भारत सरकार / Government of India

सरकारी राजपत्र
OFFICIAL GAZETTE

संघ प्रदेश दादरा एवं नगर हवेली तथा दमण एवं दीव प्रशासन
U.T. ADMINISTRATION OF DADRA AND NAGAR HAVELI AND DAMAN AND DIU

असाधारण
EXTRAORDINARY

प्राधिकरण द्वारा प्रकाशित / PUBLISHED BY AUHTORITY

Daman 12th December, 2024 21 Agrahayana, 1946 (Saka) No. : 77

Administration of
Dadra & Nagar Haveli and Daman & Diu, U.T.
Labour Department,
Silvassa.

No. LEO/Misc. Corr./2023/1792 **Dtd. 06/12/2024**

Subject: Regarding Publication of Awards delivered by the District & Sessions Court, DNH, Silvassa.

With reference to the above cited subject, the Award passed in IDR No. 121/2015 is here by published in the Offcial Gazette of this UT Administration of Dadra & Nagar Haveli and Daman & Diu for general information.

Sd/–
(Aarti Agarwal)
Deputy Secretary (Labour & Employment)
Dadra & Nagar Haveli and Daman & Diu
Daman

CNR No. UTDN01-001137-2015
Presented on :04/09/2015
Registered on :15/10/2015
Decided on :04/09/2024
Duration : **08 Y 10 M 20 D**
Exhibit No.29

BEFORE THE PRESIDING OFFICER, LABOUR COURT, DADRA & NAGAR HAVELI, AT SILVASSA.
(Presided over by Mr. A. A. Bhosale)

I.D.R. No. 121 / 2015

ADJUDICATION BETWEEN

M/s. Reliance Industries Ltd.,
(Silvassa Mfg. Division)
342, Kharadpada, Naroli,
(U.T. of Dadra & Nagar Haveli and
Daman & Diu.)
..**First Party**

AND

Mr. Jayesh Kurjibhai Ajudia,
At & Post : Tarahadi, Ta. Padhari,
Dist. Rajkot,
(Gujarat).
..**Second Party**

Appearances :
Mr. D. M. Shah, Ld. Advocate for first party.
Mr. S. B. Parmar, Ld. Advocate for second party.

Reference u/s 10(1) of
The Industrial Disputes Act, 1947.

A W A R D
(Delivered on 04/09/2024)

1] That, the second party workman raised an industrial dispute and filed an application dated 21.03.2014 before the Conciliation Officer against the management of M/s. Reliance Industries Limited (Silvassa Mfg. Division). However, no settlement could be arrived before the Conciliation Officer. Therefore, the Conciliation Officer has submitted his failure report u/s 12(4) of The Industrial Disputes Act, 1947

(hereinafter referred to as I.D. Act) before the appropriate Government. Then, the Labour Commissioner, Dadra & Nagar Haveli, Silvassa, by his order dated 21.08.2015, was pleased to refer present dispute for ad-judication u/s 10(1)(c) of the I.D. Act to this Labour Court.

2] On receipt of the reference, this Court had issued notices to both the parties. Both the parties have appeared before the Court. Second party workman filed Statement of Claim which is at Exh.08.

The sum and substance of the claim of second party workman is as follows :-

3] That, the second party workman was working with the first party company since 23.08.2001 on the post of operator and was drawing the salary @ Rs.12,300/-. It is contended that the second party was never served with any kind of notice or memo during service tenure and his service record remains unblemished.

4] It is alleged by the second party workman that the first party i.e. M/s. Reliance Industries Limited (Silvassa Mfg. Division), *(hereinafter referred as first party)*, introduced a so called Voluntarily Retirement Scheme (VRS) for the workers, which was not disclosed by the first party. It is alleged that notice was also not published by the company on its notice board. The second party workman and other workmen working in the said industrial unit were forced to resign under the so called VRS by the first party. It is

alleged that the officers of the management of the first party namely Shri R. N. Sharma, Shri Sandesh Kadam, Shri Raju Patil, Shri B. Satish, Shri Gyanchand Gautam and Shri Vinit Dugal gave threat and adopted unfair labour practice.

5] It is contended that the second party workman and other workmen have neither given any resignation voluntarily nor they have accepted VRS and the dues thereof. It is alleged that the second party workman and other workmen have opposed the so called VRS as company has not given any kind of information about the so called scheme and it was not constituted with the consultation of workmen. It is alleged that after obtaining so called resignation and signature in the blank paper and vouchers under pressure and threat, the second party workman and other workmen have been terminated from the services by the first party company w.e.f. 30.06.2013.

6] It is alleged that the second party workman has never given any voluntary resignation and also had not received any acceptance letter of so called resignation letter. The company has not paid the so called legal dues under the so called scheme on the same day. As the resignation is obtained under pressure and threat, the same is sham, bogus, unlawful. It is alleged that the first party has deposited the so called amount of legal dues in his bank account without any notice to second party workman. It is alleged that the services of the present second party workman and other workmen have been terminated

under the guise of so called VRS and so called resignation. It is contended that more than 300 workmen have been terminated under the guise of so called VRS.

7] It is contended that the work carried out by the second party and other workmen is still continued in the first party and at present, the same is carried out by the newly recruited 2000 employees. The second party workman is without job and suffering starvation. The termination of the second party was in contradiction of the provisions of I.D. Act.

8] It is contended that in the first party company, more than 100 employees are working. Therefore, the provisions of Chapter V – B of the I.D. Act is applicable. Therefore, for avoiding the liability / responsibility under the Chapter V – B of the I.D. Act, the first party under the guise of so called VRS, terminated the services of more than 300 employees, which they couldn't have been done under the pretext of justifiable retrenchment under Chapter V – B of the I.D. Act.

9] It is further alleged that the so called payment deposited in the bank account of all the workmen clearly shows that there is a pure discrimination in the so called payment under the VRS. The workmen were never made aware about the terms of the so called VRS. The employee who have rendered the 10 years of service and the employee who have rendered more than 20 years of service were paid the

same amount under the so called VRS. Before floating such scheme, the company has not published the seniority list. The first party has not taken a due care to inform the Government authority about the introduction of the so called VRS.

10] It is further contended that the acceptance of retrenchment compensation or so called benefits of the VRS should not be held to create a bar against them. As per the provisions of the I.D. Act, employers right to retrench his employees can be validly exercised only when it is shown that the employee has become surplus on the ground of rationalization or on ground of economic reasonable and bonafide adopted by the management or because of other industrial trade reasons. But, all these factors are missing in the present proceedings. Therefore, the termination is gross violation of the mandatory provisions of the Act.

11] *Inter-alia,* in the background of above contentions and allegations, the second party workman is seeking declaration that the termination of the services of the second party workman w.e.f. 30.06.2013 is illegal, improper and he is also seeking direction against the first party to reinstate him on his original post with continuity of service alongwith all consequential benefits and with full back wages.

12] The first party company has filed its Written Statement which is at Exh.09. The substance of the same is as under :-

That, the first party denied and disputed all

adverse statements, allegations in the claim of the second party. It is contended that the dispute raised in the present reference is individual dispute u/s 2(A) of the I.D. Act. The remedy u/s 10 of the I.D. Act is not available and therefore, the present reference is itself invalid.

13] It is further contended that the second party workman has voluntarily opted for VRS and the first party has accepted his application / resignation. Accordingly, the second party is relieved from his services. Therefore, the said removal or withdrawal cannot be said to be discharge, dismissal, retrenchment or termination in anyway and therefore, the dispute raised by the second party cannot be termed as industrial dispute as contemplated under the I.D. Act.

14] It is further contended that the company had introduced VRS and it was launched on 07.05.2013 and which was initially in operation upto 14.05.2013. However, the same by notice dated 14.05.2013 was extended upto 31.08.2013 and was again extended by notice dated 01.09.2013 upto 31.12.2013 with a modification and clarification that the optees who will be relieved from 30.11.2013 onwards will be paid special incentive of Rs.3,00,000/-, (instead of special incentive offered in that eventuality in the original scheme dated 07.05.2013). The said scheme was again extended by displaying notice dated 31.12.2013 upto 01.05.2014 and then once again extended vide notice dated 01.05.2014 upto 31.12.2014.

15] It is contended that the said VRS was displayed on the notice board of the factory of the first party at various places alongwith its annexures so as to enable the workers to know and understand the entire scheme. The scheme and the annexures were also displayed by the company in vernacular language on the notice boards of the factory of the first party company. So also, various notices and modifications as stated above were also displayed on the notice boards of the factory of the company at various places alongwith its translation in vernacular language.

16] It is contended that the second party workman submitted an application for voluntary separation under the said scheme in the prescribed form and a said form was witnessed by two persons who have also signed the said application. It is contended that the application made by the second party workman for acceptance of VRS was completely out of his free will. Not only this but also, the first party has communicated to the second party workman that his application for voluntary separation is accepted in writing. The first party also credited an amount of Rs.1,00,000/- as advance towards the VRS benefits to the bank account of the second party for voluntary separation. It is contended that on acceptance of the application of the second party for voluntary separation, he was relieved from the services of the company and the monetary benefits offered under the VRS after deducting the amount paid as advance, the balance amount was transferred to bank

account of second party. It is submitted that the first party has paid the full and final amount under the VRS to the second party.

17] It is contended that the second party also submitted an application for payment of gratuity and company has paid him the gratuity by cheque. The second party also filled in and submitted Form No.19 to withdraw his provident fund, wherein he has specifically mentioned that he has resigned. The amount of P.F. was also paid to the second party by cheque. The second party also filled in and submitted the form of pension under the EPS, 1995.

18] It is further contended that alongwith the Written Statement, first party has submitted Annexure - 'A' which contains the details of the relevant dates of the entire sequence of events in respect of the second party.

19] It is contended that the first party intents to clarify that as per the long practice, the wages and other monetary benefits, except gratuity and P.F., are being directly credited in the respective bank accounts of all the employees of the first party. Similarly, in the present case also, the amount of gratuity and P.F. is paid to the second party by issuing cheques in his name and the rest of the payments under VRS or even advance towards VRS benefits, were directly credited in the bank account of the second party.

20] It is further contended that it requires to be appreciated that right from the date, the second party

applied under the VRS, till he made a complaint raising the dispute before the Conciliation Officer, at no point of time, the second party has made any grievance in respect of the VRS or of his relieve from the services. The second party never raised grievance or complaint with the first party that his signatures were obtained on blank papers or vouchers or that the monetary benefit has been credited in his bank account behind his back or without his knowledge. The second party never contended before the company that he has not gone through the VRS introduced by the company or that no such scheme was displayed by the company. The second party has neither returned the amounts credited to his account nor he has volunteered to return the said amount. Thus, the allegations in respect of obtaining the signatures on blank paper and under coercion or threat are totally baseless. *Inter-alia*, on these grounds, the first party contends that the reference deserves to be rejected.

21] Considering the pleadings of the rival sides, following issue nos.1 to 3 & 6 were referred for adjudication. But, by way of order below Exh.1 dated 20.08.2024, following issue nos.4 & 5 were additionally framed by the Court. In the present case, joint pursis is filed by both the sides at Exh.28, stating therein that both the parties do not wish to lead any further evidence in respect of the additionally framed issues. Further, it is mentioned that the arguments advanced in IDR No.108 of 2015 be also considered in the present reference. I am reproducing the issues

alongwith my findings thereon for the reasons to be discussed hereinafter :-

Sr. No.	ISSUES	Findings
1)	Whether the disputes raised by second party workman can be treated as "industrial disputes" under section 2(k) of the Industrial Disputes Act, 1947 ?	...In the affirmative
2)	Whether accepting resignation letter of second party workman by the company and subsequently accepting VRS benefits by second party workman voluntarily can amount to termination of services ?	...In the negative
3)	If the answer to issue nos.1 & 2 is in affirmative, whether the demand of second party workman for reinstatement with full back wages with continuity in service is legal and valid ?	...In the negative
4)	Whether the second party workman proves that his signature was obtained on the disputed VRS scheme and other vouchers under pressure and threat by the first party company ?	...In the negative
5)	Whether it was required to issue statutory notice u/s 9-A of the Industrial Disputes Act, 1947 before floating the disputed VRS scheme by the first party company ?	...In the negative
6)	If not, what relief the workman is entitled ?	...Not entitled for the reliefs claimed
7)	What order ?	Reference is answered in negative

22] Before going into further discussion, it is more than necessary to mention here that infact, there

are in all 292 references arising out of the same alleged Voluntarily Retirement Scheme (VRS) of the first party company and its workmen. The term of said VRS scheme ranges from January 2012 to December 2014. The first and the second party in IDR No.108 of 2015 had led the evidence in detailed. Wherein second party Tarunchandra Parmar (S.W.1) filed his affidavit of chief-examination. He is cross examined in detailed by the first party in IDR No.108 of 2015. The first party also filed affidavit of its authorized person namely Mr. Vinit Vishnu Dugal (F.W.1) in IDR No.108 of 2015. He is also cross-examined in detailed by the Ld. Advocate of the second party in IDR No.108 of 2015.

23] But, in other 291 references, the individual second party in each reference has filed affidavit of his examination-in-chief in lieu of oral evidence. Like in the present case, second party Jayesh Kurjibhai Ajudia (S.W.1) has filed his affidavit of chief-examination at Exh.11. Even, the first party has conducted the cross-examination of the second party in each of the references. But, the cross-examination of the second party in the present reference is to the limited extent. But, the second party has not led evidence in other references, except IDR No. 108 of 2015. In the present reference, second party has filed pursis at Exh.23, stating therein that dispute raised by him and the dispute raised by another workman namely Mr. Tarunchandra Parmar against the first party company in IDR No.108 of 2015 is the same and very much similar. It is further mentioned in the pursis that the

legal contentions of both the parties are same and most of the factual aspects are also same, however, the only difference between the two reference is with regard to date of resignation, date of relieving, the amount of gratuity etc. It is further mentioned in the pursis that said second party Tarunchandra Parmar in IDR No.108 of 2015 has filed his affidavit at Exh.10 and the first party company has cross examined him. It is further mentioned in the pursis that the second party in this reference has also filed his own affidavit, which is practically on the same line with the only difference so far as date of joining, date of resignation, acceptance of resignation etc. Lastly, it is submitted in the pursis that the cross-examination done on behalf of the first party of the workman Mr. Tarunchandra Parmar in IDR No.108 of 2015, be considered as his cross-examination, so far as common facts are concerned. Thereafter, one another joint pursis is filed at Exh.25, wherein it is mentioned that the evidence led of Mr. Vinit Dugal in reference IDR No.108 of 2015 vide Exh.31 be also considered as evidence on behalf of the first party. Thereafter, first party closed its evidence by pursis at Exh.26.

24] Thus, for the sake of ad-judicating the present reference, evidence of first party and second party in reference IDR No.108 of 2015 also requires to be taken into consideration alongwith the evidence of the present workman. But, as the references were referred for ad-judication of each of the workman separately, the each and every reference needs to be

decided separately, even though there are some identical facts. Now, I turn to reasons.

For issue nos.1, 2 & 4 :-

25] Issue no.1 is as to whether the dispute raised by the second party workman can be treated as industrial dispute or not within the meaning of sec.2(k) of I.D. Act and issue no.2 is whether accepting resignation letter of second party workman by the first party company and subsequently accepting VRS benefits by second party workman voluntarily can amount to termination of service and issue no.4 i.e. whether the signature of the workman was obtained on the disputed VRS scheme and other vouchers under pressure and threat by the first party. As all three issues are interlink and dependent on each other, for the sake of brevity, those can be discussed and answered together.

26] Infact, the burden to prove that the signature was obtained under the pressure and threat is on the workman's shoulder. The said issue nos.2 & 4 are infact based on the factual aspect. No doubt, the second party workman has alleged in his claim of statement that certain officials of the first party, threatened him to sign on the blank papers and vouchers. But, in order to ascertain whether the signatures were obtained under pressure and threat, the evidence of both the sides on this aspect needs to be appreciated.

27] At this juncture, it is more than necessary to

go through the cross-examination of Tarunchandra Parmar (S.W.1 in IDR No.108 of 2015).

28] The said workman admitted in his cross-examination in para no.2, that he identifies his signature on application dated 07.05.2013. It is his application for voluntary retirement. He had submitted this application to HR department after signing it (Exh.11 in IDR No.108 of 2015). He further admitted that the said document bears signature of two attesting witnesses. The said workman Tarunchandra Parmar (S.W.1 in IDR No.108 of 2015) further admitted that the document at Exh.12 (in IDR No.108 of 2015) is a document about acceptance of his application of VRS and it also bears his signature alongwith date. He further admitted that as per said letter, he was to be relived on 31.05.2013. The said witness Tarunchandra K. Parmar (S.W.1 in IDR No.108 of 2015) further admits that document at Exh.13 (in IDR No.108 of 2015) is his service certificate and relieving order. He further admitted that he had signed upon it and also mentioned the date under his signature as 31.05.2013 as its receipt date. He further admitted that document filed at Exh.15 (in IDR No.108 of 2015) is his salary certificate for the month of May 2013. It is dated 04.07.2013. He further admitted that the said salary certificate also bears his signature alongwith date. He further admitted that he has received an amount of Rs.1,00,000/- as advance. He further admitted that all those workers who had opted for VRS were given an advance amount for Rs.1,00,000/-. He further admitted

that he was relieved on 31.05.2013. The said witness Tarunchandra K. Parmar (S.W.1 in IDR No.108 of 2015) further admitted that document at Exh.16 (in IDR No.108 of 2015) is the application by his to the trustee for payment of gratuity. The document at Exh.17 (in IDR No.108 of 2015) is a counterfoil bearing his signature of receipt of cheque of Rs.42,134/- towards the gratuity amount. The said cheque was issued by Silvassa Industries Employees Gratuity Fund. He further admitted that he had received this cheque on 04.07.2013. The said witness Tarunchandra K. Parmar (S.W.1 in IDR No.108 of 2015) further admits that document at Exh.18 (in IDR No.108 of 2015) is the Form No.19 for withdrawal of the provident fund from the trustees. It also bears his signature. The said witness further admits that document at Exh.19 (in IDR no.108 of 2015) is the statement showing the settlement sheet of provident fund. It consist of cheque of Rs.69,036/-. The said witness Tarunchandra K. Parmar (S.W.1 in IDR No.108 of 2015) further admits that document at Exh.19 (in IDR No.108 of 2015) bears his signature and he had received it about 04 years ago. He further admits that document at Exh.20 (in IDR No.108 of 2015) is the Form no.10-C for pension under the EPS. It also bears his signature.

29] The said witness Tarunchandra K. Parmar (S.W.1 in IDR No.108 of 2015) further admits in his cross-examination that till date, he never objected of any of the above documents. Further, that he has received an amount of Rs.9,00,000/- towards VRS. He

never attempted to return the monetary benefits of Rs.9,00,000/- and other amounts which he had received under VRS.

30] In respect of threat and coercion by the first party company, the said witness Tarunchandra K. Parmar (S.W.1 in IDR No.108 of 2015) further admits in his cross-examination that he cannot state the time or date as to when he was called upon and intimidated. He deposes that he was called by HR department and he was intimidated by Mr. R. N. Sharma of HR department. He admitted that he never complained to the higher authorities or to the police even though he was working with the company between the period from 09.05.2013 to 31.05.2013. The said witness Tarunchandra K. Parmar (S.W.1 in IDR No.108 of 2015) further admits that about 350 – 400 people opted for VRS alongwith him. He was alone at the time of signing the VRS. But he further admitted that it is true that two co-workers were there at the time of signing his VRS. He further admitted that in between the period from 09.05.2013 to 04.07.2013, he did not complaint about intimidation to him. He admitted that for the first time, at the time of filing the complaint before the Labour Commissioner on 31.03.2014, he alleged about the intimidation. He volunteered that the documents signed by him didn't bear the dates. But, he further admitted that it is true that he had put the date under his signature, whenever he had signed. Lastly, he admitted that there are no legal dues outstanding against the company.

31] Now turning to the evidence of the first party on this aspect i.e. of threat and coercion, its witness Mr. Vinit Vishnu Dugal (F.W.1 in IDR No.108 of 2015), he has produced in his chief-examination the facts as mentioned in the written statement. However, in cross-examination, he admitted that document no.1 filed alongwith list Exh.9 (in IDR No.108 of 2015) is the VRS scheme. The said scheme was run by the company in the year 2012 to 2014. The VRS scheme in the present matter is dated 07.05.2013 and it is marked as Exh.35 (in IDR No.108 of 2015). He further admitted that company has not obtained any previous permission from the then Labour Commissioner or the Income Tax Office. He further admitted that they have not filed any document to show that VRS of the year 2012 was extended to the year 2013 and then, to the year 2014. He also admitted that workmen who worked for 5 to 12 years, they gave him Rs.8,00,000/-. He also admitted that the work which was done by the second party workman, is still being done by the other workers. Further, he admitted that in the year 2016, according to his knowledge, around 800 to 900 workers were working and he can inform the company to submit their seniority list.

32] Now, turning back to the oral evidence of second party workman in the present reference namely Jayesh Kurjibhai Ajudia (S.W.1) at Exh.11, his chief-examination is very similar to the facts as pleaded in statement of the claim. The first party alongwith its Written Statement has submitted Annexure - 'A' and list

of documents vide Exh.10. It is pertinent to note that the documents filed by the first party company vide Exh.10 are admitted by the second party workman and hence, those were exhibited and read in evidence. In the present reference, document at Exh.12 is the application / resignation applied under VRS. It bears the signature of the present second party workman and two witnesses. The document at Exh.13 is the office copy of the acceptance letter of VRS of the second party, it also bears signature of the second party alongwith the date as 15.05.2013. The document at Exh.15 is the office copy of the relieve order of the second party workman. It also bears the signature of the second party alongwith date as 30.06.2013. The document at Exh.16 is the income tax projection for the assessment year 2013-14 in respect of the workman issued by the first party. The document at Exh.17 is the photocopy of the final payslip of the second party for the month of June 2013. The document at Exh.18 is the photocopy of the application by the second party workman claiming the amount of gratuity. The document at Exh.19 is the office copy of payment advise and cheque in respect of gratuity payment to workman by the gratuity trust alongwith the signature of the second party and date as 13.09.2013. The document at Exh.20 is the application of the second party workman in Form No.19 to withdraw the provident fund. The document at Exh.21 is the copy of the provident fund settlement sheet. It also bears the signature of second party and date as 13.09.2013.

33] Thus, the above evidence is adduced by both the sides on the factual aspect of floating of the alleged VRS and its acceptance by the second party workman. With this evidence in hand, Ld. Advocate Shri S. B. Parmar for the second party workman has submitted his Written Arguments vide Exh.37 (in IDR No.108 of 2015). Similarly, the Ld. Advocate Shri D. M. Shah for the first party company has produced his Written Submissions vide Exh.38 (in IDR No.108 of 2015). Now, I turn to submissions.

SUBMISSIONS ON BEHALF OF SECOND PARTY

34] It is submitted by the Ld. Advocate of second party that the floating of the VRS by the first party company is just the paper arrangement. Prior to floating of said scheme, the second party workmen were not taken into consideration. The said scheme was never displayed on notice board. Even the witness of the first party in cross-examination has admitted that he has not produced any document to show that the said scheme extended upto 2014. In the absence of such document, the first party has recruited new employees. Furthermore, the signatures of the second party workmen were obtained under threat and coercion. Infact, under the guise of the VRS, the second party workmen have been retrenched by the first party company. It is further submitted that admittedly more than 100 employees are working with the first party company. Therefore, the provisions of Chapter V-B of I.D. Act in case of special provisions

relating to lay of, retrenchment are applicable to the first party. Under said chapter, if the first party wants to retrench the employees from the service, then permission of the appropriate Government is mandatory. Considering the sound financial condition of the company, the first party was never in position to justify retrenchment of the workmen. Therefore, to avoid the liability / responsibility under the Chapter V-B of the I.D. Act, the company under the guise of VRS, terminated the services of more than 300 employees. Therefore, issue no.2 requires to be answered in affirmative.

SUBMISSIONS ON BEHALF OF FIRST PARTY

35] As against this, it is submitted by Ld. Advocate of the first party in his written submissions at Exh.38 (in IDR No.108 of 2015) that second party Tarunchandra K. Parmar (S.W.1) (in IDR No.108 of 2015) has clearly admitted in his cross-examination that application for VRS bears his signature alongwith date. Similarly, the other documents i.e. the acceptance letter, relieve order, income tax projection letter, application for payment of gratuity, application for withdrawal of P.F. amount bears his signature. It is submitted that the second party workman in present reference submitted his VRS resignation on 14.05.2013 and it was accepted on 15.05.2013. He was allowed to work till 30.06.2013. But, even till 30.06.2013, the present workman has never raised any objection that his signature was obtained under threat or coercion. It is submitted that the said objection was raised for the

first time when the second party workman filed his application before the Labour Commissioner on 21.03.2014. Thus, infact, for almost 09 months, the present second party has not raised any objection about threat or coercion. Therefore, it is submitted that all those are baseless allegations.

36] The Ld. Advocate for the first party further submitted that the second party workman has retained the benefits received to him and at the same time, he challenging the VRS. But, he is estopped by his conduct and he cannot raise the dispute unless he deposits the amounts received under the VRS either with the Court or with the first party. To buttress this particular submission, the Ld. Advocate has relied on following decisions :-

1. *2009(1) SCC(L&S) Page-706 (Supreme Court) in case of Ramchandra Shukla & Ors. Vs. Vikram Cement & Ors.*
2. *2011(9) JT.(SC) Page-588 (Supreme Court) in case of Mansingh vs. Maruti Suzuki India Limited & Ors.*
3. *2006(2) CLR Page-959 (Gujarat High Court) in case of Harish Ramanlal Patel & Ors. Vs. State of Gujarat & Ors.*

37] The Ld. Advocate for the first party in respect of issue no.1 i.e. whether the present dispute can be treated as industrial dispute, submitted that the present second party will not fall under the definition of the workman as contemplated u/s 2(s) of the I.D. Act. Not only this, but also, the dispute also will not fall within the definition of industrial dispute u/s 2(k) of the I.D. Act. There is no employer and employee relation

between the first party and the second party. Hence, reference itself is bad in law. It is submitted that the worker who has opted for VRS, is not the workman and therefore, his claim before the labour court will not lie. To buttress this submission, Ld. Advocate for the first party relied on following authorities :-

1. *2001(89) FLR Page No.522 (Kerala HC) in case of Purandaran vs. Hindustan Lever Ltd.*
2. *2002(1) LLJ Page No.527 (Bombay HC) in case of Premier Automobiles Ltd. vs. PAL VRS Employees Welfare Association & Anr.*

38] The Ld. Advocate for first party submitted that the burden to prove the allegations in respect of force and threat in obtaining the signatures, is on the second party. To buttress this submission, he relied on following authorities :-

1. *1998(II) LLN Page No.493 (Allahabad HC) in case of Delta Engineering Company (Pvt.) Ltd., Meerut vs. Industrial Tribunal.*

2. *2016 (LLR) Page No.511 (Punjab & Haryana HC) in case of Ram Kishan Sharma vs. Presiding Officer & Anr.*

CONSIDERATIONS

39] I have provided thoughtful considerations to the arguments raised from both the sides. So also, I have carefully gone through the judgments relied on by both the sides.

40] So far as issue no.4 is concerned i.e. whether the signature of the second party workman

was obtained on the VRS and other vouchers under threat, pressure etc., is completely issue of fact. In the cited authority on behalf of the first party, in case of ***Delta Engineering Company***, cited as Supra, the Hon'ble Allahabad High Court observed in para no.9 as under :-

> *9. It may be made clear here that the view taken by the Labour Court that in the absence of the evidence adduced by the employers the averments made by the employees in their written statements stood proved was erroneous. The primary burden of establishing the fact that thumb impressions/signatures of the employees were obtained by the petitioner on blank papers and such papers were subsequently used as resignation letter to the disadvantage of the employees and further that the consent for resignation was taken on false promise and inducement which was not intended to be fulfilled will always remain upon the employees at whose instance the reference was made. It is only after the evidence in support of such pleas is adduced that the petitioner is called upon to prove that the employees had voluntarily tendered their resignations and the same were accepted by the petitioners on 7 October, 1997.*

41] In the second authority of ***Ram Kishan Sharma*** (cited as Supra), it is held that the burden to prove a plea is upon the party, who pleaded before the Court. Thus, in view of the ratio of both the cited cases, it is more than clear that the burden to prove the fact that signatures of second party workman was obtained on the disputed VRS under threat and pressure, is on the second party.

42] Thus, now it is necessary to appreciate as to what evidence has been surfaced on record. After going through the cross-examination of Tarunchandra K. Parmar (S.W.1) (in IDR No.108 of 2015) and also in the present case, it is clear that Tarunchandra K.

Parmar (S.W.1) (in IDR No.108 of 2015) has clearly admitted that all the documents such as application for VRS (Exh.12), service certificate and relieving order (Exh.13), income tax projection for the year 2013-14 (Exh.14) bears his signature. He also admits that he had received the cheque towards gratuity amount on 04.07.2013. He clearly admits that at the time of signing his VRS application, two other employees were also present. He clearly admits that there is no legal due outstanding against the company.

43] Now, so far as the cross-examination of the present second party workman, he also admitted that he has worked in the first party company for about 12 years. He further admitted that he has made application under the VRS. He further admitted that he has received total amount under VRS and all other legal dues. Apart from that, the second party workman has also admitted all the documents filed at Exh.12 to Exh.22. It is also important to mention here that the second party has signed on the said office copy documents alongwith mentioning the date.

44] Thus, if the above cross-examination is perused, it is more than clear that the Tarunchandra K. Parmar (S.W.1) (in IDR No.108 of 2015) and present workman was clearly having the knowledge as to what he was signing on. He has also received all the benefits under the scheme. He has not raised any objection against the said scheme until he filed dispute before the conciliation officer. But that too, it is filed after a long delay.

45] It is pertinent to note that present second party workman has not deposited the benefits received under the scheme even prior to or after filing of the present dispute. On this aspect, the first party has relied on decision of the Hon'ble Supreme Court in ***Ramesh Chandra Sankhla & Ors. vs. Vikram Cement***, cited as Supra. Infact, in the said case, the workmen firstly accepted the benefits under the VRS. Then, the same was again challenged on the ground that they had not opted for voluntarily retirement and they were pressurized, threatened to opt for the scheme. In the said judgment, the Hon'ble Division Bench of the High Court directed the workmen in para no.20 as under :-

> *20. The Division Bench, however, held that since the respondent-workmen had received the benefits under the scheme, pocketed the amount and approached the Labour Court claiming that they had not voluntarily accepted the scheme and the benefit thereunder, it would be equitable to direct each of the employees who had filed a petition under Section 31(3) of the Act to return the benefit so received to the employer, subject to the undertaking by the Company that in the event the Labour Court allows the claim and grants benefits to the workmen, the same would be restored to them by the Company with interest @ 6% per annum.*

46] The Hon'ble Supreme Court upheld the said directions of the Division Bench and observed in para no.100 as under :-

> *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.

47] In the second authority in case of ***Mansingh vs Maruti Suzuki India Limited***, the reference was made to the case of ***Ramesh Chandra's*** case and it was directed that the second party should deposit the principal amount received by him under the VRS, before challenging the same.

48] In the third authority, in case of ***Harish Ramanbhai Patel***, the Hon'ble Gujarat High Court, after referring to the decision of ***Mansingh vs. Maruti Suzuki India Limited***, observed as under :-

Constitution of India, 1950 - Art. 226 - Refund of amounts received under VRS - *A challenge is given by the appellants-workmen to the order dated 7.1.2016 passed by learned single Judge, directing the workmen to refund the entire amounts received by them, under Voluntary Retirement Scheme, from respondent No.4-Company. In substance the crucial question is "Whether the condition to refund the monetary*

benefits received by the petitioners-appellants before adjudication of the dispute by the competent forum, is sustainable or not? - Relying on the recent judgment of Supreme Court reported in Mansingh v. Maruti Suzuki India Ltd. & Anr. 2011 (14) SCC 662, the Court answered the question in affirmative i.e., the condition is sustainable. Thus the Court declined to interfere with the impugned order. Writ appeal is devoid of merit.

49] Thus, after this much of discussion, it is clear that there is absolutely no evidence to prove the allegation that the signature or the consent as such of the second party was obtained under the threat or coercion. So also, the second party is estopped because of his conduct to challenge the VRS at the same time retaining the benefits received. So far as the allegation that irrespective of the length of service, all workmen are given equal amount under the scheme is concerned, according to me, it was for the individual employee to accept the said compensation or not. Once the workman has voluntarily accepted the said compensation, then he cannot blame that he has received less amount as compared to his length of service. ***Therefore, the issue no.4 under consideration is answered into negative***.

50] Now, coming to issue nos.1 & 2, those are relating to mainly the legal point. But, the issue no.2 is mixed issue of law and fact. Because, in issue no.2, it has to be decided as to whether the accepting of the VRS benefit by second party workman can amount to termination of services. For this issue, it is submitted by Ld. Advocate of the second party that under the guise of so called VRS, the first party has illegally

terminated the services of the second party. Also it is argued that it is a kind of retrenchment of second party workman under the guise of VRS.

51] At this juncture, it is necessary to go through definition of retrenchment as provided under sub-section (oo) of sec.2 of I.D. Act. It reads as under :-

[(oo) "retrenchment" 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 -

(a) voluntary retirement of the workman, or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf, or

[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein, or]

(c) termination of the service of a workman on the ground of continued ill-health,]

52] Now, it is necessary to go through the definition of workman as provided under sub-section (s) of sec.2 of I.D. Act. It reads as under :-

[(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 [ten thousand 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.]

53] Now, the definition of industrial dispute is provided under sub-section (k) of sec.2 of I.D. Act. It reads as under :-

(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person,

54] Thus, after perusing about three definitions, it is clear that industrial dispute means, for the sake of present case, it is dispute between employer and workman. After perusal of the definition of the workman, it is clear that workman includes any person who has been dismissed, discharged or retrenched. But now, the definition of retrenchment under sub-section (oo) of sec.2 of I.D. Act, makes it clear that it doesn't include voluntary retirement of the workman. But, at the same time, the definition of workman includes a person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute.

55] Now, turning back to the facts of the present dispute, the workman is alleging that his services are terminated under the guise of the VRS. Thus, he is challenging his removal as termination or dismissal,

alleging that his signatures were obtained on the VRS form under the threat and coercion. But, once the workman fails to prove his allegations of threat and coercion, then, the VRS opted by the workman has to be held as his voluntary act and it will bind him. Therefore, by no stretch of imagination, it can be said that voluntarily accepting the VRS benefits by second party workman can amount to termination of services. ***Hence, issue no.2 is answered in negative.***

56] Now, so far as the issue no.1 is concerned as to whether dispute raised can be treated as industrial dispute, as already mentioned, the industrial dispute means the dispute between employer and workman and the definition of workman includes the workman who has been dismissed, discharged or retrenched. Considering the allegations of obtaining the consent under threat and coercion, the dispute would be maintainable as industrial dispute. Even, in the cited authority on behalf of first party in case of ***Ariane Orgachem Pvt. Ltd. vs. Wyeth Employees Union & Ors., (2015) – II CLR 478***, in the said authority, Ariane Orgachem Pvt. Ltd. framed one VRS, which was operative from 12.04.2005 to 30.04.2005. On 15.04.2005, 45 out of total 143 workmen applied for the VRS. After several months of accepting the VRS, the respondent – Union raised the demand seeking their reinstatement in the company. In response to the said demand, Ariane Orgachem Pvt. Ltd. replied that all the workmen had taken the VRS benefits and they are not the workmen of the appellant company.

Therefore, no industrial dispute could be raised by or on their behalf by the respondent union. On 12.12.2005, the respondent union wrote a letter to the Asstt. Commissioner of Labour, Mumbai seeking the intervention in respect of their demand with the company. On 01.08.2006, the conciliation officer sent the failure report to the Asstt. Commissioner of Labour, subsequent to which on 14.08.2006, the office of the Dy. Labour Commissioner, which took cognizance of the failure report, declined to make an order of reference to the industrial tribunal stating thereby that there was no industrial dispute in existence between the parties. The same was challenged before the Hon'ble High Court of Bombay. The Hon'ble High Court exercised its powers and quashed the order dated 14.08.2006 passed by the Dy. Commissioner of Labour, Mumbai, who had refused to make an order of reference to the industrial tribunal for its ad-judication. The Hon'ble Supreme Court observed in para no.10 referring to the observations of the Hon'ble High Court and further observed in para no.23, to upheld the order of the Hon'ble High Court. Both the para nos.10 & 23 are extracted below :-

> *10. The High Court in exercise of its power quashed the order dated 14.8.2006 passed by Deputy Commissioner of Labour, Mumbai, who has refused to make an order of reference to the Industrial Tribunal for its adjudication of the industrial dispute between the parties. The High Court has held that the acceptance of the benefits by the concerned workmen from the appellant may not establish the fact that no force or compulsion was exercised by the appellant and this is the most contentious and disputed question of fact which could not have been decided by the State*

Government in exercise of its administrative power. The High Court has held that the subjective satisfaction of the subject matter of an industrial dispute between the parties by the State Government is therefore, vitiated in law and making an order of reference in respect of the concerned workmen is absolutely essential in this regard. Thus, the High Court by issuing a writ of mandamus, directed the Deputy Labour Commissioner to make an order of reference to the Industrial Tribunal with regard to the demand of industrial dispute raised by the Union dated 14.11.2005 on behalf of the concerned workmen, for its adjudication under Section 10(1)(d) of the Act. Aggrieved by the impugned judgment of the High Court, these appeals have been filed by the appellant-Companies, praying this Court to set aside the same contending that the High Court has exceeded its jurisdiction in passing the impugned judgment and order.

23. The other important factual aspect of the case is whether the voluntary retirement of the concerned workmen was forced or not is required to be produced by the parties before the Industrial Tribunal for its detailed examination and scrutiny. The fact that certain documents were sought to be summoned at the instance of first respondent-Union during the conciliation proceedings from the appellant-Company by the Conciliation Officer which were not produced by it is one more important factor which is required to be considered by the Industrial Tribunal under Section 10(1)(d) read with the Third Schedule of the Act in exercise of its original jurisdiction to resolve the disputed questions of fact. Further, the VRS produced on record by the Management gives it the discretion to arbitrarily fix the compensation varying from Rs.50,000/- to Rs.7,11,000/-, which if proved, would be considered as arbitrary and there would be a grave miscarriage of justice to the concerned workmen. This aspect of the matter has been ignored by the Deputy Labour Commissioner, who has erroneously refused to make an order of reference to the Industrial Tribunal for its adjudication of the existing industrial dispute.

57] Thus, in the case at hand also, the factual aspect of threat and pressure can be decided by the

labour court only. Therefore it has to be held that the dispute referred is an industrial dispute within the meaning of sec.2(k) of the I.D. Act. ***Hence, issue no.1 is answered into affirmative***.

For Issue no.5 :-

58] The next important issue under consideration is in respect of whether it was required to issue statutory notice u/s 9-A of the Industrial Disputes Act, 1947 before floating the disputed VRS scheme by the first party company. Infact, one of the main ground of arguments and also the defense of the second party is the fact that prior to issuance of the disputed VRS, statutory notice u/s 9-A of the I.D. Act was not issued and secondly, that no permission from the Labour Commissioner or from the Income Tax department was obtained. The Ld. Advocate for the second party submitted in his Written Notes of Argument that even as per the draft of the alleged VRS at Exh.35 (in IDR No.108 of 2015), it is mentioned therein, that to improve the health of the plant in the face of adverse market conditions, rationalization of manpower exercise is being undertaken and as a part of this exercise, the need was felt to introduce the VRS. Thus admittedly, the object of the alleged VRS is for the purpose of rationalization. But, it is settled position of law that under the guise of rationalization, standardization and improvement, which is likely to be led to the retrenchment of the workmen, then the same would fall in forth schedule item nos.10 & 11 of the I.D. Act and for doing so, mandatory notice u/s 9-A of the

I.D. Act is required to be given. Further, it is submitted that admittedly in the case at hand, no such notice was issued. Further, the permission from the Income Tax department was not obtained. Even, on this sole ground, the VRS can be declared as null and void. To buttress this particular submission, Ld. Advocate for the second party relied on following judgments :-

1. *1997(1) MhLJ in case of Shankar Prasad Gopal Prasad Pathak vs. Lokmat Newspaper Pvt. Ltd.*
2. *1991(1) L.L.N.930 in case of Hindustan Lever Limited vs. Hindustan Lever Employees Union & Ors.*
3. *1998(79) FLR 547 in case of KEC International Ltd. vs. Kamani Employees Union & Anr.*

59] It is submitted by the Ld. Advocate of the second party that infact the facts of the present case and that of the case of ***KEC International Ltd.*** are very much identical.

60] As against this, it is submitted by the Ld. Advocate of the first party that in case of floating of VRS, it is not required to issue notice u/s 9-A of the I.D. Act. It is submitted that the judgment relied on behalf of the second party on this aspect are totally irrelevant. But, in case of the third authority in case of ***KEC International Ltd.***, it is submitted that the judgment in KEC International Ltd. was set-aside by the Division Bench of the Hon'ble Bombay High Court in case reported in 1998(4) L.L.N. 540 in case of ***KEC International Ltd. vs. Kamani Employees Union & Ors***. The Ld. Advocate further relied on following authorities to support his contention that it is not

mandatory to issue notice u/s 9-A of the I.D. Act before introducing the VRS :-

1. *1998(4) L.L.N. Page No.540 in case of KEC International Ltd. vs. Kamani Employees Union & Ors.*
2. *2003 Vol.-IV LLJ (Supplement) at Page No.404 (AP HC) in case of Richard Fritchley & Ors. vs. Management of Gatesway Hotel, Banjara Hills, Hyderabad & Ors.*
3. *2004, Vol.-III LLN Page No.1031 (Madras HC) in case of R.Sekar, Son of V.R. Ramchandran vs. Presiding Officer, Principal Labour Court, Chennai & Ors.*
4. *2002 Lab IC 2539 (Bom HC) in case of M/s. Permanent Magnets Ltd. vs. Vasant Guru Patekar & Ors.*
5. *2000 Vol.II CLR 814 (All. HC) in case of Hindustan Lever Ltd. vs. State of U.P. & Ors.*

CONSIDERATIONS

61] I have provided thoughtful considerations to the arguments raised from both the sides. Before going further, it is necessary to produce sec.9-A of the I.D. Act. It reads as under :-

> *9A. Notice of change.—No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,—*
>
> *(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected, or*
>
> *(b) within twenty-one days of giving such notice·*
>
> *Provided that no notice shall be required for effecting any such change—*
>
> (a) where the change is effected in pursuance of any 2 [settlement or award]; or
>
> *(b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification,*

Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.

62] At the same time, it is necessary to mention the entry at sr. nos.10 & 11 of the forth schedule :-

THE FORTH SCHEDULE
(See section 9-A)
CONDITIONS OF SERVICE FOR CHANGE OF WHICH NOTICE IS TO BE GIVEN

1. **
2. **
3. **
4. **
5. **
6. **
7. **
8. **
9. **
10. *Rationalisation, standardisation or improvement of plant of technique which is likely to lead to retrenchment of workmen,*
11. *Any increases or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift, [not occasioned by circumstances over which the employer has no control].*

63] Now, coming to the authorities relied on behalf of the second party, the first authority in case of ***Shankar Prasad Gopal Prasad Pathak vs. Lokmat Newspaper Pvt. Ltd.***, in the said judgment, the respondent i.e. Lokmat Newspaper Pvt. Ltd. installed photo-composing machine, thereby introducing a new technique of rationalization, standardization, improvement of plant or technique without giving a notice u/s 9-A of the I.D. Act. The respondent completely switched over their work of composing of newspaper on photo-composing machine in October 1981. On 04.11.1981, respondent transferred the

appellant and other 24 employees to Jalgaon. However, as the appellant and other employees were employed with the respondent, when the respondent was having only one establishment or concerned at Nagpur, the services of the appellant were not transferable and complaint under the MRTU and PULP Act was filed. Thus, the facts of the case of ***Lokmat Newspaper Pvt. Ltd.*** and that of the present case are clearly distinguishable. Hence, the ratio of the said case cannot be pressed into service to the facts of the present dispute.

64] Now, coming to the second authority relied on behalf of the workman in case of ***Hindustan Lever Ltd.***, in para no.4 of the judgment, it is clear that some individual settlements were carried out between the employer and the workman. It is again not relating with the floating of the VRS vis a vis Sec 9-A of I.D. Act.

65] But, the third authority in case of ***KEC International Ltd. vs. Kamani Employees Union & Anr.,*** *reported in 1998(79) Page No.547*, it is clearly held that even for the VRS, it is necessary to issue the mandatory notice u/s 9-A of the I.D. Act.

66] But, the Ld. Advocate for the First party has produced on record the decision of the Hon'ble Bombay High Court in *1998(4) LLN at Page No.540 in case of* ***KEC International Ltd. vs. Kamani Employees Union & Ors***. Infact, the said appeal was born out of the earlier judgment of the Hon'ble Bombay High Court in case of KEC International Ltd.

vs. Kamani Employees Union & Ors., relied on behalf of the second party workman. But, the Hon'ble High Court has disposed of the appeal in terms of the consent terms. But, while doing so, the Hon'ble High Court has observed in para no.3 as under :-

> *3. It is made clear that the contentions raised by the parties in their respective writ petitions are kept open to be urged before the Industrial Court and/or in any other proceedings. We also make it clear that neither the Industrial Court nor any Single Judge of this Court is bound by any observations made in the order passed by the learned Single Judge which has been set aside by consent.*

67] Thus, after going through the above clarification of the Hon'ble Bombay High Court, the observations in case of the KEC International Ltd., relied on behalf of the second party workman, no more holds the field.

68] Now, coming to the other authorities relied on behalf of the first party on the aspect of sec.9-A of the I.D. Act, in case of ***Richard Fritchley & Ors. vs. Management of Gatesway Hotel, Banjara Hills, Hyderabad & Ors.***, cited as Supra, is case relating to the voluntary separation scheme. In the said case also, employees firstly accepted the benefits and later, complaint of fraud and coercion. The Hon'ble Andhra Pradesh High Court observed in para no.12 as under :-

> *12. In the case on hand, though it is alleged by the petitioners that fraud and force was used, the petitioners did not complaint either to the management or reported the matter to the police, instead having resigned under the scheme received the benefits calmly and after a period of nearly four months raised the dispute. The*

decision of the Apex Court in M/s. Lokmat Newspapers Pvt. Ltd. 's (supra) is also not applicable to the facts of this case as that was a case pertaining to rationalization/standardization affecting the service conditions of the workmen and under those circumstances it was held that notice under Section 9-A of the Act must precede the introduction of such rationalization concerned, and it cannot follow the introduction of such a rationalization. In the present case, as observed above, issuance of notice under Section 9-A of the Act is not necessary, as the scheme offered was optional and not compulsory and therefore by any stretch of imagination it cannot be said that the scheme adversely affected the interest of the employees, but in fact afforded a chance to those employees who were willing to opt out of service by receiving lumpsum amount.

69] Now, in the other authority, in case of ***R. Sekar, Son of V. R. Ramchandran vs. Presiding Officer, Principal Labour Court, Chennai & Ors.***, in the said case, it is alleged by the petitioner that petitioner was terminated on 30.06.1993 in the guise of VRS. He was paid a sum of Rs.1,49,875/-. It was his case that though such termination was styled as if it was a voluntary retirement, actually the petitioner was forced to retire. But, the Hon'ble Madras High Court observed in para nos.9 & 10 to hold that sec.9-A of the I.D. Act is not applicable in case of Voluntarily Retirement Schemes.

70] In the next authority cited in this behalf, in case of ***Permanent Magnets Ltd. vs. Vasant Guru Patekar & Ors.***, the Hon'ble Bombay High Court observed in para no.7 as under :-

7. It is clear that if any employer intends to effect any change in the industrial matters specified in Schedule IV of the Act he has to give a notice of change and has to wait for 21 days before the

proposed change is effected. If there is no objection or opposition from the workmen, the employer can effect the proposed change and if they object, no change can be effected. A notice for VRS benefits is in effect a notice of change in respect of Item 11 of the Schedule IV of the Act. The workmen have agreed to accept the change by giving their applications to the Petitioner Company. There is a valid agreement or settlement between the Petitioner Company and the workmen, and there was no dispute or difference between them to amount to be an industrial dispute. Further, there is no bar for the employer to effect the proposed change after expiry of 21 days as prescribed in the Section. If the workmen object to such a change an industrial dispute requiring adjudication would arise. If both the sides agree, an agreement or a settlement for the proposed change is the final result of the notice of change. By the VRS notice the employer proposes a change and when the workmen voluntarily accept the proposed change in the form of the VRS there is no illegality of any nature which can be said to have been committed by the employer. The notice for VRS itself can be treated as a notice under Section 9-A of the Act and no separate or further notice of change is necessary.

71] Lastly, in case of ***Hindustan Lever Ltd.***, cited as Supra, the Hon'ble Allahabad High Court observed as under :-

Voluntary Separation Scheme (VSS) - *Industrial Disputes Act, 1947 – S.9A and U.P. Industrial Disputes Act, 1947 – S.6-N – Petitioner company declared VSS in 1974 – Scheme offered benefits far in excess of those provided under S.6-N – Some workmen resigned under the scheme and received all dues under the scheme – About 5 years thereafter some of them raised industrial dispute as to termination of their services – Reference came to be made – Industrial Tribunal passed an award in favour of workmen as the scheme was not included in the standing orders – Hence this writ petition – While allowing writ petition it is held as follows· (1) Since it was a voluntary offer to give up the job by accepting voluntary retirement under the scheme, which could have been a separate contract between*

employers and the workmen, there was no need to include the scheme in the standing orders (2) Principle of estoppel applies and workmen are estopped from raising an objection after they had enjoyed the benefits of the scheme happily and that too after 5 years (3) Voluntary retirement is excluded from retrenchment and (4) S.9-A of Central Act was not attracted as condition of service was not going to be changed.

72] Thus, after going through all the authorities relied on behalf of both the sides, it can be safely concluded that in the facts of the present dispute, it was not required to issue the statutory notice u/s 9-A of the I.D. Act before floating the Voluntarily Retirement Scheme by the first party. ***Hence, issue no.5 is answered into negative***.

For Issue Nos.3 & 6 :-

73] Now the last two issues are ultimately going to decide the outcome of this dispute. The issue no.3 is in respect of relief of the second party for reinstatement with full back wages and with the continuity in service. However, the answer to this issue by and large depends on the findings of the other issues. But, since the issue no.2 and issue nos.4 & 5 are answered in negative, the claim of reinstatement with full back wages cannot be allowed. ***Hence, issue no.3 is answered into negative***.

74] Now, last issue i.e. issue no.6 as to what relief the workman is entitled, but I am afraid that in view of the findings recorded against the other issues, the workman wouldn't be entitled to any relief. Hence, issue no.6 is answered as workman is not entitled to

reliefs claimed.

For Issue no.7 :-

75] Now, the last general issue no.7 as to what order needs to be passed. I conclude that the second party workman failed to establish his case and resultantly, present reference is answered in negative. Hence, in point no.7, I pass following final order is passed :-

-: O R D E R :-

i) The reference is answered in negative.

ii) The claim of second party stands rejected.

iii) Copy of the award be sent to appropriate Government under section 17(1) of The Industrial Disputes Act, 1947, for publication in such a manner as the appropriate Government deems fit.

Sd/-
(Mr. A. A. Bhosale)
Presiding Officer,
Labour Court,
Dadra & Nagar Haveli,
Silvassa.

Place : Silvassa.
Date : 04/09/2024.

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