

HIGH COURT OF JAMMU & KASHMIR AT JAMMU.

OWP No. 864/2003 & CMP No. 1062/2003

Date of decision: 29.09.2009

Management of Hindustan Lever Ltd. Vs. *State & Ors.*

Coram:

MR.JUSTICE J.P.SINGH, JUDGE

Appearing Counsel:

For Petitioner(s) : Mr. S.C.Agarwal, Sr.Advocate with Mr. Sandeep Prabakar, & C.S.Gupta, Advocates.

For Respondent(s) : Mr. Sunil Sethi, Sr. Advocate with Ms. Veenu Gupta,Advocate.

i) Whether approved for reporting in Press/Journal/Media : **Yes**

ii) Whether to be reported in Digest/Journal : **Yes**

The Management of Hindustan Lever Limited, a Company registered with the Registrar of Companies under the Companies Act, 1956, introduced Voluntary Separation Schemes, from time to time, giving option of voluntary retirement to its workers, on the terms and conditions indicated in the Schemes.

Those working at the Bari Brahma, Jammu, Unit of the Company's factory, too, were given option of voluntary retirement, under the prevalent Voluntary Separation Schemes.

Responding to the Schemes, thirteen workers of its factory at Bari Brahma, Jammu, opted for voluntary retirement in the year 1991, 18 in the year 1992 and 20 in the year 1995 under the Schemes prevalent during the above mentioned years.

It was, however, in 1996 that the number of workers who opted for voluntary retirement under the Voluntary Separation Scheme in-vogue in the year of their retirement, went up to 235.

Feeling aggrieved by the lesser benefits, given to them by the Company, as compared to those who had opted for voluntary retirement in the year 1996, the workers of the Bari Brahma factory Unit of the Company, who had proceeded on voluntary retirement, in terms of the Voluntary Separation Schemes floated in the years from 1991 to 1994, projected their grievances before the Conciliation Officer (Deputy Labour Commissioner), Jammu.

The Conciliation Officer, accordingly, sent the workers' case to the State Government seeking Reference to the Labour Court on the following lines:-

"Keeping in view the circumstances under which the petitioners resigned voluntarily to receive benefits much more than they were entitled under Section 25-F of the Industrial Disputes Act, as they were induced to separate taking into consideration the higher amount being paid to them. I recommend the following issues for adjudication by the Labour Court/ Tribunal, if approved:-

- (1) Whether the demand of the workers for their reinstatement on the job with back wages is legal or otherwise when they have already availed the benefits under VSS.
- (2) If the demand is found legal to what relief they are entitled."

The State Government however, refused to refer the dispute to the Labour Court/Tribunal, aggrieved whereby the Hindustan Lever Limited Employees' Union, filed Writ

Petition, OWP No. 938/1998, in this Court, questioning the State Government's refusal to refer the matter to the Labour Court.

The Writ Petition was allowed on February 04, 1999, directing the State Government to take further steps in terms of the provisions of Section 10 of the Industrial Disputes Act, 1947, hereinafter to be referred as 'the Act', for short.

The State Government, accordingly, issued its SRO 236 published vide Notification of June 18, 1999, referring to the Labour Court for adjudication, the dispute, in respect of the matters appearing as such, in the SRO, which for facility of reference is reproduced hereunder :-

"GOVERNMENT OF JAMMU AND KASHMIR
LABOUR AND EMP: DEPTT:
NOTIFICATION:-
Srinagar, the 18th of June 1999.

SRO 236:- Whereas, the Government is of the opinion that an industrial dispute exists between the Management of Hindustan Lever Limited, Jammu and its workers through Parshotm Singh regarding the matters herein-after appearing and
 Whereas, the Government considers it desirable to refer the dispute to the Labour Court for adjudication:
 Now, therefore in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (XIV of 1947), the Government of Jammu and Kashmir hereby refer the dispute to the Labour Court constituted vide notification SRO 767 dated 31.10.1972 for adjudication in respect of the matters specified below:

- i) Legality or otherwise of the action of the management of Hindustan Lever Limited, Jammu, as regards the payment of compensation to its workers under Voluntary Separation Scheme, and
- ii) Onward appropriate relief to the said workers in case the illegality of the action of the said management was established."

By order of the Government of Jammu and Kashmir.

Commr./Secretary to Government,
Labour & Emp: Department."

Looking to the complexion of the employees' dispute projected through the Hindustan Lever Limited

Employees Union, and the Company's response thereto, the Labour Court put the parties to the following issues:-

- “1. Whether the action of the respondent-management of Hindustan Lever Ltd. Jammu as regards the payment of the compensation to the workers (petitioners) is legally un-justified and invalid? O.P.P.
- 2. In case issue No.1 is proved in affirmative whether the petitioners are entitled to further compensation on account of being not treated at par with the other workers of the different industrial units with whom the settlement under VSS (Voluntary Separation Scheme) was arrived at between the workers and the management? O.P.P.
- 3. Whether the petitioners have signed the bilateral settlement with the management by virtue of which they received the compensation fully and were given the substantial benefits under the VSS as such under section 18 sub sec(1) of the I.D. Act the petitioners are precluded from taking up this pleas again before this Tribunal, thus their claim as is referred for adjudication to this Tribunal is not maintainable under law? O.P.R.
- 4. Whether Mr. Charanjit Singh Saini has no locus standi to plead the case on behalf of other petitioner? O.P.R.
- 5. Relief.”

The petitioner-Company questioned the sustainability of the State Government's Reference, on the ground, that, having resigned from service after accepting and availing of, the benefits of the prevalent Voluntary Separation Schemes, the workers had ceased to be “workmen” in terms of the provisions of the Industrial Disputes Act, 1947 and subsequent dispute of theirs for claim of higher benefits similar to those flowing from the Voluntary Separation Scheme of 1996, was not thus cognizable under the provisions of the Act aforementioned, before the Labour Court.

After examining and appreciating the evidence which the parties had produced before it and holding that the action of the Management of Hindustan Lever Limited, in making payment of compensation to its workers under the Voluntary Separation Scheme, was illegal and bad in law, And that the workers were entitled to compensation equal to the highest paid to the similarly

placed workers, on the basis of their Status, length of service and Grade, the Labour Court, issued its Award on February 28, 2003.

The petitioner-Company's plea, regarding the maintainability of the Reference, though noticed in the Award, was not, however, addressed to by the Labour Court.

Aggrieved by the Labour Court's Award of February 28, 2003, the Management of Hindustan Lever Limited, hereinafter to be referred as the "petitioner-Company", has invoked the Extra Ordinary Civil Writ Jurisdiction of the Court seeking quashing of the Award, aforementioned.

Referring to *A.K.Bindal vs. Union of India* reported as (2003) 5SCC 163, *HEC Voluntary Retired Employees Welfare Society and anr. Vs. Heavy Engineering Corporation Limited and ors.* reported as 2006-II LLJ 245, *C.J. Everestee vs. District Labour Officer Ernakulam* reported as 1994-II LLJ 851, *Alakh Niranjan Prasad Sinha and ors. vs. Chairman, Bharat Wagon & Engineering Company Limited and ors.* reported as 2004(101)FLR 54, *Tamil Nadu Steele Ex-Employees Association vs. Govt. of Tamil Nadu and ors.* reported as 2001-I-LLJ-1507 and *K. Komaraiah & ors. vs. Industrial Tribunal-cum-additional Labour Court* reported as 2000-II CLR-282, besides other judgments on the issue, the petitioner- Company's learned Senior Advocate submitted that the Award, questioned in the Writ Petition, was without jurisdiction, as the Reference made by the Government to it, was incompetent, in that, after accepting the voluntary retirement, the respondents-

employees, had ceased to be ‘workman’ in terms of the provisions of the Act and their Post-Retiral disputes, were not cognizable by the Labour Court, constituted under the provisions of the Act. According to him, the impugned Award, being a consequence of the incompetent Reference was liable to be quashed.

Learned counsel was critical of the omission of the Labour Court to address itself on the vital question of its jurisdiction to deal with the dispute projected by the Company’s retired employees, raised and canvassed before it, by the Company.

Keeping in view the facts and circumstances of the case and additionally because the parties had already spent about ten years in the litigation, it was not considered appropriate to remand the case to the Labour Court and the learned counsel for the parties were heard, on the question as to whether or not the Reference made by the State Government to the Labour Court was valid, and if so, what was its effect on the Labour Court’s Award.

Before proceeding to examine, the issue, which falls for determination in the case, as to the validity or otherwise of Reference made vide SRO 236 published in Notification of June 18, 1999 by the State Government, reference needs to be made to few paragraphs of the *Statement of facts and claims*, made by the workers of the Hindustan Lever Limited, And the Company’s response thereto.

Statement of facts and claims of the workers read thus:-

“4. That in the year 1989 the respondents introduced a scheme known as Voluntary Separation Scheme at Bombay Factory offering monetary benefits in Lumpsum to the tune of Rs.2.25 Lacs and pensionary benefits also to those persons who voluntarily accept this scheme. A copy of the scheme is filed as Annexure-I in the list of documents.

5. That the respondents introduced the same voluntarily Separation Scheme at the Bari-Brahmana unit and didn't put this scheme into black and white deliberately concealed this scheme from the employees including the Members of the Petitioner No.1 association. This unit did not disclose the real contents of the said scheme to the employees rather in the garb of the said scheme started victimisation and harassment of the employees individually and started bargaining with the workers using threats, compulsion, coercion and undue influence.

6. That in the process of bargaining with the individual workers the Management of Bari-Brahmana has been able to give very nominal benefits to the members of the petitioners Association with the result that the members of the petitioners Association were given very less benefits than provided under the Voluntary Separation Scheme.

7. That at the same time contents of the Voluntary Separation Scheme introduced by the head Office at Bombay Factory were never disclosed to the workers Union nor any negotiations were done at the union level.

It was done individually with a result that the most of the members of the Petitioners' Association were victimized and were harassed as well. In fact some of the petitioners was suspended/terminated through vague allegations and victimization and were ultimately compelled to accept Voluntary Separation Scheme.

8. That the respondents told each of the aggrieved members that they will extend benefits of the actual contents of the scheme to each of them as soon as they receive clarifications regarding the actual benefits under the Voluntary Separation Scheme from Head Office.

9. That it is further submitted that aggrieved workers being powerless and innocent had blind faith in the Management. But the management never extended actual benefits available to them under the scheme upto this time.

10. That the respondents with malafide intention to close down their unit at Bari-Brahmana forcefully retrenched/terminated the workers through un-fair labour practices and no worker accepted the scheme with his own consent.

11. That in May 1996 the Management extended full benefits of this scheme to the remaining 232 workers and paid Rs. 3 to 5 lacs under the scheme plus other benefits.-----

In the light of the facts mentioned above and those other submissions to be made at the time of the arguments, the petitioners most humbly pray that the dispute may kindly be settled and the benefits of Voluntary Separation Scheme may be extended to the petitioners including differences of Voluntary Separation Scheme, service gratuity and refund of Income Tax deducted at source. Claim for litigation and mental agony may also be considered.”

Petitioner-Company's response to the employees claim before the Labour Court, as summarized, in the writ petition, is as follows:-

- a. All the workmen have on their own volition accepted and availed of the benefits under the respective VSS as introduced from time to time and resigned from the services of the Management. These resignations were duly accepted by the Management. The benefits under the VSS were substantially higher than the benefits payable under law. These 165 workers were paid a total sum of Rs.1,73,766.00 (One crore seventy three lacs eighty five thousand seven hundred sixty six only). After availing and accepting the said benefits and having resigned and settled the matter the workers could not be permitted to turn around and raise a fresh case.
- b. Present was a case wherein each and every claimant had submitted his resignation which was accepted by the Management and hence there was no employer-employee relationship between the Management and the workers.
- c. All the workers had entered into a vi-parte settlement with the petitioner Management under the provisions of the Industrial Disputes Act, 1947. A joint application signed by both the parties for registration of the settlement was also sent to the Labour Authorities. These settlements were voluntarily entered into and were duly registered with the Labour Authorities. It was clearly stated in the settlements that the amounts being paid to the workers were full and final settlements. The workers duly issued receipts against the receipt of the entire amount that was mentioned in the settlement. As per the well settled law the terms of the settlement were binding upon both the parties under Section 18(1) of the Industrial Disputes Act, 1947 and the parties could not resile from the terms of the said settlement.
- d. That as per the well settled law laid down by the various Courts a workman after availing of and accepting the benefits of Voluntary Retirement ceases to be a “workman” under Section 2(s) of the Industrial Disputes Act, 1947 and hence no claim can lie against the Management.
- e. That the various VSS were introduced in the different years between the period 1990 till 1996 when the

factory was finally closed. Each scheme was prepared keeping in view the relevant facts/circumstances and the salary structure as existing at that time. Each scheme was valid for a certain period during which the workmen were free to opt/avail of the scheme or not to avail of the said scheme. These employees never raised any objection or filed any complaint or grievance till the filing of the present Industrial Disputes and enjoyed the benefits under the VSS for several years. Therefore there could be no basis or justification in equating the various different schemes introduced in different years and availed of by different number of employees.

f. Under a scheme of voluntary retirement the employees have option to accept the said scheme or continue to work as before. Therefore, once the said option has been exercised by the employee the question of it being illegal does not arise as alleged or at all. The benefits granted in each VSS scheme by the Management were different and it related to different periods and the employees were free either to accept the same or continue to work with the Management. Since the benefits offered in various schemes at different period of time were varying there can be no basis or justification for claiming any alleged differential with respect to any subsequent Voluntary Separation Scheme. It is submitted that a person can take the benefits of VSS as it is, when he applies for the same, and cannot claim for Voluntary Separation Scheme (VSS) for a future period. An employee who on his own will, after considering his own facts and circumstances takes the benefits of VSS resigns, signs a full and final settlement and walks away cannot then turn around and ask for benefits of future schemes.”

Perusal of the workers' claim and the Company's response thereto indicates that the dispute between the parties pertains only to the benefits which were payable by the Company to the employees on their Voluntary Retirement; the employees claiming benefits on the lines, these had been allowed to those who had voluntarily retired in the year 1996, and the Company asserting their entitlement only to those benefits which were available to them in terms of the Schemes under which they had proceeded on Voluntary Retirement.

The employees, therefore, do not appear to have questioned the fact of their voluntary retirement from the Company and their grievances, in a nut shell, appears to

be only that of their entitlement to benefits more than the one given to them by the Company, seeking parity with the workers who had proceeded on voluntary retirement from the Company in the year 1996.

This is apparent from the perusal of their *Statement on facts and claims* made before the Labour Court.

The Reference made by the State Government, too, indicates that what was referred by the State Government to the Labour Court was *the legality or otherwise of the action of the Management of Hindustan Lever Limited, Jammu, as regards the payment of compensation to its workers under VSS Scheme*; and, onward appropriate relief to the said workers in case the illegality of the action of the said Management is established.

The issue arising for determination in the case is, therefore, required to be considered in the backdrop of the factual matrix, appearing in the preceding paragraphs.

To determine the question, which arises for consideration in the petition, regard needs to be had to the definition of the “Workman”, as it so appears in Section 2(S) of the Industrial Disputes Act, 1947 which for facility of reference is reproduced hereunder:-

[(S) “workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, **and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—**

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]”

Perusal of the above extracted definition of the workman indicates that barring those described in the first part of the Section, the workman would include the dismissed, discharged or the retrenched employee(s) too, who had been dismissed, discharged or retrenched in connection with or as a consequence of the dispute which had led to his such dismissal, discharge or retrenchment or whose dismissal, discharge or retrenchment had led to a dispute.

In other words, the workman contemplated by the Industrial Disputes Act, for settlement of his dispute, is only he or she who is either in employment, or questioning his dismissal, discharge or retrenchment, intends to be retained as an employee/workman, with the employer. An employee proceeding on voluntary retirement, would not thus fall within the expressions, ‘dismissed’, ‘discharged’ or ‘retrenched’, appearing in section 2(S) of the Act, for all these expressions contemplate an action by the Management, And not by the worker, in case of voluntary retirement, which the worker, on his own volition, opts for, though, pursuant to any Scheme floated as such, by the employer. Such an employee proceeding on voluntary retirement cannot

thus be construed as ‘workman’, in terms of Section 2(S) of the Act.

The definition of the workman, in my view, may not, thus conceive a person who was no more interested to be the workman, in the employment of the employer and was interested only to seek settlement of his Post-Retiral benefits.

The Industrial Dispute contemplated by Section 2(K) of the Act means any dispute or difference between employers and employers, or between employer and workmen or between workmen and workmen, which is connected with the employment or non-employment, or the terms of the employment or with the conditions of Labour, of any person, meaning thereby, that for the existence of an Industrial dispute, jural relationship, as contemplated by Section, must exist between the litigating parties.

The respondents-workers do not dispute their voluntary retirement from the Company and express no intention of their retention in the Company.

In this view of the matter, the cessation of the jural relationship of employer and employee, disentitles them to seek adjudication of their claim of parity with the workers who had proceeded on voluntary retirement, much after their retirement, on a Reference under Section 10 of the Act, which is contemplated for settlement of only ‘Industrial Dispute’, which the respondents’ claim, in my opinion, may not amount to.

I am supported in taking this view by what was held in C.J. Everestee’s case by the Kerala High Court where their lordships held as follows:-

"The definition of 'workman' in Section 2(s) in connection with persons employed in an industry falls in three parts. The first part of the definition gives the statutory meaning of workman. The second part is designed to include something more in what the term primarily denotes. By this part of the definition, persons who have been dismissed, discharged or retrenched in connection with an industrial dispute; or whose dismissal, discharge or retrenchment has led to an industrial dispute. This part specifically excludes the categories of the persons specified in clauses (1) to (iv) of Section 2(s). The third part connotes that even if a person satisfied the requirements of any of the first two parts, if he falls in any of the four categories in the third part, he shall be excluded from the definition of 'workman'. In our opinion, the appellant, having voluntarily tendered his resignation pursuant to a scheme for voluntary retirement, the resignation having accepted by the management and all the benefits arising out of such resignation has been paid by the management and received by the appellant, he cannot be treated as a 'workman' coming under Section 2(s) of the Industrial disputes Act. As already noticed, the definition only includes persons who are presently employed, or who have been dismissed, discharged or retrenched from the service of the employer. In fact, dismissal, discharge or retrenchment is an act of the employer, whereas terminating the contract of service by way of resignation by the workman is his own act. We are, therefore, of the opinion that the claim of the appellant is misconceived and beyond the scope of Section 2(s) of the Industrial Disputes Act."

I, therefore, do not find any merit in the submissions of respondents' learned senior counsel that the beneficial provisions of the Act, may not permit restrictive and literal interpretation of the provisions of Section 2(S) of the Industrial Disputes Act, not to include in it the disputes which the employees proceeding on voluntary retirement may raise with their employer.

For all what has been said above, the dispute referred for adjudication by the State Government to the Labour Court, in respect of the matters regarding the legality or otherwise of the action of the Management of Hindustan Lever Limited, Jammu as regards the payment of compensation to its workers under the VS Scheme, and onward appropriate relief to the said workers, in case the illegality of the action of the said Management was established, in the absence of any reference by the Government, regarding the voluntary retirement of the workers as such, between the Management of Hindustan Lever Limited and its

employees, not being an industrial dispute, in terms of Section 2(k) of the Act, the Reference made by the State Government to the Labour Court, becomes without jurisdiction and incompetent, in that, reference under Section 10 of the Act may be contemplated only in the event of the existence of an industrial dispute.

The consequent Award issued by the Labour Court, based on the incompetent Reference, cannot thus be sustained.

This petition, therefore, succeeds, and is accordingly allowed, quashing State Government's SRO 236 of June 18, 1999 published vide Notification of June 18, 1999 and the Labour Court's Award of February 28, 2003.

**(J.P.Singh)
Judge**

Jammu
29.09.2009
Vinod.