(2012) 07 KAR CK 0003

In the Karnataka High Court

Case No : Writ Petition No. 39226 of 2011 (S-RES)

Anand V. Kallannavar APPELLANT

Vs

BEML Limited, Bangalore and Others RESPONDENT

Date of Decision : 03-07-2012

Acts Referred:

Citation : (2012) 6 KarLJ 369

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : Gowthamdev C. Ullal, for the Appellant; Sneha Nagaraj for M/s. Sundarswamy and Ramdas, for the Respondent

Judgement

H.N. Nagamohan Das, J.—In this writ petition the petitioner has prayed for a writ in the nature of certiorari to quash certain portions in the letter dated 2-9-2011 -- Annexure-T, Circular dated 17-8-2007 -- Annexure-P, the Circular dated 12-10-2007 and for a writ of mandamus directing the respondents to re-fix the pension and other benefits in terms of the revised pay scale as per general bulletin dated 17-7-2009 and for other reliefs. The petitioner joined the services of the respondent-Company in the year 1991 as Assistant Engineer Trainee. From time to time the petitioner was promoted to higher grade. As on 23-6-2008 the petitioner was promoted as Senior Manager (Grade V). On 13-9-2008 the petitioner tendered resignation and requested the respondent-Company to accept his resignation and to relive him from duties with effect from 30-9-2008. On 15-12-2008 the respondents refused to process the resignation letter submitted by the petitioner on the ground that he has not paid the liquidated damages and executed bond to the effect that he will not join any competitor company. Thereafter the petitioner approached this Court in W.P. No. 5571 of 2011 challenging the action of the respondents in refusing to accept the resignation tendered by the petitioner. During the pendency of the writ petition the petitioner gave a representation on 23-6-2011 requesting the respondents to settle his retiral benefits. In view of this development this Court vide order dated

18-7-2011 disposed W.P. No. 5571 of 2011 with a direction to the respondents to consider the representation given by the petitioner for settlement of retiral benefits. Now under the impugned communication dated 2-9-2011 -- Annexure-T the respondents calculated the retiral benefits of the petitioner in pre-revised scale and deducted a sum of Rs. 1,33,160/- and paid the balance amount. The petitioner being aggrieved by the denial of benefit of revision of pay scale and deduction of certain amount is before this Court.

2. Heard arguments on both the side and perused the entire writ papers.

3. The respondents issued a general bulletin bearing No. 1199, dated 17-7-2009 revising the pay scale of the employees working in the company. This revision of pay scale was given retrospective effect from 1-1-2007. Para 14.5 of this bulletin reads as under:

14.5 Benefits of revised Basic Pay and allowances in terms of this General Bulletin and consequent payment of arrears shall not be applicable to Executives who ceased to be in the services of the Company on the following ground on or after 1st January, 2007:

a. Dismissal;

b. Resigned and left without permission or notice;

c. Resigned and left where disciplinary action against him/her had already been initiated and was in progress;

d. Resigned and left without due notice where bond liability/payment of liquidated damages etc., had not been discharged at the time of leaving the Company;

e. Abandoned the service;

f. Absconding from service.

4. It is not in dispute that as on 1-1-2007 -- the day on which revision of pay scale was given effect the petitioner was on regular rolls of the respondent-Company. The benefit of revision of pay scale shall not be applicable to the executives who seized to be in the service of the company on or after 1-1-2007 on the grounds specified above. Learned Counsel for the respondents contend that underground No. 14.5(d) the petitioner is not entitled for revision of pay scale. It is contended that the petitioner tendered his resignation on 13-9-2008 and remained absent from his duties with effect from 30-9-2008 without paying the liquidated damages. It is contended that in terms of the general bulletin No. 1170, dated 12-10-2007 a sum of Rs. 2.25 lakhs is to be paid towards liquidated damages to the grade of petitioner. Without paying this liquidated damages the petitioner tendered his resignation and therefore he is not entitled for the benefit of revision of pay scale. I decline to accept this contention of the learned Counsel for the respondents.

5. It is not in dispute that the petitioner tendered his resignation on 13-9-2008 with a request to relieve him on 30-9-2008. It is mandatory that the petitioner shall give 3 months advance notice. If there is shortfall in giving 3 months notice, then the petitioner shall make good the same by paying the wages for the shortfall period. Accordingly the respondents by their communication dated 15-12-2008 accepted the resignation of the petitioner with effect from the close of shift on 3-10-2008 and deducted a sum of Rs. 77,770/- towards the shortfall of 3 months notice pay in lieu of notice period. This amount of Rs. 77,770/- is adjusted by the respondents at the time of settlement of retiral benefits of the petitioner. When the respondents have adjusted a sum of Rs. 77,770/- towards the shortfall of 3 months notice period, then it amounts to acceptance of resignation of the petitioner. Therefore it is not a case of resignation without notice. In that event the case of petitioner do not fall under any one of the grounds specified in Para 14.5 of the general bulletin. On one hand recovering the payment towards shortfall of notice period and also refusing to extend the benefit of revision of pay scales is impermissible under law.

6. Secondly it is contended that in terms of general bulletin dated 12-10-2007 the petitioner is required to pay the liquidated damages of Rs. 2.25 lakhs before tendering his resignation. But the petitioner left the organisation without due notice and without paying the liquidated damages. Therefore the petitioner is not entitled for the benefit of revision of pay scales. I decline to accept this contention of the learned Counsel for the respondents. As stated above the petitioner gave advance notice of resignation on 13-9-2008. Since there was shortfall of notice period the respondents have recovered a sum of Rs. 77,770/- towards the shortfall period and accepted the resignation of the petitioner with effect from 3-10-2008 by their order at Annexure-A. Therefore it is not a case where the petitioner has resigned and left the organisation without due notice attracting payment of liquidated damages. On one side recovery of a sum of Rs. 77,770/- towards the shortfall of notice period and on the other hand demanding a sum of Rs. 2.25 lakhs as liquidated damages on the ground that the petitioner left the organisation without due notice is impermissible under law. When the respondents have recovered the pay towards shortfall of notice period and accepted the resignation then it cannot be said that the petitioner is liable to pay the liquidated damages. Therefore the denial of benefit of revision of pay scale to the petitioner on the ground that he has not paid the liquidated damages is bad in law.

7. Identical issue relating to payment of liquidated damages and executing a bond etc., between the employer and employee came up for consideration before a Division Bench of this Court in K.Y. Venkatesh Kumar v. BEML Limited and Others, W.A. No. 2736 of 2009. The Division Bench of this Court, by following the law declared by the Apex Court and this Court vide order dated 9-12-2009 held that such condition as unenforceable, unsustainable and unconscionable. Therefore denial of benefit of revision of pay to the petitioner is illegal.

8. Learned Counsel for the respondents relying on a judgment of the Supreme Court in the case of HEC Voluntary Retd. Emps. Welfare Soc. and Another Vs. Heavy Engineering Corporation Ltd. and Others, contends that the petitioner voluntarily tendered his resignation and therefore not entitled for revision of pay scale. The facts in Heavy Engineering Corporation Limited''s case are entirely different from the facts on hand. The Supreme Court while considering the claim of an employee who retired under a scheme held that such an employee is not entitled for higher salary unless by reason of statute he becomes entitled thereto. In this case the petitioner has not submitted his resignation under any such scheme introduced by the respondents. Therefore the decision referred to supra is not applicable to the facts of this case.

9. It is not in dispute that there was shortfall in issuing due notice of resignation by the petitioner. Towards this shortfall period the respondents have adjusted a sum of Rs. 77,770/-. Further the respondents have already adjusted this amount from the retiral benefits payable to the petitioner and the same is in accordance with law.

10. The respondents have paid the ad hoc increment amount pending pay revision in a sum of Rs. 51,390/-. The adjustment of this amount under the pre-revised pay scale of petitioner is illegal. The respondents have adjusted a sum of Rs. 4,000/- paid as profit linked incentive. This payment of Rs. 4,000/- is not on the basis of any misrepresentation or fraud played by the petitioner. If there is a mistake on the part of respondents in making this payment of Rs. 4,000/- towards profit linked incentive then the same cannot be recovered from the petitioner in view of the law declared by the Apex Court in the case of Sahib Ram Vs. State of Haryana and Others, For the reasons stated above, the following.-

ORDER

i. Writ petition is partly allowed.

ii. Petitioner is entitled for the benefit of revision of pay scale under bulletin No. 1199, dated 17-7-2009.

iii. The respondents are hereby directed to calculate and settle the retiral benefits of the petitioner by extending the benefit of revised pay scale.

iv. The respondents shall adjust the amount of Rs. 51,390/- under the revised pay scale.

v. The respondents shall also refund the amount of Rs. 4,000/- deducted from the retiral benefits of the petitioner. Ordered accordingly.