



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.5656 OF 2021

PETITIONER :- Surendra S/o Sauklal Dasariya,
Aged 28 years, Occ.: Nil,
R/o Bansilal Mahale, At Rajiv Nagar,
Wanadongri, Plot No.9/10, Hingna Road,
Nagpur.

..VERSUS..

RESPONDENT :- Agrofab Machineries (I) Pvt. Ltd. EL-32,
MIDC Area, Hingna Road, Nagpur-440016
(MS) India.
Through its Manager (HR), Shri Jairam
Murlidhar Dubey.

AND

WRIT PETITION NO.5679 OF 2021

PETITIONER :- Ashish S/o Manohar Gaikwad,
Aged 29 years, Occ.: Nil,
R/o. House No.533, Kasba, Hingna, Nagpur.

..VERSUS..

RESPONDENT :- Agrofab Machineries (I) Pvt. Ltd. EL-32,
MIDC Area, Hingna Road, Nagpur-440016
(MS) India.
Through its Manager (HR), Shri Jairam
Murlidhar Dubey.

Ms Aasavari S. Kale, Adv. h/f Mr R.N. Deshpande, Adv. for Petitioner (in both petitions).

Mr A.J. Pathak, Advocate for Respondent (in both petitions).

CORAM : ROHIT W. JOSHI, JJ.

DATE : 15/09/2025

ORAL JUDGMENT :

1. Heard.

2. **Rule.** Rule is made returnable forthwith. Heard finally by consent of learned counsel for the respective parties.

3. The petitioners in these petitions were employees with the respondent/employer. The services of the petitioners were terminated by way of retrenchment on 30.12.2014. The employees challenged the retrenchment by filing Complaint (ULP) No.81 of 2015 and Complaint (ULP) No. 85 of 2015. In the said complaints, the respondent/employer filed an application seeking directions against the employees to deposit the amount of retrenchment compensation. The said applications were rejected by the learned Labour Court vide order dated 21.08.2018. The respondent/employer filed revision applications challenging the said orders. The revision applications came to be allowed vide judgments and orders dated 13.12.2018 and 23.01.2020. The employees are

directed to deposit the amount of retrenchment compensation with the Labour Court within the period stipulated in the order.

4. The employees have filed present petitions challenging the said order passed by the learned Industrial Court. The contention of the learned Advocate for the petitioner is that, in view of Section 25(F) of the Industrial Disputes Act, 1947 (hereinafter referred to as “Act of 1947”), payment of retrenchment compensation is a condition precedent for retrenchment of any employee. The learned Advocate, therefore, contends that even if the complaints are dismissed, the employee will be entitled to retain the amount of the retrenchment compensation and therefore, directions for depositing the said amount could not have been issued.

5. *Per contra*, Mr. Pathak, learned Advocate appearing for the respondent/employer contends that the master-servant relationship is severed by the act of retrenchment and if the employee seeks to assert that the relationship should continue, it would be appropriate that the amount of retrenchment compensation should be secured. He contends that, by issuing

directions to deposit the retrenchment compensation, the learned Industrial Court has balanced the equities. Placing reliance on the judgment of the Hon'ble Supreme Court of India in the case of *Ramesh Chandra Sankla and others ..vs.. Vikram Cement and others*, reported in **2008 14 SCC 58**, the learned Advocate contends that the employee cannot approbate and reprobate, and therefore, it is submitted that they were rightly directed to deposit the amount of retrenchment compensation with the Court, as was done in the cited judgment. The learned Advocate also placed reliance on the judgment in the case of *Man Singh ..vs.. Maruti Suzuki India Ltd and another*, reported in **2011 (14) SCC 662** and judgment of this Court in the case of *Motiram S/o Kautikrao Tekale ..vs.. State of Maharashtra*, reported in **2017(3) MhLJ 853**.

6. The judgments of the Hon'ble Supreme Court in the cases of *Ramesh Chandra* and *Man Singh* (Supra) are pertaining to voluntary retirement. In the considered opinion of this Court and the ratio of the said judgments will not apply to the present case, which is not a case of voluntary retirement but of retrenchment. The scheme of voluntary retirement framed by the employer is in the nature of an invitation to the employees to make offer for voluntary

retirement in terms of the scheme. When the employee makes such an offer, it is open to the employer to accept the same. Once an offer is accepted by the employer, the voluntary retirement becomes effective and the master-servant relationship ceases. If the employee does not opt for voluntary retirement, it is obvious that they will be not entitled to receive any amount under the voluntary retirement scheme. Therefore, if the employee accepts voluntary retirement and then challenges it, it is desirable that the amount received by him under the voluntary retirement scheme be deposited. As against this, in case of retrenchment, the master-servant relationship is not severed at the behest of the employee. In such cases, if the employee challenges the retrenchment and even if the challenge fails, he will be entitled to retain the amount of retrenchment compensation. As rightly pointed out by the learned Advocate for the petitioners, payment of retrenchment compensation is a condition precedent for retrenchment.

7. As regards the judgment in the case of *Motiram* (Supra), the same pertains to payment of closure compensation. Perusal of the judgment demonstrates that the employer had declared closure vide notice dated 30.12.2013. The worker's Union has taken up the

issue before the Deputy Commissioner of Labour. Thereafter a settlement was arrived between the parties on 12.08.2014 and in terms thereof closure compensation and some additional amount was paid by the employer to the employee. Perusal of the Para-18 of the judgment will disclose that, all the employees have received full and final amount in terms of settlement which included an amount of Rs.1,60,000/- as an ex-gratia amount. This Court has observed that each of the petitioners fetched more amount than closure compensation provided under the Act of 1947. In view of the above, this Court has followed the judgment in the case of *Ramesh Chandra Sankla* (supra) to hold that the employees cannot challenge the settlement unless they deposit the amount received under the settlement. In the present case, although, the employer has paid the retrenchment compensation to the employees, there is no settlement between the employer and employees. Even if the employees fail in the challenge, they will be entitled to retrenchment compensation. It will be pertinent to mention that the petitioner on retrenchment compensation is provided for in order to make a provision for subsistence of an employee whose services are retrenched and therefore, it is undesirable to direct the employee to deposit

amount of retrenchment compensation with the Court as a condition for challenging the retrenchment. In a given case, an employee may well be forced to withdraw the challenge to retrenchment on account of failure to deposit the amount of retrenchment due to financial constraints. It is obvious that the right to receive retrenchment compensation is a statutory right of an employee whose services are retrenched. It will be therefore inequitable to direct the employee to deposit the amount of retrenchment compensation as a condition for contesting the retrenchment.

8. In that view of the matter, in the considered opinion of this Court, the learned Industrial Court has erred in issuing directions to the employees to deposit the amount of retrenchment compensation as a condition for challenging the retrenchment. The impugned order is therefore, quashed and set aside.

9. It will be pertinent to state that since the petitioners/employees were not deposited the amount as directed by the learned Industrial Court, the respondent/employer filed

applications in both the complaints vide Exh.C-10 *inter alia* praying for dismissal of the complaints. The said applications were rejected by the learned Labour Court vide order dated 08.05.2019. The respondent/employer filed two separate revision applications challenging the said order dated 08.05.2019. The said revision applications came to be allowed by the learned Industrial Court vide judgment and order dated 23.01.2020, whereby the complaints were ordered to be dismissed on account of non-compliance with the order directing deposit of retrenchment compensation. Since the initial orders directing to deposit the retrenchment compensation are set aside, these consequential orders of dismissal of complaints in view of non-compliance of the said orders are also required to be set aside. Accordingly, I pass the following order :-

- i) Writ Petitions are **allowed**.
- ii) The orders dated 13.12.2018 passed by the Member, Industrial Court No.4, Nagpur in Revision Application (ULP) Nos.166 of 2018 and 167 of 2018 and orders dated 23.01.2020 passed by the Member, Industrial Court No.2, Nagpur, in Revision (ULP) Nos.117 of 2019

and 103 of 2019, are hereby quashed and set aside.

- ii) Complaint (ULP) Nos.81 of 2025 and 85 of 2015, are restored to file.

- iv) Parties are directed to appear before the learned Labour Court on **13.10.2025**.

- v) Parties to note that, separate notice for appearance will not be issued.

Rule is made absolute in above terms. No order as to costs.

(ROHIT W. JOSHI, J.)

C.L. Dhakate