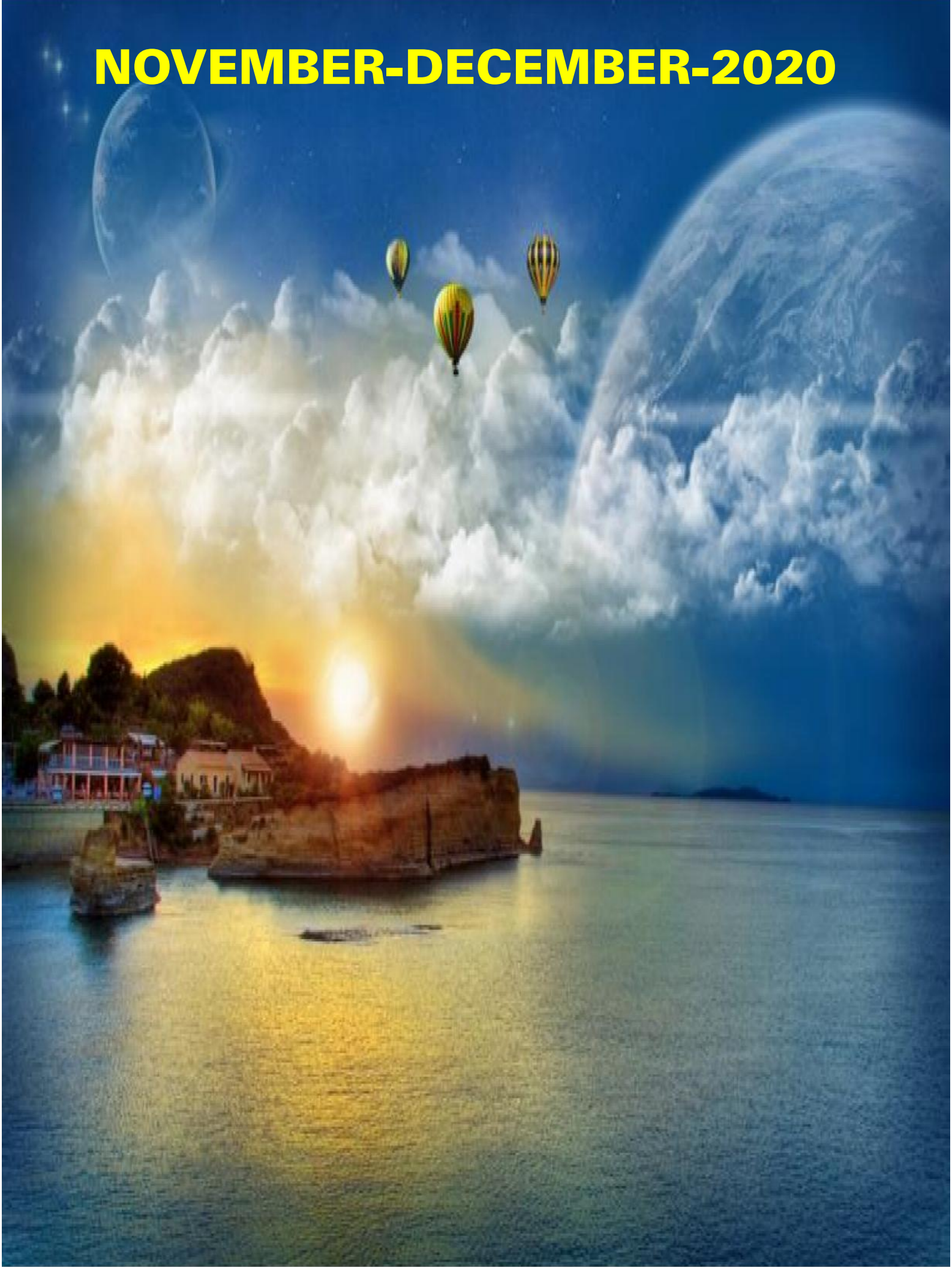
NOVEMBER-DECEMBER-2020



VOL : 17 NO.6 BANGALORE NOVEMBER-DECEMBER-2020

Editorial

PRIVATIZATION OF PORT TRUST

With the amendment to the existing laws connected with the management of the Port Trusts all over the country, the Parliament approved the Major Authorities Bill which paves way for the corporatization of 11 Major ports in the country. The Government has also taken initiatives to roll out a Special Voluntary Scheme for the port workers covering over 25,000 port workers all over the country. The Central Trade Unions along with all the unions were opposing the move of the Government for corporatization of the Public Sector Units. The Government though assured the unions that there is no move to privatize the Public Sector units and the ownership of the Public Sector Units will remain under the control of the Government appears to be a false assurance provided to the trade unions during their agitation in the country.

The proposal to roll out a Voluntary Retirement Scheme to the workers in 11 Ports is a clear indication to help the private managements to take over the functioning of the ports. While the Port authorities will be the controllers and owners of the Port Trust, they will be permitted to allow the private sector to operate the Port Trust on lease basis. While, the Port Trusts will remain as the land lords of these ports and collecting a share of revenue from those private owners who are willing to take over the management of these ports. These companies will utilize the infrastructure provided by the Port authorities and also maintain their own super structure and install their own modern and advanced equipments which do not require more number of port trust employees to handle the cargo, thereby rendering thousands of workers redundant in the Port. A model which is globally in practice is being adopted by the Government of India forgetting the millions and millions workers involved in building such a wonderful Ports and management of ports all over the country. It is yet another ploy to move towards globalization of the Ports by the Government. The sinister design of the proposed Bill is to ensure a leaner entity and provide sufficient leverage to the new private entrants to hire limited number of employees. The jobs of over 25,000 consisting of Class I and Class II Officers and Class III and Class IV Cargo and non cargo handling employees in these Ports. The offer of special VRS is to reduce a good number of workers from

their jobs and provide union free atmosphere for the new managers/corporate to take over the management of the Ports. The scheme provides for an option to all those who have completed 10 years of service and 40 years of age. The scheme also provides power to the Managements of the Trust to retain the skilled and technical staff of high caliber so that the Port Trust administration is not affected. The Port authorities will have discretion to consider the application for special VRS of the employees. The scheme also declares that the vacancies caused due to the option of VRS availed by the employees will get extinguished. The Government has issued detailed guidelines in regard to the implementation of the special VRS Scheme which will be in operation for six months.

The fear of the unions is that the Government's desire is to slowly and cunningly hand over the major Public Sector Units to the private management and in the process deny the employment opportunities available to the working class in the country. The Port Trusts unions were very powerful and they had launched a number of agitation in order to improve their service conditions. The present move is aimed at reducing the striking power of the unions so that the handing over of the Ports to the Private Sector is smoothly done by the Government. It is also a wake up call for all other major Public Sector Units to come together and oppose this move so that the control and management of the Ports will remain with the Government. The existing jobs can be retained only through the struggle.■

BHARAT FORGE STAFF UNION SEEKS REVERSAL OF LAYOFFS

The employees union of Bharat Forge has asked the company to reverse the layoffs made during the lockdown at the Chakan plant. The company had laid off 167 workers at the Chakan plant in August 2020, citing the difficulties caused by the pandemic and the subsequent lockdowns. The Bharat Forge Employees Union in Chakan said that while production had resumed at the plant, workers with over 20 years of service have not been called back to work.

The union has filed a case in the Mumbai High Court, claiming that the layoffs were illegal and that the company should recall 167 employees, said Santosh Tambe, a member of the union. Workers are getting only 50% of their basic and dearness allowance wages and are finding it difficult to sustain, Tambe said.

The company had two rounds of VRS in 2020, but no worker at the Chakan plant opted for it as people want to hold on to their jobs, he said. The union at Chakan has 210 permanent workers and only 40 of them have been retained by the company and they continue to work at the plant. The wage agreement at the Chakan plant has also been overdue for two years, Tambe said.

According to Tambe, there were 11 lines at the Chakan plant but some of them have been moved to the company's Baramati plant but it is adding new lines for electric mobility so there is production at the plant and enough work for workers at the Chakan plant, he said. The plant makes crankshaft, knuckles, gears, shaft and T Cap for automotives.

Bharat Forge's main plant in Pune at Mundhwa too has seen a delay in wage agreement. Workers at Bharat Forge's Mundhwa plant have been waiting for a wage settlement for the last 18 months, Santosh Sable, general secretary of the Bharat Forge Kamgar Sangh Mundhwa, said. To protest against the delay, an indefinitely fast was scheduled from January 5, 2021 by the Bharat Forge Union, but it has been called off for now, Sable said.

The protest was put off after the company assured the union that the wage agreement issues would be resolved in 15 days, Sable said. ■

Source: Financial Express, Date:05.01.2021

TO SEEK A FAVOUR IS TO BARTER AWAY ONE'S FREEDOM

EPFO PENSION LATEST UPDATE: BIG CHANGE IN PF STRUCTURE ON THE CARDS! PENSION TO BE MADE PROPORTIONAL TO PF CONTRIBUTIONS

There is a big news that can bring in massive change in the salary of people working in private sector. This news is about their provident fund (PF) as there might be changes in the EPFO structure.

Senior officials of Labour Ministry has made some suggestions to cabinet committee on labour in this regard. These officials were of the view that to continue and make EPFO like funds more relevant, there is a need to make structural change in it.

As per Zee news report, In the recommendations given to cabinet committee, it was said that instead of existing system of 'Defined benefits', 'Defined contributions' model should be initiated. Currently, there is a mnimum limit of EPFO pension has been fixed. This model, in a way, is 'defined benefits.' On availing 'Defined contributions', members of the EPF will be given benefits as per their contributions. Meaning, your pension will be directly proportional to your contribution.

As per media reports, EPFO has more than 23 lakh pensioners, who get a pension of Rs 1,000 every month. While their contribution in the PF is even less than one fourth of it. The officials said if it continues to happen, it will be difficult to manage in future. This is why 'Defined contributions' should be adopted to make it more relevant. In August 2019, EPFO's Central Board of Trustees (CBT) has demanded to increase minimum pension to Rs 2,000 to Rs 3,000 as per pension scheme, however, it was not implemented. As per sources, the government will have to bear an extra expenditure of Rs 4500 crore upon implementing minimum pension of Rs 2,000 and if it is increased to Rs 3,000, it will cost the exchequer massive Rs 14,595 crore.

As per officials, a big portion of EPFO amount invested in the share market also gave negative returns due to Covid 19 pandemic. Of the Rs 13.7 crore EPFO corpus, only five per cent or Rs 4600 crore was invested in the share market, said officials to Zee news. ■

Source: Business Breaking News Live

UNEMPLOYMENT RATE AT 6-MONTH HIGH IN DEC DESPITE REVIVAL SIGNS

Figures indicate that the economy is still sluggish and not yet ready to accommodate all in labour market

The national unemployment rate and the rural joblessness rate jumped to a six-month high in December, indicating that the economy is not yet ready to absorb a sizeable pool of the labour market despite almost all the sectors opening up.

According to the Centre for Monitoring Indian Economy (CMIE), national unemployment rate climbed to 9.06% in December from 6.51% in November, while the rural joblessness rate climbed to 9.15% from 6.26% during the same time.

Both national and rural joblessness levels are also at the highest since July. In June, when the pandemic was at its peak in the country, and several sectors were under lockdown, monthly unemployment was 10.18% at the national level and 9.49% in rural India. In July, the figures stood at 7.4% and 6.51%, respectively.

Interestingly, the urban unemployment rate (8.84%), which has hovered higher than the rural and national average for the last several months, has reported a lower number than both in December. Though this is still higher than the November figure and is the highest in four months, it still gives hope that urban India may be shaping up better than other regions.

The latest figures indicate that the economy is still sluggish and is not yet ready to accommodate enough hands in the labour market, despite an EPF subsidy scheme being in place for the past two months, economists and experts said. They argued

that the constant pressure on jobs may push the Union Government to spend more on the rural employment scheme, infra, and allied sectors in the annual budget next month, to spur job creation.

According to government data, while MGNREGA created some 236 million person-days of work in November, it was 188.07 million in December, which means a fall of 48 million person-days month-on month.

"The government will have to spend more on reviving demand. It needs to spend more on infrastructure creation, on the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), among other job creation avenues," said Arup Mitra, a professor of economics at Institute of Economic Growth in New Delhi adding that in urban India labour intensive construction and retail segments are gradually improving.

"The job market in India is in a complicated situation. Demand is low and the economy has not revived enough. Open unemployment (the situation when a person is educated and willing to work, but is unable to get a job is one part. The other side is how to bring back people, especially women workers, who have fallen off the employment pool," said Amit Basole, associate professor of economics at Azim Premji University in Karnataka. Supply side constraints have eased, but the policy focus should be on reviving demand, he said. "Constrained demand contributes to low employment generation and low income and push people off the labour market," Basole said. An immediate measure can be to put more cash in the hands of people through their Jan Dhan accounts, he said.

Continued higher allocation to the national rural employment guarantee scheme will help rural India and a focused effort to revive micro, small, and medium enterprises (MSMEs), which are still struggling to recover from the shock, will be key to job creation, Basole said. "MSMEs are still running below capacity. Liquidity has not reached them fully and there are myriad other issues that need attention," he said.■

Source: MINT - Date: 04-01-2021

GOOGLE EMPLOYEES LAUNCH UNION, ESCALATING YEARS OF TENSION WITH MANAGEMENT

Alphabet Workers Union to collect dues and pay organizing staff

Employees of Google and parent company Alphabet Inc. announced the creation of a union on 04/01/21, escalating years of confrontation between workers and management of the internet giant.

The Alphabet Workers Union said it will be open to all employees and contractors regardless of their role or classification. It will collect dues, pay organising staff and have an elected board of directors.

The unionizing effort, a rare campaign within a major US internet company, is supported by the Communications workers of America as part of a recent techfocused initiative known as CODE-CWA. Googlers who join the Alphabet Workers Union will also be members of CWA Local 1400.

"We will hire skilled organizers to ensure all workers at Google know they can work with us if they actually want to see their company reflect their values, Dylan Baker, software engineer at Google, said in a statement. A successful Alphabet union could limit executives' authority, while inspiring similar efforts across Silicon Valley, which has mostly avoided unionization so far. The group said it plans to take on issues including compensation, employee classification and the kinds of work Google engages in.

The announcement did not specify whether the new organization will try to secure majority support among Alphabet's workforce, formal recognition by Alphabet or collective bargaining with the company a process that has been aggressively resisted by US corporations.■

Source: Business Standard, Date: 5/01/2021

WAGE REVISION CLAUSE IN SETTLEMENT PROPOSAL WORRIES BPCL EMPLOYEES

Staffers fear the new owner of to-be privatized firm will move to lower wages

Employees of Bharat Petroleum Corporation (BPCL) are concerned about the company's long-term settlement proposals. According to employee association leaders, the proposed long-term wage agreement has a three-yearly revision clause, which is a subject of contention. "With the privatisation of BPCL appearing inevitable, there are worries that the new promoter (whoever it is) would soon move to lower wages. The long-term wage agreement proposed by the management calls for a three-yearly review of salaries. This is a deviation from the 10-yearly review in the earlier long-term wage agreements, a representative from a BPCL employee union said.

Before the push for privatization, employees were said to be opposed to the ten yearly wage revisions, fearing stagnation of salaries. But with a new promoter for BPCL in the offing, the employees have shifted to protecting the existing levels of wages.

Vedanta, Apollo Global, and ISquared Capital have responded to the Centre's decision to shed its controlling stake in (BPCL). The Public Sector undertaking (PSU) commands around 15 per cent of India's crude oil refining capacity and 22 per cent of the auto fuel marketing share. This disinvestment drive is part of government's efforts to bridge the fiscal deficit. Since the Centre is paying no heed to those opposing the privatization, employees of BPCL are fighting to get a proper wage settlement, as was the case when Bharat Aluminium Company (BALCO) was privatized, the representative said.

Vedanta Group's Sterlite Industries had acquired 51 per cent stake in BALCO in March 2001. This contentious disinvestment was conducted during the tenure of the first National Democratic Alliance government.

In an earlier representation, the All India Coordination Committee of BPCL Workers had said the wage agreement for employees in the Mumbai Refinery had expired on December 31,2016. The agreement with employees in the Kochi Refinery had expired on July 31, 2018. The agreement with employees in the marketing division of the company had expired on May 31, 2018.

The employees' associations have been pushing to get renewed wage pacts. It's not that BPCL employees are a monolith. According to company officials in the know, Nearly 95 per cent of the employees in the marketing division have no qualms about the proposed wage settlement and have signed on the dotted line."
"this digression can be explained by the lesser number of years of service left for most employees in the marketing division. There are around 2,000 employees in the marketing division and a similar number in the refinery division. The association representative said.

"Since there has been negligible new hiring in the marketing division over the past decade, most employees there just have three to six years of service left. The refinery division, on the other hand, has employees with much more years of service left and they feel threatended, he said.■

Source:Business Standard, Date:05.01.2021

HONDA INTRODUCES VRS TO DEAL WITH COVID UNCERTAINTY

First such scheme in 20-year history in India

Honda Motorcycle & Scooter India (HMSI), the 100 per cent subsidiary of Japan's Honda Motor Company, has introduced a voluntary retirement scheme (VRS) for permanent employees as it seeks to "realign its production strategy" and improve the overall efficiency in "these uncertain times", the company said in an internal circular. Employees above the age of 40 or those who have completed 10 years of service are eligible for the scheme. This is the first time in its 20-year history that the maker of Activa scooters and Unicorn motorcycles has launched such a scheme. The move reflects the

pain the world's largest market for scooters and motorcycles has been through during the Covid-19 pandemic. Two-wheeler sales in India dropped by about 25 per cent year–on-year to 9.6 million units in the first eight months of the current financial year, according to the society of Indian Automobile Manufacturers (Saim). Even though dispatches to dealers-counted as sales-have largely seen an improvement in the past five months, sales to end users have been slow.

The development at HMSI, India's second-largest two-wheeler manufacturer, comes a fortnight after Honda's car manufacturing arm. Honda Cars India, announced realigning its production. With a combined annual capacity of 6.4 million units, HMSI has production facilities in Manesar (Haryana), Alwar (Rajasthan), Narsapura (Karnataka), and Vithalapur (Gujarat), and employs over 20,000 people across the plants. The VRS is applicable only to the Manesar facility where it makes the Unicorn, Shine and Activa models.

"HMSI has been reducing production of the Activa at Manesar as it's also being produced at the three other plants", said a person privy to the development, Going forward, it plans to shift the production of the Activa from Manesar and deploy it for making some upcoming motorcycle models. The announcement for the same is expected in the coming months.

"In order to maintain its existence in this competitive two-wheeler market, it is essential to continue with high efficiency and competitiveness. Therefore keeping in view all the above reasons, the management has introduced the VRS for all the associates who want to retire voluntarily before their fixed retirement age, so that they can be relieved from the company gracefully", Naveen Sharma, division head (general affairs), HMSI said in the circular, a copy of which has been reviewed by Business Standard. The directors of the company are not eligible, he wrote.

The scheme will be effective from January 5 and will remain open till January 23. However, the management at its discretion can change the scheme without prior information or notice and may extend its time period, the letter said. The management will have full authority to decide in this regard.

The formula for the VRS package includes three-month gross salary into the completed year of service, one month's basic plus variable dearness allowance (VDA) into the remaining year of service- and ex gratia of Rs. 22,000 into the completed year of service. The scheme also has an early bird incentive of Rs. 5 lakh each for the first 400 applicants. If the VRS applications exceed 400, an additional Rs. 4 lakh will be paid to all the applicants, the letter said. The company has also capped the maximum amount for applicants for permanent workmen and junior engineer (JE) and above. For instance, for senior manager or vice-president the amount is capped at Rs. 72 lakh, for manager at Rs. 67 lakh, for deputy manager at Rs. 48 lakh, and Rs. 15 lakh for assistant executive. Some of the other auto firms that have introduced a VRS this fiscal include Tata Motors, Ashok Leyland, and Toyota Kirloskar Motor.■

Source:Business Standard, Date: 07-01-2021.

Legal Verdict

[2020 (166) FLR 462]
(DELHI HIGH COURT)
Ms.REKHA PALLI, J.
W.P.(C) No.2792 of 2007
November 15, 2019
Between
MANAGEMENT OF M/s BIRLA TE
And
CHUNNI LAL

Industrial Disputes Act, 1947-Section 33 (2) (b)-Dismissal-Labour Court allowed the dispute in favour of respondent/workman-Hence, present writ petition-held, petitioner's own case that its factory shifted

to Baddi-All similarly situated workmen were allowed to work at Baddi-No reason to deprive the respondent, being represented through his legal heirs, of the consequential benefit arising out of the impugned order and award passed in his favour-No infirmity with the impugned order of Labour-Court-Petition dismissed. [Paras 9 to 14]

JUDGMENT

Ms. REKHA PALLI,J.- The present writ petition filed by the management assails the order dated 29.01.2007 passed by the learned Industrial Tribunal in OP No.100-2005/1987, whereunder the petitioner's application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as'ID Act') seeking approval of its order dismissing the respondent/workman from service, came to be rejected. The petitioner has also assailed the award dated 29.01.2007 passed by the same Tribunal in ID No.72/2005 whereunder the petitioner was directed to reinstate the respondent in service with 50% backwages, after holding that he had been illegally terminated.

2. The brief facts of the case are that the respondent/ workman joined the services of the petitioner/Mill in October, 1970 and became a member of the Textile Mazdoor Congress (Regd.). On 12.01.1994 the workman was issued a charge sheet alleging that he along with 30 other workmen had, on 10.01.1984 at about 11.30 am, forcibly entered the administrative block and misbehaved with one Mr. Hemant Kumar, the Chief Executive officer of the Mill, because a transfer order was issued in their names upon the closure of the petitioner's weaving section. It was also alleged that the errant workmen had continued with their gherao of Mr. Hemant Kumar till 6.30 pm and had also stopped the labour officer from entering the premises. When the respondent/ workman denied his presence at the site on the date of incident, a departmental enquiry was initiated against him. Even though the inquiry could not be completed due to successive change in the Inquiry Officers, the petitioner dismissed the respondent from service, as also the other 30 workmen accused of being involved in the incident, vide its order dated 28.03.1985. In view of the pending industrial dispute between these parties, the petitioner filed an approval application under Section 33(2)(b) of the ID Act before the Tribunal seeking approval of its dismissal order dated 28.03.1985.

In his reply to the approval application, the respondent/workman specifically denied the petitioner's allegations and pointed out that the petitioner, being aggrieved by the genuine and legitimate demands being raised by him as an active union member, had fabricated the incident as it was looking for a reason to oust him and the other union members from service. He further claimed that the petitioner had not even remitted one month's salary to him, which was a necessary precondition for filing an approval application under Section 33(2)(b) of the ID Act

3. Based on the pleadings of the parties, the Tribunal framed the following issues:

1. Did the respondent indulge in violence activities and gheraoed Shri Hemant Kumar, Chief Executive?

2. Is the applicant entitled to approval of dismissal of the respondent?

4. In support of its claim that the respondent had indulged in violent activity by gheraoing its Chief Executive Officer, the petitioner examined two witnesses, viz., Sh. Mahavir Prasad, the Industrial Relations Officer and Sh.Hemant Kumar, and also placed reliance on the police complaint dated 10.01.1984. The respondent, on the other hand, examined himself as his sole witness. Upon consideration of the evidence led before it, the Tribunal came to the conclusion that, prima facie, there was no proof of the respondent's participation in the alleged incident dated 10.01.1984. It was also found that there was nothing to show that the payment of one month's wages had been remitted to the respondent in accordance with Section 33(2)(b) of the ID Act. The Tribunal, therefore, rejected the petitioner's approval application in the impugned order dated 29.01.2007 by holding as under:-

"32. As per the present approval application, AW1- Mahavir Prasad is an eye witness to the incident dated 10.01.84. If the complaint Ex.AW1/1 is looked into, then, the presence of Mahavir Prasad does not find mention on the date of the alleged incident in the said complaint. The statement of AW1- Mahavir Prasad in his affidavit Ex.AW1/A that he has seen the incident by his naked eyes is not believable as his such version is coming before this Court after a gap of about 18 years. There is no document to corroborate his version. Moreover, the management has also failed to bring on record the attendance record of the workman as on the date of the alleged incident dated 10.01.84.

33. If the complaint Ex.AW1/A is looked into, the SHO Sh. Kalla Roshanara Police Station was already present in his room who let Mr. Hemant Kumar to go for natural call at about 5.00 PM, then, the question is, that, if the police was already there, how he was confined in the room thereafter till 6.30.PM. If the police was there why the investigation of the police is not relied upon by the management. The answer is obvious that the management does not want to bring true facts before this Court.

34. There is no explanation on the record why the management has not examined the security personnels who were deputed on the said date of incident who tried their best to prevent the workman along with the co-workmen who entered into the administrative block without permission. The name of Sh. R.L. Goyal and Sh. Mahavir Prasad who are stated to be eye witnesses to the incident in question, as per the approval application are not mentioned in the complaint Ex.AW1/1 which ***ipso-facto*** shows that they were not present at the time of the alleged incident and they were got prepared by the management thereafter as there is no document, proved on record by the management to show that Sh. R.L. Goyal and Mahavir Prasad were present on the date of the alleged incident in the office.

35. There is also no explanation on the record that why the police or the management has not taken photographs of the broken doors and the broken pots on the date of the alleged incident, as narrated in the approval application itself.

36. The date of the incident was 10.01.84 and without completing the enquiry into the charges against the workman, the management filed the present approval application on 28.03.1985 without supporting it with any affidavit of the management's witnesses. The management has filed the affidavits of AW1-Mahavir Prasad and AW2-Hemant Kumar after a gap of more than 18 years with improved versions, as discussed above which clearly shows that the management has not approached to this Court with clean hands to show their ***bona fide*** that in fact such incident took place and the workman did participate in the alleged incident. Since, the relations between the management and the workman were not in good terms at the relevant time, it can be said that the management was trying to get rid off the workers, employed in the Weaving and Allied Department and created the present scene in question. Thus, I hold that there is no ***prima facie*** evidence on record that the workman infact did participate in the alleged incident dated 10.01.84 and therefore, this issue is decided against the management and in favour of the workman.

ISSUE NO.2

37. The management in the approval application in para-16 has stated that the management has sent the dismissal letter by registered AD post and simultaneously one month's pay in lieu of notice was also sent by money order. In reply to the approval application, the workman has denied of having received the same. The management has not examined any official from postal authorities that infact the said dismissal letter and the said amount were delivered to the workman concerned. Therefore, the management has failed to prove the compliance of Section 33 (2) (b), in view of the judgment in Anil Kumar Joshi Vs. Air India Limited.

38. Keeping in view the discussions, made above on issue No.1, the management/ applicant failed to prove on record the ***prima facie*** evidence to show that the workman did participate in the alleged incident dated 10.01.84 and the management further failed to prove on record that the management in fact delivered the dismissal letter along with one month's wages by money order to the workman concerned. Therefore, I accordingly, reject the approval application, moved on behalf of the management. The workman is deemed to be in the employment of the management. It is ordered, accordingly."

5. Even while the petitioner's approval application was pending adjudication before the Tribunal, the respondent, after sending a demand notice to the petitioner, also raised an industrial dispute challenging his termination. The said industrial dispute came to be allowed by the Tribunal vide its award dated 29.01.2007 wherein, upon an appreciation of evidence, it came to the conclusion that the petitioner had failed to prove any misconduct on the part of the respondent. The Tribunal, therefore, set aside the respondent's termination and directed the petitioner to reinstate him with continuity of service and 50% back wages.

6. Assailing the order rejecting its approval application as also the award directing the respondent's reinstatement, the present writ petition has been filed.

7. Learned counsel for the petitioner Dr. M.Y. Khan submits that once the respondent had raised an industrial dispute, the order passed in the petitioner's approval application loses all sanctity and is no longer relevant. He submits that irrespective of the petitioner's approval application being dismissed by the Tribunal, the merits of the respondent's defence in the industrial dispute ought to be considered independently by this Court. He submits that the charges framed against the respondent were of a serious and grave nature as he was guilty of illegally confining and abusing his superior officer. He was, therefore, guilty of misconduct which warranted his dismissal from service. In support of the aforesaid contention, Dr. Khan places reliance on the decisions of the Supreme Court in L.K. Verma v. HMT Ltd. & another, M/s Ralli Chemicals Ltd. Fertilizer Factory v. Labour Court and Jay Engineering works v. State. He further submits that the findings of the Tribunal in the impugned order as well as the impugned Award are not based on a proper appreciation of evidence and are, therefore, not sustainable. Dr. Khan finally submits that even otherwise, since the Mill closed on 30.11.1996 and the respondent having attained the age of superannuation in the year 2009, expired on 27.04.2015, the relief of reinstatement with 50% back wages granted to the respondent was not warranted. He, therefore, prays that the writ petition be allowed.

8. On the other hand, Mr. Vinay Sabharwal, learned counsel for the respondent submits that in view of the settled legal position, as laid down by the Supreme Court in Jaipur Zila Sahakari Bhoomi Vikas Ltd. v. Ram Gopal Verma, once the petitioner's approval application was dismissed by the Tribunal, the respondent was deemed to be in continuous service. Even if he did not raise an industrial dispute challenging his termination, the same cannot alter the fact that his termination was ***non-est,*** being in violation of Section 33(2)(b) of the I.D. Act. He further submits that the Tribunal, after a detailed appreciation of the evidence led before it, has come to the conclusion that the petitioner had not produced any material to show that the respondent had, in fact, indulged in any misconduct. He further submits that the petitioner's plea that the Mill stands closed is belied by its own averments in the present petition to the effect that the petitioner Mill, which was earlier operating in Delhi, had been relocated to Baddi, District Solan, Himachal Pradesh and has, thereafter, merged with M/s Chambel Fertilizer and Chemicals Ltd. He, thus, contends that the petitioner is continuing to operate at Baddi and is also, in any event, maintaining an office at Delhi, on which address it had been served with notices by this Court. He submits that the Tribunal has arrived at a categorical finding not only while deciding the approval application but also while deciding the industrial dispute raised by the respondent/workman that no case of misconduct was made out against the workman. He submits that these findings are

based on a due appreciation of evidence warranting no interference by this Court and, therefore, prays that the writ petition be dismissed.

I have considered the submissions of the parties and with their assistance perused the record.

9. As noted above, Dr. Khan has raised two primary contentions, the first being that once an industrial dispute was raised by the respondent, he cannot rely on the Tribunal's order rejecting the management's approval application to substantiate his claim in the industrial dispute. In my view, merely because the respondent also chose to raise an industrial dispute cannot imply that the order rejecting the approval application loses its sanctity. On the contrary, in the light of the decision of the Supreme Court in Jaipur Zila Sahakari Bhoomi Vikas Ltd. (supra) categorically holding that once the management's approval application is rejected, a necessary consequence thereof is that the termination/ dismissal will not have any effect, it is evident that once the petitioner's approval application was rejected, the order of termination passed against the workman would be rendered void. In fact, as has been held by a Division Bench of this Court in Badshah Singh v. Delhi Jal Board passed [LPA No.604 of 2014], in such a situation where the management's approval application is rejected, it would not even be necessary for the workman to raise a formal claim in this regard. Thus, I find no merit in the petitioner's first contention.

10. At this stage, it may be noted that as a consequence of the rejection of the approval application, the respondent could have claimed reinstatement with full back wages without raising any industrial dispute. Even when the respondent proceeded to raise a specific industrial dispute wherein he has been granted reinstatement with only 50% back wages, this aspect of quantum of back wages payable to the respondent could have engaged this Court but in view of the fair stand taken by the learned counsel for the respondent that the respondent is satisfied with the award of 50% back wages made in his favour, this aspect need not be determined by this court

11. I do not find any merit even in the second contention of the learned counsel for the petitioner that the Tribunal's finding that no misconduct had been proved is perverse and liable to be interfered with by this Court. Even though this Court, while exercising writ jurisdiction, is not expected to re-appreciate the evidence unless some perversity is pointed out, yet I have carefully examined the evidence and find absolutely no reason to differ with the conclusion of the Tribunal which is based on a correct appreciation of evidence. None of the Management witnesses were able to conclusively establish the alleged misconduct on the part of the respondent and, therefore, the Tribunal was fully justified in coming to the conclusion that no misconduct was made out. It is not the case of the petitioner that any admissible or material evidence was ignored by the Tribunal or that any inadmissible evidence had been considered by the Tribunal. On the other hand, I find that the learned Tribunal has meticulously examined the evidence led on record and has provided cogent reasons for disbelieving each of the management witnesses. Therefore, while exercising my writ jurisdiction I see no reason to interfere with the findings of fact recorded by the Tribunal, both in its impugned order and award dated 29.01.2007. Reference may be made to the decision in Harjinder Singh v. Punjab State Warehousing Corporation wherein the Supreme Court has, by referring to its earlier decision in Surya Dev Rai v. Ram Chander Rai reiterated the scope of interference by a writ Court while dealing with an award passed by a Labour Court by observing as under:-

> "13. In Surya Dev Rai case a two-Judge Bench, after threadbare analysis of Articles 226 and 227 of the Constitution and considering large number of judicial precedents, recorded the following conclusions: (SCC pp. 694-96, para 38)
>
> "(1) Amendment by Act 46 of 1999 with effect from 1-7-2002 in Section 115 of the Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under

Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction—by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction—by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the Subordinate Courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a Subordinate Court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction

exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case."

12. I also do not find any merit in the petitioner's contention that the respondent could not be granted reinstatement as the Mill was closed on 30.11.1996, pursuant to the orders passed by the Supreme Court. Once it is the petitioner's own case that its factory was relocated to Baddi, it is evident that all similarly placed workmen continued to be employed in Baddi unless they had chosen to voluntarily leave the services of the respondent. Therefore, there is no reason to deprive the respondent, now represented through his legal heirs, of the consequential benefits arising out of the impugned order and award passed in his favour.

13. Before I conclude I may also refer to the decisions relied upon by the learned counsel for the petitioner. I find that these decisions pertain to cases where the workman's misconduct regarding misbehaviour/ assault of senior officers stood conclusively proved by way of cogent evidence and, therefore, the only question before the Court in those matters was regarding the nature of penalty imposed on the workman. In the present case, in view of the Tribunal's conclusion that no case of misconduct was made out against the workman, with which I see no reason to differ, the decisions relied upon by the petitioner would be wholly inapplicable.

14. For the aforesaid reasons, I find no infirmity either in the impugned order dated 29.01.2007 rejecting the petitioner's approval application or in the impugned Award dated 29.01.2007 directing the respondent's reinstatement with continuity of service and 50% back wages.

The writ petition being meritless, is dismissed.

Petition Dismissed.■

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