IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2308 OF 2010

Crompton Greaves Ltd. .. Petitioner
Versus
S.B.Lokhande & Ors. .. Respondents

Mr.K.K.Singhvi, Senior Advocate with R.V.Paranjape for petitioners
Mr.S.C.Naidu with T.R.Yadav for respondents

CORAM : S.C.DHARMADHIKARI, J.

Reserved on : 8th February 2011

Pronounced on : 10th March 2011

ORAL JUDGEMENT:-

1] By this petition under Article 226 of the Constitution of India, the petitioner employer is challenging an order dated 3rd May 2010 passed by the 10th Labour Court, Mumbai in Application (IDA) No.97 of 2007.

2] Learned Judge of the 10th Labour Court allowed the said Application preferred by the respondent Nos. 1 to 11 in the following terms:-

> "(a) The opponent company is hereby directed to pay the applicants their claim towards bonus/ ex-gratia payment and towards casual leave, privilege leave and LTC payment as more particularly specified in the Annexure B and D annexed herewith."

3] It is common ground that the above application was preferred by respondent Nos. 1 to 11 (original applicants) against the petitioner opponent claiming that they are erstwhile employees. They worked with the company at its division at Kanjurmarg and they were on the roll of the company. They worked continuously on and up to 26th October 2005.

4] The said respondents then stated that they have

accepted the payment as per the settlement dated 23rd December 2005, as a Voluntary Retirement Scheme payment (VRS). However, while tendering the said payment, the amount of bonus due and payable was not paid. This was for the period 1st April 2004 to 31st March 2005 and 1st April 2005 to 26th October 2005. It is stated that the petitioner company declared bonus for the period 1st April 2004 to 31st March 2005 in and around November 2005. This declaration was for the workers employed at the Kanjurmarg Division. Subsequently, the workers in other divisions at Kanjurmarg were paid bonus amounting to Rs.11000/- approximately per employee as declared for the period 1st April 2004 to 31st March 2005. During the relevant period even the respondent Nos. 1 to 11 were employees of the company and were working in the same division. Therefore, they are entitled to receive bonus at the same rate and for the period noted above.

5] As far as the period commencing 1st April 2005 to 31st March 2006 is concerned, it is alleged that the petitioner company declared bonus and made payment to all employees working in the said division at the rate of Rs.14,000/- per employee. Respondent Nos. 1 to 11 worked during 1st April 2005 to 26th October 2005, hence, they were entitled to bonus payment on par with the co-employees on pro-rata basis for the period they were in the service of petitioner.

6] This claim was quantified by the said respondents in Annexures B and C to their application. It was alleged that this payment was not made and the petitioner failed and neglected to make it. As far as other claims are concerned, what has been alleged in the application and para 8 onwards is that the petitioner suddenly closed large machine division at Kanjurmarg with effect from 26th October 2005. At that point of time, respondent Nos.1 to 11 had a balance of their casual

leave, privileged leave and LTC. On account of this balance,the said respondents claimed that they are entitled for payment of monies in terms of Annexure D. They alleged that they are entitled to monetary payment towards the services rendered to the petitioner company which was not provided under VRS or any other scheme. This amount having not been paid, the respondents 1 to 11 claimed that the petitioners may be directed to pay them. In para 9 there is a reference to the letters addressed/ demands raised and non compliance therewith. From para 10 to 12 it is stated that the amounts are undisputed being duly quantified. In these circumstances, interest was claimed at 12% and with a direction that the labour court should determine the amounts due and payable and direct the payment in respect thereof with Interest. This application was filed on 16th March 2007.

7] Upon being served with the copy of the application, the

petitioners filed their written statement firstly contending that the application is not maintainable because the respondent Nos. 1 to 11 are not entitled to any money towards payment of bonus as they have already received all amounts in terms of memorandum of settlement dated 23rd December 2005. The settlement was with Bhartiya Kamgar Sena – Union representing all workmen of large machine division, including respondent Nos. 1 to 11. This settlement has been consented to and the workmen concerned by their individual confirmation letters acknowledged that they have received the amounts in full and final settlement of all their claims. This includes all claims in accordance with law. Such individual confirmation letters are given even by the respondent Nos. 1 to 11 – Original applicants. Further, the amounts towards encashment of casual leave and privileged leave and LTC stood paid and, therefore, no amount in terms of any of the annexures are due and payable.

8] Clause 4 of the settlement was relied upon and it was even reproduced in para 3. It is alleged that pursuant to the provisions of Payment of Bonus Act, employees who are not covered by the same were not entitled for any bonus. Therefore, when the VRS benefits were calculated and the settlement was signed the amount was worked out in such a manner that the employees were not prejudiced financially. The amounts were computed accordingly and in such circumstances, no claim for bonus is maintainable.

9] Thus, the emphasis was on the fact that payment under the VRS was all inclusive. Therefore, in para 13 of the written statement, while dealing with para 8 of the original application, it was urged that there was no sudden closure of large machine division. It was closed in terms of application made under section 25(O) of the Industrial Disputes Act, 1947 (Act

for short). The permission of closure was granted by the Authority. As far as LTC payment, encashment of casual leave and privileged leave is concerned, clause 4 of the settlement permits separate payment for the same and as pointed out, after signing of the settlement the amount due and payable towards LTC and encashment of leave, stood cleared. These amounts have already been paid and the respondent Nos. 1 to 11 have duly received them. For all these reasons, it was urged that the application should not be entertained but it deserves to be dismissed with heavy costs. The written statement is dated 9th January 2008.

10] In support of their allegations as made in the application, respondent Nos. 1 to 11 examined witnesses viz., Santu Balu Lokhande and Yeshwant Kolekar. They relied upon number of documents. As far as the petitioner company is concerned, they examined Saran Srivastav and filed number of

documents. The labour court had framed necessary issues earlier. After the evidence was led, the arguments were heard and learned Judge was pleased to hold that respondent Nos. 1 to 11 have existing right to receive bonus, ex gratia payment declared by the company. Those who retired in 2005 are, therefore, entitled to the amounts claimed vide Annexure B to the application. As far as the claims of leave encashment and LTC are concerned, it was observed that the petitioner has not produced any documentary proof in rebuttal of the case of respondent Nos. 1 to 11. Therefore, they may have stated that the benefits are paid to the said employees but having failed to produce necessary particulars, petitioner's contentions were rejected. In such circumstances and rejecting the case of the petitioner that the Notices dated 28th October 2005 and 13th October 2006 do not in any manner take away the right of the said employees, the final order has been made on 3rd May 2010. It is this order which is

challenged in this petition.

11] Mr.Singhvi, learned Senior Counsel appearing in support of this petition submitted that the impugned order is ex facie erroneous and untenable in law. He submits that the ambit and scope of powers of the Court under section 33(c)(2) of the I.D.Act is clear. The labour court could have awarded only such amount which the workman is entitled to receive from the employer. The workman is only entitled to any benefit which is capable of being computed in terms of money. It is only the question as to the amount of money due or any benefit capable of being computed in money, which can be referred to the labour court. Once, there is no entitlement to receive money or any benefit which is capable of being computed in terms of money, then, the labour court has no jurisdiction to award any sums. He submits that this crucial aspect has been overlooked by the court below. The amount was not due and

payable as the settlement having been accepted by parties. The amounts thereunder are paid by the petitioner in full and final settlement. All claims are accepted as such. Mr.Singhvi has invited my attention to the notice which came to be displayed and copies of which have been annexed to the affidavit in reply. Mr.Singhvi submits that the notice dated 28th October 2005 declaring annual bonus, ex gratia for the year 2004-05 states that the management is pleased to give bonus/ ex gratia payment for the accounting year 1st April 2004 to 31st March 2005 to all daily rated, monthly rated workmen in the employee and staff cadre. Item No.1 relates to bonus and Item No.2 relates to ex gratia. It has been clarified as to which employees are entitled to the amounts. Mr.Singhvi submits that the basic wage which has been shown as an eligibility criteria will have to be drawn so as to claim ex gratia amount. Ultimately, this amount is calculated on the basis of the salary/ wage specified therein. At Sr.No.6 in this notice, the

entitlement of ex employee has been set out. It is very clear from the same that the employees who have ceased to be in the company's service due to retire on superannuation, VRS or who have unfortunately expired during the accounting year will also be entitled to bonus and/or ex gratia as mentioned in the notice on pro-rata basis. It is stated in clause 6.2 that employees who have resigned or who were terminated from the services of company during the accounting year or who are not in the employment of the company on the date of declaration of bonus will only be paid bonus in terms of their eligibility under the payment of Bonus Act, 1965. The maximum amount of bonus will be Rs.6000/- if the ex employee was in employment of the company for the full accounting year. However, the actual amount payable will be computed on the basis of attendance of such employee during the accounting year. In such cases, no ex gratia will be payable. Mr.Singhvi submits that the petitioners have,

therefore, pointed out by leading evidence that payment vouchers cum undertaking for VRS amounts signed by the employees would demonstrate that the amounts have been accepted in full and final settlement of all claims and demands. They have no claim against the company thereafter. In the cross examination of the witness No.1, Mr.Lokhande, the settlement between the Union and the Petitioner is accepted. That is exhibited. Although, in the cross examination this witness states that he did not receive dues as per the settlement but he admits that he has received, VRS amount as per the settlement. He admits that dues of VRS were based on the scheme declared by the petitioner on 21st May 2004. He admits receipt of gratuity and provident fund. He admits that on 10th January 2006 he received Rs. 234 towards casual leave. However, he says that he does not know about privileged and casual leave. Then he again states that all other applicants have also received this encashment.

As far as the suggestion given that the claim towards LTC is paid after availing the facility the witness denies the suggestion that the benefits for the year 2005 were received and therefore not entitled to be paid any sum. Similarly, he admits that each of the applicant's salary is above Rs.10,000/- and therefore a suggestion was given that they were not eligible for bonus but the same is denied.

12] In the affidavit in chief of the petitioner's witness, to which attention is invited by Mr.Singhvi, according to him, the matter has been amply clarified and particularly by relying upon clause 4 of the memorandum of settlement dated 23rd December 2005. In such circumstances, the labour court was in complete error in awarding the amount over and above the payment already made to these applicants. Mr.Singhvi has invited my attention to paras 19 and 20 of the order and submitted that the findings recorded are contradictory. For all

these reasons, he submits that petition be allowed.

13] On the other hand, Mr.Naidu learned Counsel appearing for respondent Nos. 1 to 11 submitted that this petition deserves to be dismissed as the petitioner has suppressed the material facts from this Court. Mr.Naidu submits that the petitioner has deliberately and willfully suppressed from this Court the fact that two notices were addressed by the respondent No.1 to 11 to the petitioner demanding inspection of documents. These notices are dated 26th September 2006 and 11th December 2006. Mr.Naidu then submits that the respondent Nos. 1 to 11 filed an application (IDA) No.97 of 2007 demanding encashment of balance privileged leave to their credit as of 26th October 2005, encashment of balance casual leave to their credit, payment of LTC for the year 2005, bonus as declared between accounting years 2004-2005 and 2005-06 (pro rata upto 26th October 2005). That application

was opposed. The respondent Nos. 1 to 11 filed application for production of documents and that a copy of that application is not annexed deliberately by the petitioner. This application was taken on record by the Court below and numbered as Exh.U-4. A reply was filed to this application by the petitioner which is at Exh.C-13. This application was allowed by the labour court on 14th August 2008 but the petitioner company did not produce the documents and failed to abide by the directions of labour court. Further, the petitioner has not annexed a complete, copy of the evidence of their witness, Samar Srivastava.

14] Lastly, the petitioner has failed to disclose and annexe notices dated 28th October 2005 and 13th October 2006 whereunder the payment of bonus and ex gratia was declared for all permanent workmen. The petitioner has also suppressed the evidence of the applicant's witness No.2

Yeshwant Kolekar and a copy of his deposition has not been annexed. The petitioner has failed to inform the court that in terms of the order of the labour court certificate of recovery has been issued by the Assistant Commissioner of Labour, Mumbai dated 26th October 2010 in the sum of Rs.4,18,363/-. Hence, on this ground alone the petition deserves to be dismissed.

15] Without prejudice and on merits it is submitted that what the respondent Nos. 1 to 11 have claimed is bonus and ex gratia for the accounting year referred to above. The company by two notices declared bonus and ex gratia and, therefore, the respondent Nos. 1 to 11 were entitled to receive this amount. The petitioner has not denied that the notices have been issued but there only argument was that the voluntary retirement scheme includes all payments and under all heads. However, in the cross examination of the petitioner

company's witness there is an admission that in terms of the notices issued the employees who retired, superannuated and who opted for VRS are also entitled to bonus, ex gratia on pro rata basis.

16] Once the observations are to this effect, then, there is no error of law or perversity committed by the labour court. As far as the claim for encashment of leave and LTC is concerned, even the witness examined by the petitioner company has admitted that company maintains leave record and such leave record has not been produced. Once the relevant record is not produced before the court below, then, the court below was justified in taking the view that there is no proof submitted by the petitioner. If there is no proof submitted that the amount that is due and payable has been remitted, then, the impugned order is in accordance with law. For all these reasons, there is no merit in the petition and it be dismissed.

17] With the assistance of the learned Counsel appearing for parties, I have perused the petition and the annexures so also affidavit in reply filed together with its annexures. I have also perused the compilation of documents.

18] The application was made under section 33(c)(2) of the I.D.act. By now, it is well settled that the benefit that is payable under section 33(c)(2) is pre-existing benefit or flowing from pre-existing right. In a decision in the case of State Bank of India Vs. Ramchandra Dubey, reported in A.I.R. 2000 S.C. 3734, in para 8 the Supreme Court has referred to the ambit and scope of labour court's powers and observed thus:-

> "8. The principles enunciated in the decisions referred by either side can be summed up as follows:-

> "Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under section 33C(2) of the Act. The benefit sought to be enforced under section 33C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit, which is considered, just and fair on the other hand is vital. The former falls within jurisdiction of labour court exercising powers under section 33C92) of the Act while the latter does not....."

This view has been followed in subsequent decisions also. The respondent Nos. 1 to 11 made claims, which according to them, have been computed on the basis of their rights under the two notices issued by the petitioner company. The period of entitlement is prior to the VRS. The VRS is dated 23rd December 2005. The petitioner resisted this application and the claim made therein by pointing out that in terms of the Payment of Bonus Act, the respondent Nos. 1 to 11 are not

entitled to any amounts. Further, in view of the settlement they are not entitled to bonus as claimed. As far as encashment of casual leave LTC privileged leave is concerned, it is urged that the petitioners have already paid the same.

19] The labour court adverted to this defence and found that the respondent Nos. 1 to 11 were employees of the company during the relevant period. It adverted to the case of respondent Nos. 1 to 11 that the bonus/ ex gratia payment is not part of VRS and it is specifically excluded under the memorandum of settlement dated 23rd December 2005. Therefore, the respondent Nos. 1 to 11 have an existing right to claim the said amount. Further, the service conditions of employees were governed as per the settlement and, therefore, the payment of LTC and bonus were agreed by the company. After adverting to the evidence of the witnesses,

the labour court held that there is nothing in the cross examination by the petitioner's Advocate which would show that the version of respondent No.1 has been in any way falsified. Therefore, respondent Nos. 1 to 11 who worked upto 26th October 2005, were entitled to receive bonus/ ex gratia payment.

20] As far as entitlement is concerned and the dispute raised by the petitioner thereto, the labour court adverted to clause 4 of the settlement, which records the agreement that amounts paid by the company to individual company staff as per the VRS dated 26th May 2005 will be by way of full and final settlement and will be all inclusive of the compensation payable to them by law but will not include PF, leave encashment, LTC and gratuity. The labour court also held that the petitioner has failed to produce any proof that the claim on account of PL/ casual leave and LTC is already settled and the

amounts paid by the petitioner.

21] Mr.Singhvi, learned Senior Counsel appearing for petitioner would urge that by clause 7 of the settlement, the workmen and staff of Large Machine Division, Kanjurmarg had agreed that they and the Union will not raise any dispute in future, either individually or collectively on the matter of closure of LMD Kanjurmarg as well as their rights/ claims related thereto arising therefrom so also claims relating to their reinstatement, backwages or otherwise.

21] I do not see how this clause in any manner assists the petitioner. Reading of this clause does not mean that the respondent Nos. 1 to 11 were prohibited from raising any claim under section 33 (c)(2) or filing any application in that behalf. Thus, a reading of clause 7 does not mean that no adjudication was permissible insofar as the claims raised in

the instant petition.

22] Mr.Singhvi also placed reliance upon clause 8 of the settlement which reads thus:-

> "8. The Union, workmen and staff hereby agree, confirm and declare that in view of all issues being settled, they shall not challenge the said order or claim any relief in any court of law, in connection with the said voluntary retirement, termination, settlement or otherwise, under any law for the time being in force."

Reading of this clause would indicate that what the Union workmen and staff have agreed, confirmed and declared is that all issues being settled, they shall not challenge the said order or claim any relief in any court of law in connection with

the said VRS, termination, settlement or otherwise under any law for the time being in force. This clause only indicates that closure or the order in that behalf will not be questioned. This was agreed because the permission under section 25-O of the I.D.Act to close down the LMD Kanjur was granted to the petitioner. Parties agreed that this closure or the order made in respect thereof will not be challenged in any court of law nor any relief in relation thereto would be claimed. Although clause 8 would indicate that the parties had intended not to initiate or institute any proceedings in any court of law pertaining to the claim in connection with VRS, termination, settlement or otherwise, yet, if the petitioner by their own acts have issued the circulars in relation to bonus, ex gratia and which are applicable to also those employees who have retired from service voluntarily, then, the petitioner cannot turn around and argue that the application before the labour court was not maintainable by virtue of clause 8 of the settlement

dated 23rd December 2005. Further, clause 4 of the same settlement leaves out or excludes certain claims from purview thereof and the application in relation to those claims at least was maintainable. That apart, no such argument as has been raised by Mr.Singhvi before me appears to have been raised before the Court.

23] The Court below has on an appreciation of oral and documentary evidence found that the notice dated 28th October 2005 in relation to annual bonus/ ex gratia for the year 2004-05 and for the year 2005-06 itself make a reference to the claim of bonus of the employees and to payment of ex gratia to such of the employees who made requests through Union or otherwise. That ex gratia is taken as a gesture of goodwill by the petitioner management. It is a claim clearly set out and crystalised in the notices itself. Further, what the Court below had done is to grant the relief on the basis of the

clauses of these notices to the ex employees. There is no substance in the contention that the labour court has granted both bonus as well as ex gratia to the claimants like respondent Nos. 1 to 11. The labour court bearing in mind clause 6.1 and 6.2, which both relate to the claims of ex employees has held that they are entitled to the amounts in terms of these clauses and if the clauses do not make any ex gratia payment permissible, then, that is obviously not awarded.

24] The labour court is, therefore, right in its conclusion that once the respondent Nos. 1 to 11 were working at LMD Kanjur and the employees working therein were entitled to bonus for the years 2004-05 and these respondents were admittedly so working on the date of notice i.e. 28th October 2005 or till 26th October 2005, then, they are entitled to receive the monetary benefits.

25] The labour court is right in holding that the respondent Nos. 1 to 11 have claimed a benefit under a pre-existing right. They are not claiming anything merely because it is just and equitable.

26] Similarly as far as the claim for the years 2005-06 which is based on the notice issues for the subsequent period even that notice dated 13th October 2006 contains identical clause in relation to ex employees. There what the respondent Nos. 1 to 11 could be held to be entitled is a payment calculated pro-rata. In other words, they would be entitled to the benefit till the date of their employment, in terms of which even VRS has been accepted. Even during this accounting year 1.4.2005 to 31.3.2006 is concerned, the claim of respondent Nos. 1 to 11 would be admissible upto 26th October 2005. That is also a pre-existing right. Thus, the labour court was in

no error in rejecting the arguments of the petitioner, based as they were only on clause 4 of the settlement. Further, the Court below has not committed any perversity while relying upon and interpreting clause 6.1 and 6.2 of the notice referred to above. If the calculations for the year 2004-05 in respect of the said employees is for the entire accounting and for the subsequent accounting year, it is only from 1/4/2005 to 26/10/2005, and the payments have already been made, according to the petitioner, then, the order of the labour court should not be construed as directing payment all over again to those employees who have received it. If the payment is made, then, that payment need not be made all over again but in terms of the labour court order payment has to be made as no proof of receipt thereof came to be produced.

27] The labour court has not committed any error or perversity inasmuch as, the witness of the petitioner stated

solemnly before the court in examination in chief that on closure of the large machine division of the petitioner, with effect from 26th October 2005, the services of all the workmen and other staff working therein stood terminated. Then, there is a reference in the evidence in chief to the memorandum of settlement dated 23rd December 2005 and the payment under the same. There was a specific statement in the examination in chief that the respondent Nos. 1 to 11 are not entitled for bonus as they did not fulfill the criteria of eligibility and entitlement in that behalf. Equally, the assertion is also with regard to payment having been made towards LTC and leave encashment but in the cross examination of the petitioner's witness, he admits that as per the above notices in the Kanjurmarg plant of the company, bonus, ex gratia payment was made to permanent employees on the roll of the company on the date of the circular. He admits that he will not be able to state whether the payment shown in the Receipt U-5, 6 and

7 is in relation to bonus ex gratia. In relation to U-5 he gave the same answer. On a suggestion from respondent Nos. 1 to 11, the witness admits that the applicant and respondent Nos. 1 to 11 were entitled to bonus, ex gratia payment in the above accounting year. At the same time, he admits that individual leave account of employees is maintained. However, the leave record has not been produced. He admits that the concerned workmen were entitled to LTC for the period 2005. He admits that clause 6.1 makes bonus ex gratia admissible on pro-rata basis to those employees who retired voluntarily, superannuated or retired. He admits that the concerned workmen who opted for VRS and upto 26th October 2005 were on the roll of petitioner company as permanent employees were granted benefits.

28] From the entire deposition it is clear that the petitioner company has made applicable the circular even to the

employees like respondent Nos. 1 to 11. They could not have made any contradictory statement in the oral deposition. Once this was the factual position, all that was required to be produced and proved to resist the claim of the said employees is a document evidencing payment of all the sums as claimed in the application. That having not been produced, in my view, the labour court rightly relied upon the deposition of the workmen which is not falsified in the cross examination by the petitioners and the admission of petitioner's witness to accept the claim made in the application. There is no error of law apparent on the face of the record or any perversity in the findings rendered by the Court below requiring this Court's intervention under Article 226 of the Constitution of India.

29] Thus, although I find substance in the objections raised by Mr.Naidu to the maintainability of present petition because of the conduct of the petitioners, yet, on merits also I find that

this is not a fit case for interference in the extra ordinary, equitable and discretionary jurisdiction under Article 226 of the Constitution of India.

30] As a result of the above discussion, this petition fails and it is dismissed. Rule is discharged. No costs.

(S.C.DHARMADHIKARI, J)