IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 21086 of 2019

With
R/SPECIAL CIVIL APPLICATION NO. 21087 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 21088 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 21089 of 2019

==========

RAJA LAXMAN CHOPADA
Versus
ADITAYA BIRALA NOVA LIMITED

==========

Appearance:
MR SAMIR B GOHIL(5718) for the Petitioner(s) No. 1
KHUSHBU D CHHAYA(8093) for the Respondent(s) No. 1

==========

CORAM:**HONOURABLE MR. JUSTICE BIREN VAISHNAV**

Date : 21/07/2022

ORAL ORDER

1 Heard Mr.Samir Gohil, learned advocate for the petitioners and Ms.Khushbu Chhaya, learned advocate for the respondent.

2 All these petitions challenge the order dated 23.10.2019 passed by the Labour Court, Junagadh, in the respective references filed by the petitioners before the Labour Court.

3 Facts in brief would indicate that the petitioners by

filing Statement of Claims before the Labour Court have challenged their purported termination from service by the respondent employer.

3.1 In the pending references, the employer filed an application at Exh.12 on 27.03.2019, relying on a decision of the Division Bench of this Court indicating that since the workmen had accepted the amounts as ex-Gratia compensation on their termination, the workmen must be asked to deposit these amounts.

3.2 That application was heard by the Labour Court and the Labour Court passed an order dated 03.07.2019 rejecting the application of the employer. The employer approached this Court by filing Special Civil Application Nos. 15459 of 2019 and allied petitions challenging the order below exh.12. After considering the arguments of the learned counsel appearing for the petitioner, where an alternative submission was made that even if the employer was not paid the amount be refund, the Labour Court could have directed that pending the reference, the

amount that the workmen had received could have been deposited before the Labour Court, the Court directed that it will be open for the employer to file a fresh application which be decided on merits. Paras 6 to 8 of the order dated 13.09.2019 read as under:

> *"6. Reading the applications suggest that no such prayer is made and, therefore, prays that he may be permitted to withdraw the present petitions with liberty to file an application for fresh consideration wherein a prayer be made for deposit of the amount before the labour Court and then the labour Court shall consider the same on its own merits. It is further submitted that the labour Court should expeditiously hear and decide the main reference and hence, he states that he shall file fresh application before the labour Court on or before 19.9.2019.*
>
> *7. Having considered the facts on record, I am of the view that it shall be in the interest of justice to allow the employer to file such application before the labour Court which shall be considered by the labour Court on its own merits. Accordingly, if and when such application is filed by the employer – petitioner before the labour Court, the labour Court shall consider the same as expeditiously as possible before deciding the main issue. This Court has not entered into the merits of the matters.*
>
> *8. With the aforesaid observations and directions, all these petitions are disposed of as withdrawn with a view to file a fresh application with a fresh prayer before the concerned labour Court."*

3.3 On a fresh application being filed before the Court Court at exh.29, the Labour Court observed by the order

under challenge that the amounts so received by the workmen be deposited before the Labour Court and the same be invested in a fixed deposit. That order is a subject matter of challenge by the workmen before this Court.

3.4 This Court, on 29.11.2019, extensively considering the submissions made by Mr.Samir Gohil, learned counsel for the petitioners, passed the order, which reads as under:

> *"The petitioners were the daily wager in Buffalo Housing of Dairy Department under the respondent in the year 1996 and they continued to serve till their services came to be terminated on 30.6.2018.*
>
> *2. It is the grievance on the part of the petitioners that they were given a cheque of ex gratia amount in lieu of all the terminal benefits and the signature were obtained of the petitioner by the respondent on the letter which was already prepared.*
>
> *3. The termination came to be challenged before the Labour Court, Junagadh, where the employer respondent hassought the direction to refund the amount paid to each of the petitioner as ex-gratia amount.*
>
> *4. This was rejected by an order dated 3.7.2019 by the Labour Court.*
>
> *5. The challenge was made by the employer before this Court by way of writ petition being Special Civil Application No. 15459/2019 and allied matters*

where the Court granted permission to the employer to file fresh application before the Labour Court vide order dated 23.10.2019 allowed the same by directing the petitioner-workman to deposit the amount before the Labour Court. While doing so the Court has taken into consideration the decision of this Court and directed to fix deposit the amount of ex gratia payment for the period of one year.

6. This Court has heard the learned advocate Mr. Samir B. Gohil, who has urged that none of the petitioners has the capacity to pay back the amount considering the fact that they were earning a meager sum of Rs 13,000/- at the time of their service. He further urged that the Court may direct for an early hearing of the matter and the petitioners shall tender an undertaking as the Court may direct. However, it is simply not possible for them to refund this amount at this stage. In wake of his submissions the Court deems it appropriate to issue Notice returnable on 6.12.2019.

7. Direct service is permitted."

4 Essentially, the submission of the learned counsel then was that it was not possible for the workmen to deposit the amount before the Labour Court, and therefore, it was urged to the Court that it may direct early hearing of the matters and the petitioners shall file an undertaking as the Court may direct.

5 Mr.Samir Gohil, learned advocate for the petitioners, would therefore submit that the order of the Labour

Court directing deposit of the amount is bad. Though it was the case of the employer that they had by way of an ex-gratia amount, which was accepted by the workmen on they having resigned, it was the stand of the employer, the main references were still pending adjudication where it was the case of the workmen – petitioners that their termination was bad. In the event the Labour Court comes to the conclusion that the workmen had wrongfully been retrenched, the order of refund / deposit would restrict the examination of the Labour Court to the aspect of retrenchment and such an order cannot act as a compromise or an estoppel against the exercise of fundamental rights available under the Constitution of India.

5.1 In support of his submission, Mr.Gohil, learned counsel for the petitioner, relied on the decision of the Hon'ble Supreme Court in the case of ***Nar Singh Pal vs. Union of India.,*** reported in ***2000 (3) SCC 588.*** He would rely on para 13 of the decision, which reads as under:

"13. The Tribunal as also the High Court, both appear to have been moved by the fact that the appellant had encashed the cheque through which retrenchment compensation was paid to him. They intended to say that once retrenchment compensation was accepted by the appellant, the chapter stands closed and it is no longer open to the appellant to challenge his retrenchment. Thus, we are constrained to observe, was wholly erroneous and was not the correct approach. The appellant was a casual labour who had attained the 'temporary' status after having put in ten years' of service. Like any other employee, he had to sustain himself, or may be, his family members on the wages he got. On the termination of his services, there was no hope left for payment of salary in future. The retrenchment compensation paid to him, which was only a meager amount of Rs.6,350/- was utilised by him to sustain himself. This does not mean that he had surrendered all his constitutional rights in favour of the respondents. Fundamental Rights under the Constitution cannot be bartered away. They cannot be compromised nor can there be any estoppel against the exercise of Fundamental Rights available under the Constitution. As pointed out earlier, the termination of the appellant from service was punitive in nature and was in violation of the principles of natural justice and his constitutional rights. Such an order cannot be sustained."

6 Ms.Khushbu Chhaya, learned counsel appearing for the respondent – employer would submit that the order of the Labour Court is just and proper. Essentially, what was challenged by the petitioners before the Labour Court was that their alleged termination, which in fact, was not

the case when the employer had by way of a settlement already paid the amounts and after the workmen had accepted the same they had turned around to challenge it as retrenchment. The order of deposit was therefore equitable interim arrangement pending the final adjudication of the dispute.

7 Having heard the learned counsels for the respective parties, what is evident is that the stand of the workmen is that they have been illegally terminated from their services, and therefore, the question of their termination being illegal is a subject matter which is at large pending for adjudication in the pending references. The petitioners cannot be directed to refund the amount which they have purportedly accepted towards settlement of their dues and even if that be so, as and when the reference is decided, the Labour Court can modify the relief accordingly.

8 Perusal of the impugned order would indicate that it is the stand of the employer that it is not termination that

was the result of the end of an employer-employee relationship between the parties, but a voluntary resignation pursuant to which an amount of compensation / ex-gratia payment was accepted by the workmen and they cannot now turn around and challenge the end of such engagement by referring to it as termination was an issue that needed to be decided by the Labour Court. While deciding the issue therefore whether it was in fact termination or acceptance of voluntary disengagement on resignation, the stand of the Labour Court in balancing the equities pending the reference by directing the workmen to deposit the amount cannot be said to be a stand prejudicial to workmen.

9 Though, Mr.Gohil, learned counsel for the petitioners, may be right in his submission that the judgement of the Division Bench which the Labour Court has relied upon is in context of the voluntary retirement scheme, but in facts of the case whether the termination was as a result of voluntary resignation given by the workmen or “retrenchment” is an issue which needs to be

adjudicated by the Labour Court and when pursuant to the directions issued by this Court on remand and the Labour Court pending the issue of final decision directed the workmen to deposit the amount, no fault can be found with the orders passed by the Labour Court and the Labour Court obviously while considering the order of deposit when moulding the final relief in favour of either of the parties.

With the aforesaid observations, the petitions are dismissed accordingly.

(BIREN VAISHNAV, J)

BIMAL