlement itself is patently illegal for being in violation of the mandatory provision, as in the case at hand, such settlement is of no avail. Strong reliance was placed on Oswal Agro Furane Ltd and Anr. (supra).

27. In the case of Oswal Agro Furane Ltd and Anr. (supra), the employer had issued notice to the State Government on 29th May 1996 in terms of Section 25-O of the Industrial Disputes Act, 1947 seeking permission for closure. Notices were also issued to the workmen on 12th June 1996. Thereafter, purported settlement was arrived at on or about 14th June 1996 in terms of Section 12(3) of

the Industrial Disputes Act, 1947. In that backdrop, the question of validity of the settlement arose for consideration. After advertent to the provisions contained in Section 25-N and 25-O of the Industrial Disputes Act, 1947, the Supreme Court enunciated the legal position as under:-

“14. A bare perusal of the provisions contained in Sections 25-N and 25-O of the Act leaves no manner of doubt that the employer who intends to close down the undertaking and/or effect retrenchment of workmen working in such industrial establishment, is bound to apply for prior permission at least ninety days before the date on which the intended closure is to take place. They constitute conditions precedent for effecting a valid closure, whereas the provisions of Section 25-N of the Act provides for conditions precedent to retrenchment; Section 25-O speaks of procedure for closing down an undertaking. Obtaining a prior permission from the appropriate Government, thus, must be held to be imperative in character.

15. A settlement within the meaning of Section 2(p) read with sub-section (3) of Section 18 of the Act undoubtedly binds the workmen but the question which would arise is, would it mean that thereby the provisions contained in Sections 25-N and 25-O are not required to be complied with? The answer to the said question must be rendered in the negative. A settlement can be arrived at between the employer and workmen in case of an industrial Disputes. An industrial Disputes may arise as regard the validity of a retrenchment or a closure or otherwise. Such a settlement, however, as regard retrenchment or closure can be arrived at provided such retrenchment or closure has been effected in accordance with law. Requirements of issuance of a notice in terms of Sections 25-N and 25-O, as the case may, and/or a decision thereupon by the appropriate Government are clearly suggestive of the fact that thereby a public policy has been laid down. The State Government before granting or refusing such permission is not only required to comply with

the principles of natural justice by giving an opportunity of hearing both to the employer and the workmen but also is required to assign reasons in support thereof and is also required to pass an order having regard to the several factors laid down therein. One of the factors besides others which is required to be taken into consideration by the appropriate Government before grant or refusal of such permission is the interest of the workmen. The aforementioned provisions being imperative in character would prevail over the right of the parties to arrive at a settlement. Such a settlement must conform to the statutory conditions laying down a public policy. A contract which may otherwise be valid, however, must satisfy the tests of public policy not only in terms of the aforementioned provisions but also in terms of Section 23 of the Indian Contract Act.”

28. The Supreme Court enunciated that the provisions contained in Section 25-N and 25-O being imperative in character, would prevail over the right of the parties to arrive at a settlement. Such a settlement must conform to the statutory conditions laying down a public policy and consequences flowing from the mandatory requirements as contained in Section 25-N and 25-O must, therefore, be given full effect to.

29. Mr.Upadhyay would urge that the aforesaid enunciation of law governs the facts of this case with equal force and the settlement between employer and the recognized union, even if taken at par, is of no assistance for the petitioners. The aforesaid enunciation of law is clear and explicit. The Supreme Court has in terms expounded that the settlement has to be in conformity with the

mandatory provisions of law and not in derogation thereof.

30. One of the factors which Mr.Bapat pressed into service, appears to be of some significance. In the case of **Oswal Agro Furane Ltd and Anr.** (supra), the employer had already applied for permission for closure of the undertaking under Section 25-O (1) of Industrial Disputes Act, 1947 and thereafter settlement was arrived at between the employer and the workmen. In the case at hand, however, from the perusal of the recitals in the settlement, (Exhibit-A to the Petition) it becomes evident that, the employer and the workmen allegedly commenced negotiations while the employer was contemplating retrenchment of the workmen. The recitals further record, the parties reckoned that the process of retrenchment was a lengthy one and the workmen would have got only retrenchment compensation along with other legal dues, and, therefore, the parties entered into the settlement. Undisputedly, the bonafide and genuineness of this assertion is a matter for adjudication. The terms of settlement, in the least, indicate that instead of retrenchment the employer and the recognized union decided to bring about cessation of employment by payment of *ex-gratia* compensation upon the workmen tendering resignation.

31. Whether this factor of resignation by the workmen is of salience? As noted above, termination of the employment on

account of voluntary retirement of the workmen is excluded from the ambit of “retrenchment”. If a workman voluntarily desires to bring an end to employer-employee relationship and the employer accedes to that request, that would not constitute retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act 1947 and, resultantly, the mandatory provisions under Section 25-N do not come into play.

32. As noted above, in case at hand, each of the complainants have tendered the resignation. *Prima facie*, the execution, as such, of the resignation letters is not in contest, though the voluntariness thereof can be questioned.

33. The position in law is well recognised that, if an employee tenders resignation, it would amount to voluntary retirement, within the excluded category (a) of Section 2(oo). Reliance placed by Mr. Bapat on the decision of the Supreme Court in the case of **J. K. Cotton Spinning and Weaving Mills Company Ltd. Vs. State of U.P. and Others**² appears to be well founded. In the said case the Supreme Court was confronted with a question: when the service of an employee is terminated consequent upon the employer accepting the resignation voluntarily tendered by the employee, does the termination so brought about amounts to ‘Retrenchment’ ? After

2 (1990) 4 SSC 27

adverting to the provisions of Section 2(s) read with Section 6-N of Uttar Pradesh Industrial Disputes Act, 1947, which were by and large similar to the provisions of Section 2(oo) and Section 25-N of the Industrial Disputes Act, 1947, the Supreme Court answered the question in the negative by holding that when an employee voluntarily tenders his resignation it is an act by which he voluntarily gives up his job and such a situation would be covered by the expression “voluntarily retirement” falling in excluded category (a) and not retrenchment and, thus, the provisions contained in Section 6-N of the said Act would not be attracted.

34. Mr.Upadhyay, the learned Counsel for complainants made an endeavour to draw home the point that the entrinsic evidence of the terms of the settlement indicates that the terms of settlement have been executed fraudulently. It would be suffice to note that this question cannot be delved into in this proceeding and at this stage. These challenges can be properly adjudicated at the final hearing of the complaint before the Industrial Court.

35. At this interim stage, the following factors, in my considered view, assume importance. *Prima facie*, there is material to indicate that in addition to the terms of settlement executed by and between the employer and the recognized union, each of the workmen executed the documents adverted above. For instance, complainant

No.1 Sham Koli submitted resignation letter on 1st April 2021 in the presence of witnesses. He also executed a letter of authority in favour of the union. A no dues/no liability/no objection certificate was also executed on 1st April 2021 in the presence of witnesses. Mr. Shyam Koli further acknowledged receipt of the amount towards full and final settlement of his legal dues (page 375) and passed receipt on 5th May 2021 (page 509). Execution of all these documents is required to be appreciated in the light of undisputed payment of a sum of Rs.14,05,726/- to Mr. Shyam Koli - Complainant No.1.

36. Secondly, the time lag and the manner in which the complainants pursued the proceedings is also of relevance. The settlement was given effect from 1st April 2021. The complainants claimed that they had addressed notice on 2nd August 2021 demanding copies of the settlement. The complainants filed the complaint on 17th February 2022. Though an application for interim relief was filed on 18th April 2022, it was not pursued and, eventually, withdrawn on 20th January 2023. The withdrawal of the Interim Application wherein purportedly a relief of reinstatement was made, deserves due consideration at this stage. It would imply that the complainants did not desire to pursue the remedy of reinstatement by way of interim order under Section

30(2) of the Act, 1947. Availability and willingness of the complainants to resume the duty thus enter the arena of uncertainty. Instead of seeking interim reinstatement, the complainants professed to restrain the employer from disposing of the assets.

37. At this juncture, equitable considerations come into play. The complainants have been paid the aggregate amount of Rs.3,19,36,870/-. The complainants have not shown the inclination to bring back the said amount. Where an employee has drawn substantial benefit under a settlement, and still professes to assail its legality and validity, equitable considerations demand such employee to restore the benefit thereunder.

38. I had an occasion to consider this aspect of the matter in the case of Lous D'Souza and Ors. Vs. Hotel King's Palace and Anr. in Writ Petition No. 2949 of 2022 decided on 5th June 2023. It was *inter alia* observed as under:

“35. The position in law is well recognized. In the case of **Man Singh** (supra) on which reliance was placed by Mr. Bapat, in somewhat identical fact-situation where the employee alleged that retirement under VRS Scheme was brought about by duress, the Supreme Court had upheld the order of the High Court directing the petitioners to deposit the amount which was paid to him by the employer. The Supreme Court followed a previous pronouncement in the case of **Ramesh Chandra Sankla** (supra) wherein the following observations were made.

100] Even otherwise, according to the workmen, they were compelled to accept the amount and they received

such amount under coercion and duress. In our considered opinion, they cannot retain the benefit if they want to prosecute Claim Petitions instituted by them with the Labour Court. Hence, the order passed by the Division Bench of the High Court as to refund of amount cannot be termed unjust, inequitable or improper. Hence, even if it is held that a 'technical' contention raised by the workmen has some force, this Court which again exercises discretionary and equitable jurisdiction under Article 136 of the Constitution, will not interfere with a direction which is in consonance with the doctrine of equity. It has been rightly said that a person "who seeks equity must do equity". Here the workmen claim benefits as workmen of the Company, but they do not want to part with the benefit they have received towards retirement and severance of relationship of master and servant. It simply cannot be permitted. In our judgment, therefore, the final direction issued by the Division Bench needs no interference, particularly when the Company has also approached this Court under Article 136 of the Constitution.

101] For the foregoing reasons, in our opinion, the order passed by the Division Bench of the High Court deserves to be confirmed and is hereby confirmed. The payment which is required to be made as per the said order should be made by the applicants intending to prosecute their claims before the Labour Court, Mandasour. In view of the fact, however, that the said period is by now over, ends of justice would be served if we extend the time so as to enable the applicants to refund the amount. We, therefore, extend the time up to December 31, 2008 to make such payment. We may, however, clarify that Claim Petitions will not be proceeded with till such payment is made. If the payment is not made within the period stipulated above, the Claim Petitions of those applicants will automatically stand dismissed. The Labour Court will take up the claim petitions after 31-12-2008".

39. Mr. Bapat invited attention of the Court to another judgment of a learned Single Judge in the case of **Smt. Phulabai Prakash Pawar Vs. SKF India Ltd., Chinchwad, Pune and Anr.**³ In the said case, orders passed by the Courts below directing the petitioners to

3 2016 SCC OnLine Bom 10721

deposit the amount which was paid to them under Voluntary Retirement Scheme, which the petitioners therein questioned, were under challenge before this Court. After referring to the pronouncements of the Supreme Court in case of Ramesh Chandra Sankla Vs. Vikram Cement and Anr.⁴ and Man Singh Vs. Maruti Suzuki India Limited and Another⁵ this Court observed as under:-

“14. The said judgment of the Apex Court in Ramesh Chandra Sankla's case (supra) was referred to by another two judge bench of the Apex Court in Man Singh's case,(supra). A contention was sought to be raised on behalf of the workman in the said case that the direction of the High Court to deposit the amount received by him under the Voluntary Retirement Scheme alongwith interest at 7.5% p.a. for the reference to proceed was quite inequitable and illegal. The Apex Court held that the said submission made on behalf of the workman is fully answered by the judgment of the Apex Court in Ramesh Chandra Sankla's case (supra) and reference was made to paragraph 100 of the said judgment. The Apex Court thereafter concluded that the said case was squarely covered by the decision of the Apex Court in Ramesh Chandra Sankla's case (supra) and the contentions raised on behalf of the workman that the High Court had no jurisdiction for directing refund of the entire amount received by the Applicant as a condition precedent for proceeding, was rejected. The said judgments lay down the proposition of law that one who seeks equity must do equity and therefore one who calls in question the Voluntary Retirement Scheme after accepting the benefits must not retain the benefits and must refund the same.

17. In the instant case, the amount paid under the Voluntary Retirement Scheme is a lump-sum amount and graded payment depending on the years of service that a workman had put in. There were no different heads under which any amount was attributed, but was a lump-sum payment. Hence, the amount paid could not be divided or separated under any heads. The Petitioner has accepted the Voluntary Retirement Scheme 2008 on account of which there is a severance of relationship as

4 (2008) 14 SCC 58

5 (2011) 14 SCC 662

employer and employee but since the Petitioner is calling in question the said scheme and is contending that she still is a employee of the company, she cannot retain the amount she has received for leaving the company. The same cannot be permitted as one who claims equity must do equity. Hence equity demands that the Petitioner in the above Petition and the Petitioners in the companion matters do not retain the amount and deposit the amount as directed by the Courts below. In so far as the said aspect is concerned, the fact that the Petitioners in the letter dated 29.06.2009 have sought the difference in payment between the Voluntary Retirement Scheme 2008 and Voluntary Retirement Scheme 2009 is eloquent of the Petitioners real intention in resiling or retracting from the said Voluntary Retirement Scheme 2008. There is therefore substance in the contention urged on behalf of the Respondents that the complaint filed is as and by way of extracting more monies from the Respondent No.1.” (emphasis supplied)

40. When the matter was listed before this Court on 3rd July 2023, this Court directed the Respondents to apprise the Court as to whether the Respondents were willing to bring back the amount which has been paid to them under the terms of the settlement, which the complainants alleged to have been brought about by way of fraud. On 31st July 2023, Mr. Upadhyay, on instructions, submitted that the Respondents-complainants do not wish to bring back the amount which has been paid to them under terms of settlement, whereupon the petition was heard on merits.

41. The situation which thus obtains is that the complainants have received substantial amount purportedly towards full and final settlement of their claim consequent to the cessation of the employer-employee relationship. Neither the complainants desire

to bring back the said amount. Nor the complainants desire to pursue the application for interim relief of reinstatement during the pendency of the complaint and, at the same time, the complainants profess to restrain the employer from selling the assets which, in the circumstances of the case, where the undertaking has long being closed down, can only further deteriorate the assets and diminish their value.

42. The aforesaid factors ought to have been considered by the learned Member, Industrial Court. In the present situation, the balance of convenience tilts in favour of petitioners rather than the workmen. The learned Member, Industrial Court was not justified in holding that the complainants would suffer irreparable loss and they would come on the street, if the assets of the petitioner No.1 are sold. The consequences which the impugned restraint order entails are far onerous for the employer.

43. The conspectus of the aforesaid consideration is that the learned Member, Industrial Court did not exercise the discretion keeping in view the principles which govern the grant of temporary injunction. It is, therefore, necessary to correct the exercise of discretion in writ jurisdiction. I am thus impelled to allow the Petition. Hence, the following order:

ORDER

- (i) Writ Petition stands allowed.
- (ii) The impugned order dated 24th April 2023 stands quashed and set aside.
- (iii) In the circumstances, there shall be no order as to costs.
- (iv) It is, however, made clear that the consideration was confined to determine the legality, propriety and correctness of the impugned order and the observations hereinabove shall not influence the final adjudication of the complaint by the Industrial Court.
- (v) Rule made absolute in the aforesaid terms.

(N. J. JAMADAR, J.)