

(2010) 12 DEL CK 0091

In the Delhi High Court

Case No : Company Appeal (SB) No"s. 20, 22-45 of 2006

Ajay Kumar Vyas and Others

APPELLANT

Vs

Indian Road Construction Corporation Ltd. and Another

RESPONDENT

Date of Decision : 08-12-2010

Acts Referred:

Citation : (2011) 166 CompCas 534 : (2011) 106 SCL 378

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Maninder Acharya, for the Appellant; P.R. Agarwal and Anju Bhushan, for the Respondent

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—The Appellants herein are the erstwhile employees of Indian Road Construction Corporation Limited (hereinafter referred to as IRCC, for short) - the company under liquidation. They had on 30th June, 2000 applied under voluntary retirement scheme (hereinafter referred to as VRS, for short) circulated vide circular dated 31st May, 2000 and were paid retirement benefits stipulated therein on 30th Sept.,2000. Subsequently, petition for winding up of IRCC i.e. CP No. 14 of 2004 was filed in this Court on 20.01.2004 and on the request of the Central Government, Mr. Pran Konchady was appointed as a Liquidator. Advertisement/notice was published inviting claims against IRCC, the company in liquidation, on 18th June, 2004 and pursuant thereto the Appellants filed their claims under Rule 148(2) of the Company (Court) Rules, 1959 (hereinafter referred to as the Rules, for short). The claim made by the Appellants before the Liquidator was that they had not been paid retirement benefits/compensation in accordance with the Office Memorandum dated 5th May, 2000 issued by Government of India, Ministry of Heavy Industries and Public Enterprises modelled on the scheme which existed in the State of Gujarat. As per the Gujarat pattern scheme ex-gratia compensation is to be calculated on the basis of 26 day month instead of 30 day month which was adopted and

applied by IRCC. By the impugned Order dated 18th April, 2006, the Liquidator had rejected the claim of the Appellants for the following reasons:

1. As the methodology under Gujarat Pattern for calculation of VRS on the basis of 26 days a month instead of 30 days a month, which you are claiming, is not applicable to you as this pattern was not adopted by the IRCC Limited while calculating the VRS compensation.

2. As per the Supreme Court decision, after the payment of VRS compensation, there is a complete cessation of the relationship between IRCC and you. So, you have no right for agitating any kind of past rights.

2. There are several reasons why the present appeals deserve to be dismissed. These have been explained in detail below;

3. IRCC was incurring losses and by letter dated 15th February, 2000 written by Ministry of Surface Transport, the decision of the Government of India to wind up the said enterprise was conveyed. It was decided that the existing employees of IRCC would be encouraged to opt for voluntary retirement under the existing scheme failing which they would be entitled to compensation upon closure of an enterprise as per the Industrial Disputes Act, 1947 (hereinafter referred to as IDA, for short). This decision was adopted by the Board of Directors of IRCC vide item No. 95/11 dated 28th March, 1999 (see, minutes of the Board meeting dated 4th July, 2000) and employees of IRCC were advised to opt for voluntary retirement based on the existing directions of the Government of India dated 5th October, 1988. IRCC by their Circular dated 31st May, 2000 reiterated/advised the employees of IRCC to opt for voluntary retirement on or before 30th June, 2000 under the existing scheme failing which they would be entitled to compensation as per the provisions of IDA. Along with the Circular, the salient features of the voluntary retirement scheme were mentioned. Clause (b) thereof reads:

(b) Benefits

The terminal payment available to an employee who seeks voluntary retirement would be an under:

i) The balance of his provident fund account payable as per the CPF regulation.

ii) Cash equivalent to accumulated earned leave as per the rules of this organization. However, encashment of leave upto the maximum of 300 days of earned leave will be allowed.

iii) Gratuity as per Gratuity Act or Gratuity Scheme applicable to the employees, that is to say Gratuity will be equal to 15/26 of a months emoluments for each completed year of service or part thereof in excess of 6 months subject to a maximum of 16 1/2 times the monthly emoluments or 3.5 lakhs rupees whichever is less.

iv) One month's/three month's notice pay as per the condition of service

applicable to the employee.

v) Ex-gratia payment equivalent to 11/2 months emoluments (Pay + DA) for each completed year of service or monthly emoluments at the time of retirement multiplied by the balance months of service left before normal date of retirement whichever is less. For example, an employee who has put in 24 years of service and has got only 1 year of service for normal retirement, will get ex-gratia payment of only 12 months emoluments and not 36 months emoluments.

vi) The employee and his family would also be entitled to travel by the entitled class to the place where he intends settling down.

vii) The voluntary retirement scheme would be applicable to all employees, workers and executives except Chief Executives and Executive Directors.

4. Government of India, Ministry of Heavy Industries and Public Enterprises Ltd. had issued an Office Memorandum dated 5th May, 2000. The said Office Memorandum records that the Government of India had earlier announced voluntary retirement scheme dated 5th October, 1988 and that the said Scheme had been revised to make it more efficacious having regard to the interest of the employees and to enable Public Sector Enterprises to rationalize their surplus manpower. For the sake of convenience, paragraphs 2, 3 and 5 of the Office Memorandum dated 5th May, 2000 are reproduced below:

2. Enterprises which are financially sound and can sustain a scheme of VRS on their own surplus resources may devise and implement variants of the existing VRS cited in para 1 above. However, in no case shall the compensation exceed 60 days salary for each completed year of service or the salary for the number of months service left, whichever is less. Salary for the purpose of VRS shall consist of basic pay and DA only and no other element.

3. Enterprises that make marginal profits or loss-making enterprises, may adopt the revised scheme of VRS which is modeled on the Scheme that exists for the State of Gujarat. The details of the scheme are set out hereunder:

i) The compensation will consist of salary of 35 days for every completed year of service and 25 days for the balance of service left until superannuation. The compensation will be subject to a minimum of Rs. 25,000/- or 250 days salary whichever is higher. However, this compensation shall not exceed the sum of the salary that the employee would draw at the prevailing level for the balance of the period left before superannuation.

ii) Salary for purpose of VRS will consist of basic pay and DA only.

iii) Arrears of wages due to revision etc. will not be included in computing the eligible amount.

iv) Payment of bonus should conform to the provisions in the Bonus Act; Casual Leave may be encashed in proportionate measure upto the date of VRS

4. x x x x

5. For sick and unviable units, the VSS package of Department of Heavy Industry will be adopted. As a corollary, the VSS scheme may be modelled on Gujarat pattern and be made applicable as in para 3 above. However, employees would have to opt for VSS within 3 months from the date of offer failing which they would be eligible only for retrenchment compensation. The details of VSS are as under:

(i) An employee would be entitled to an ex-gratia payment equivalent to 45 days emoluments (pay+DA) for each completed year of service or the monthly emolument at the time of retirement multiplied by the balance months of service left before the normal date of retirement, whichever is less;

(ii) All those who have completed not less than 30 years of service, will be eligible for a maximum of 60 (sixty) months salary/wage as compensation. This will be subject to the amount not exceeding the salary/wage for the balance period of service left (at the rate of monthly salary/wage at the time of voluntary retirement).

5. The Office Memorandum dated 5th May, 2000 in para 2 stipulated that enterprises that were financially sound and could sustain a scheme of VRS on their own surplus resources could devise and implement variants of the existing VRS but in no case should the compensation exceed 60 days salary for each completed year of service or the salary for the number of months of service left, whichever was less. Para 3 of the said Office Memorandum, unlike para 2 which dealt with financially sound enterprises that could sustain a scheme of VRS, applied to enterprises that were making marginal profits or were loss-making enterprises and such enterprises were given an option to adopt the revised scheme of VRS that existed in the State of Gujarat. Under Clause (i) of para 3, compensation was to consist of 35 days for every completed year of service and 25 days for the balance of service left until superannuation. There were certain other stipulations.

6. Paragraph 5, on the other hand, applied to sick and unviable units like IRCC. VRS package for retirement of employees of heavy industries was to be adopted in such cases. Paragraph 5 stipulated that the VRS "may be modelled" on the Gujarat pattern and made applicable. The words "may be modelled" in paragraph 5 show an element of discretion. Another requirement was that employees must opt for VRS within three months of offer, failing they would be eligible for retrenchment compensation. VRS compensation as per paragraph 5 was equal to 45 days emoluments; pay and DA for each completed year of service or monthly emoluments at the time of retirement multiplied by months of service left till retirement, whichever was less. In cases where employees had completed thirty years of service, they were eligible for maximum of sixty months" salary/wages as compensation, subject to the amount not exceeding salary/wage for the balance period of service left.

7. It is apparent from paragraphs 2, 3 and 5 that methods of computing ex-gratia compensation in paragraphs 2, 3 and 5 were different from each other.

8. After aforesaid Office Memorandum dated 5th May, 2000 was received, the matter was examined by the Board of IRCC in their 151st meeting held on 4th July, 2000. It was noticed that if the VRS modelled on Gujarat pattern was made applicable, it could be disadvantageous to the employees in view of stipulations given in paragraph 5 of Office Memorandum dated 5th May, 2000. Copy of the said Board meetings have not been placed on record but at the time of hearing, copy of the said Minutes was handed over by the counsel for the Appellants. Pursuant to the Board meeting, a letter dated 19th July, 2000 was written by IRCC to Government of India recommending as under:

3. The Board of Directors of IRCC considered the matter in detail and after due deliberations and keeping in view the decision of the Govt of India to wind up the Corporation and the scheme forwarded by DPE vide their OM quoted in para 2) above decided to improve the VRS package from 45 days to 60 days emoluments (pay+DA) for each completed year of service or the monthly emoluments at the time of retirement multiplied by the balance months of service left before normal date of retirement whichever is less to mitigate the hardship to all its employees who have applied for VRS in response to IRCC circular dated 31.3.2000 and 31.5.2000 and will be made effective to all the employees who are relieved on or after 1.7.2000. This decision was based on the guidelines to improve the VRS package enumerated in DPE's OM dated 5th May, 2000 and keeping in view the fact that expenditure on this account will be met by IRCC from its own assets/resources and no additional funds will be required from MOST.

9. In response to this letter, the Ministry of Surface Transport by their letter dated 22nd Sept., 2000 conveyed their approval to the proposal for enhancing compensation package from 45 days emoluments to 60 days emoluments for each completed year of service. Financial implications were to be met by IRCC from their own resources/assets.

10. It is clear from the aforesaid facts that what was adopted and made applicable to the employees of IRCC, who were opting for VRS, was different and in variation of Clause 5 of the aforesaid memorandum dated 5th May, 2000. Benefits and advantages over and above envisaged in and distinct from paragraph 5 were given to the employees of IRCC opting for VRS. Ex-gratia payment was enhanced from 45 days to 60 days emoluments for each completed year of service. The requirement to opt for VRS within three months was also done away with. In these circumstances, it is not correct for the Appellants to contend that they were entitled to ex-gratia compensation by calculating their past service by treating each month as 26 days and not 30 days. What was made applicable and paid to the Appellants was a special package. Specific approval was sought and granted by the Ministry of Surface Transport for payment in terms of the package. Paragraph 5 of the Office Memorandum dated 5th May 2000 was not applied and accepted in the case of IRCC.

11. The Appellants had made VRS applications on 30th June, 2000. These applications were accepted on 3rd July, 2000. Payments were received by the Appellants without any protest on 30th September, 2000. As noticed above, the Appellants have raised this claim only after the advertisement was published by the liquidator on 18th June, 2004. The principle of estoppel applies. The Appellants ceased to be employees of IRCC when payment under VRS was made and accepted by them. In *A.K. Bindal v. Union of India* (2003) 5 SCC 2003 it has been observed:

33. The Voluntary Retirement Scheme (VRS) which is sometimes called Voluntary Separation Scheme (VSS) is introduced by companies and industrial establishments in order to reduce the surplus staff and to bring in financial efficiency. The office memorandum dated 5-5-2000 issued by the Government of India provided that for sick and unviable units, the VRS package of the Department of Heavy Industry will be adopted. Under this Scheme an employee is entitled to an ex gratia payment equivalent to 45 days' emoluments (pay + DA) for each completed year of service or the monthly emoluments at the time of retirement multiplied by the balance months of service left before the normal date of retirement, whichever is less. This is in addition to terminal benefits. The Government was conscious about the fact that the pay scales of some of the PS Us had not been revised with effect from 1-1-1992 and therefore it has provided adequate compensation in that regard in the second VRS which was announced for all Central public sector undertakings on 6-11-2001. Clause (a) of the Scheme reads as under:

(a) Ex gratia payment in respect of employees on pay scales at 1-1-1987 and 1-1-1992 levels, computed on their existing pay scales in accordance with the extant Scheme, shall be increased by 100% and 50% respectively.

34. This shows that a considerable amount is to be paid to an employee ex gratia besides the terminal benefits in case he opts for voluntary retirement under the Scheme and his option is accepted. The amount is paid not for doing any work or rendering any service. It is paid in lieu of the employee himself leaving the services of the company or the industrial establishment and foregoing all his claims or rights in the same. It is a package deal of give and take. That is why in the business world it is known as "golden handshake". The main purpose of paying this amount is to bring about a complete cessation of the jural relationship between the employer and the employee. After the amount is paid and the employee ceases to be under the employment of the company or the undertaking, he leaves with all his rights and there is no question of his again agitating for any kind of his past rights with his erstwhile employer including making any claim with regard to enhancement of pay scale for an earlier period. If the employee is still permitted to raise a grievance regarding enhancement of pay scale from a retrospective date, even after he has opted for Voluntary Retirement Scheme and has accepted the amount paid to him, the whole purpose of introducing the Scheme would be totally frustrated.

35. The contention that the employees opted for v. under any kind of compulsion is not worthy of acceptance. The Petitioners are officers of the two Companies and are mature enough to weigh the pros and cons of the options which were available to them. They could have waited and pursued their claim for revision of pay scale without opting for VRS. However, they in their wisdom thought that in the fact situation VRS was a better option available and chose the same. After having applied for VRS and taken the money it is not open to them to contend that they exercised the option under any kind of compulsion. In view of the fact that nearly ninety-nine per cent of employees have availed of the VRS Scheme and have left the Companies (FCI and HFC), the writ petition no longer survives and has become infructuous.

12. The aforesaid reasoning and principle of estoppel was reiterated by the Supreme Court in HEC Voluntary Retd. Emps. Welfare Soc. and Another Vs. Heavy Engineering Corporation Ltd. and Others, . See Bank of India and Others Vs. O.P. Swarnakar etc., and Punjab and Sind Bank and Another Vs. S. Ranveer Singh Bawa and Another,

13. Learned Counsel for the Appellants have relied upon Satya Paul Nakra v. Union of India 2003 (3) AD (Delhi) 293. In the said case, the Court was examining the effect of Office Memorandum dated 6th November, 2001 issued by the Department of Public Enterprise modifying OM dated 5th May, 2000. By memorandum dated 6th November, 2001 it was directed that under the Gujarat pattern scheme salary shall be calculated on the basis of 30 days in a month and not 26 days and consequently method of calculation of ex-gratia in VRS shall be similar. Pursuant to the said Office Memorandum dated 6th November, 2001, National Fertilizers Limited the Respondent therein had issued a circular dated 22nd November, 2001 modifying the existing VRS and stating that for computation of ex-gratia, the month will be taken as 30 days and not 26 days. Some employees withdrew their application but the Petitioners therein did not withdraw and their applications were accepted after the memorandum dated 22nd November, 2001. The contention raised was that the Board of Directors of National Fertilizers Limited had not approved the modified scheme mentioned in circular dated 22nd November, 2001. Another issue raised was that of discretion of the Board of Directors of National Fertilizers Limited. Both the contentions were rejected. Principle of estoppel was applied as the Petitioners therein had taken compensation and accepted the same after circular dated 22nd November, 2001 was issued. It was held that OM dated 6th November, 2001 was binding on the National Fertilizers Limited, a public sector company. The said decision is not applicable to the facts of the present case. In the present case, the scheme was revised after the Office Memorandum dated 5th May, 2000 was issued and the option exercised by the Board of Directors of IRCC was approved by Ministry of Surface Transport in their letter dated 22nd September, 2000. What has been paid to the Appellants is different and higher than envisaged and applicable as per paragraph 5 of the Office Memorandum dated 5th May, 2000.

14. The Appellants have also relied upon Annexure A-8, note of personnel department reference No. 701072 dated 4th December, 2002. The Respondent liquidator in their counter affidavit has explained that this is an internal note of Deputy Manager (Personnel), who had expressed his own views. It is alleged that this note motivated for personal financial gain. The liquidator and Officer on Special Duty did not accept the view of Deputy Manager (Personnel). In these circumstances, the Appellants cannot rely upon note dated 4th December, 2000.

15. In view of the above, I do not find any merit in the present appeals and the same are dismissed.