(2008) 12 OHC CK 0066

In the Orissa High Court

Anatha Kishore Panda and Others — APPELLANT

Vs

Orissa State Handloom Development Corporation Ltd. and Another — RESPONDENT

Date of Decision : 02-12-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21

Citation : (2009) 107 CLT 59

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Judgement

A.S. Naidu, J.—The facts and points of law in all these Writ Petitions being one and same, with consent of Learned Counsel for the parties the same were heard together.

2. The Petitioner in all these Writ Petitions are the erstwhile employees of the Orissa State Handloom Development Corporation Ltd. which, if is stated, is a Government Orissa Undertaking. They were employed in the aforesaid Corporation in different posts. The Corporation at the initial stage functioned with flying colours, but by efflux of time ended in red. Ultimately in the year 1987 a decision was taken to close it down due to bad financial condition. The said decision to close down was assailed before this Court in OJC No. 14611 of 1997. This Court by an interim order passed on 18-12-1997 directed that before any final decision was taken regarding closure of the Corporation leave of this Court would be obtained. While matter stood thus, the Board of Directors of the Corporation in its 64th Meeting held on 29th September, 1999 resolved to adopt Voluntary Retirement Scheme (for short ''VRS'') for its employees at par with similar resolution of the Government of Orissa in the Department of Public Enterprises in respect of employees of State Public Sector Undertakings.

3. It is pertinent to mention here that since January, 1998 the employees of the Corporation including the present Petitioners were not paid their salary. Pursuant to a decision and Office Order Dated 11.10.1999 the Managing Director of the

Corporation called upon the employees to file their applications in the prescribed form if they wanted to opt for voluntary retirement on the terms and conditions embodied in the Scheme.

4. The said applications were notified to be filed on or before 15th November, 1999. The Petitioners made such applications. All the applications so filed were scrutinized to ascertain as to whether the applicants had fulfilled all the conditions stipulated in the guidelines and ultimately the Corporation allowed the eligible employees including the Petitioners to retire under VRS consequent upon which the Petitioners handed over their official charges to the Corporation on 15-2 2001. Thereafter the Petitioners requested the Corporation for their entitleme as per the VRS as well as payment of their arrear salary and other dues (sic) Corporation paid all the entitlements of the Petitioners as per the VRS (sic) their salary for the period from February, 1998 to January, 2001.

5. Being aggrieved by such action of the Corporation, the approached this Court vide WP(C) No. 140/07. Considering the limited nature of grievance of the Petitioners, this Court disposed of the said Writ Petition on 21st February, 2007 with direction to the Managing Director of the Corporation to look into the grievance of the Petitioners and take a decision with regard to their claim under VRS as well as payment of their arrear salary within a period of one month from the date of communication of the order.

6. Pursuant to the aforesaid order of this Court, the Managing Director by Order Dated 31-8-2007 intimated the Petitioners that on perusal of records it was found that they had not worked in the Corporation during the period between February, 1998 and February, 2001 as it was in defunct state and hence they were not entitled to any salary for the said period. The said decision is assailed in these Writ Petitions mainly on the ground that as the Petitioners continued to be employees of the Corporation till 28th February, 2001 when their applications for voluntary retirement were accepted, and they were all along ready and willing to discharge their duties in all fitness of things they were entitled to salary till that dated.

7. The further ground is that as the establishment of the Corporation was not declared ''Closed'' under the Industrial Disputes Act, and the services of the Petitioners had not been terminated, it would be presumed that they were in employment and thus entitled to all benefits flowing out of that.

8. After receiving notice, a counter-affidavit has been filed by the Corporation mainly taking the stand that the belated applications filed by the Petitioners with regard to their salary for the period from 1998 to 2001 cannot be entertained in these Writ Petitions filed in the year 2007. Further, as the Corporation became defunct since 1998 and the Petitioners had no duty to discharge, they were not entitled to any salary for that period, and more so, all the dues as per VRS having already been disbursed to the Petitioners.

9. On the other hand the Corporation has alleged that due to non-discharging

their duties and as they failed to take care of the properties of the Corporation, the same got damaged to some extent and the Petitioners were responsible for the loss caused to the Corporation.

10. A rejoinder has been filed by the Petitioners repudiating the aforesaid averments/allegations made in the counter-affidavit of the Corporation. Referring to the order passed by this Court in OJC No. 14611 /97, it has been averred by the Petitioners that in the said Writ application this Court while refusing to interfere with the decision of Government to close down the Corporation had directed the Corporation to provide alternative employment to its workers and to disburse their arrear dues or salary, etc. payable under law. In spite of such direction as the arrear salary was not paid, the Petitioners have reiterated their claim for arrear salary for the aforesaid period. The averment of the Corporation in its counter-affidavit that it was in a defunct state from 1998 to 2001 has been repudiated by the Petitioners.

11. In course of hearing, Mr. Tripathy, Learned Counsel for the Petitioners, strenuously took this Court through different provisions of the VRS sponsored by the Corporation. Clause 4.1 thereof stipulates that an employee who was to be allowed retire voluntarily by the competent authority would be entitled to ex gratia payment at the rate of 21 days'' salary (pay + DA) last drawn by him for every completed year of service. The said compensation would be in addition to Gratuity and other statutory dues admissible on the date of retirement. The Scheme did not breathe a word about defunct state of the Corporation from 1998 till 2001. A reading of the entire Scheme unerringly reveals that the Corporation and the State Government took the decision to pay the dues of the employees till their applications for voluntary retirement were accepted. Thus the Petitioners were entitled to salary as well as other benefits flowing out of the Scheme.

12. Mr. Mohanty, Learned Counsel for the Corporation, on the other hand forcefully submitted that the Writ Petitions filed so many years after are not maintainable. He further submitted that the Petitioners having not turned up to duty from February, 1998 to February, 2001 are not entitled to any salary for that period.

13. This Court heard the Learned Counsel for the parties at length and perused the materials on record. There is no dispute that the Petitioners were employees of the Corporation. With regard to their retirement under VRS, the Notice dated 11-10-1993 (Annexure-2) issued by the Managing Director of the Corporation reads as follows:

The Board of Directors in their 64th meeting held on 28-9-99 have been pleased to adopt Voluntary Retirement Scheme for the regular employees of the Corporation with immediate effect. The conditions of the Scheme and the prescribed application form is appended herewith for information of the employees and wide circulation. The interested employees may submit their application in the prescribed pro forma by 15th Nov, 99 positively for consideration.

14. Thus it is apparent from the Notice that the Scheme applied only to those persons who were regular employees in the year 1999 and were continuing to be in the pay roll of the Corporation. The provisions of the Scheme also reveal that only regular employees of the Corporation were eligible to apply for voluntary retirement. The Scheme also provided for verification of the applications so as to arrive at the conclusion whether an applicant was otherwise eligible to so retire or not.

15. In the case at hand, the documents cumulatively reveal that by Order Dated 27-1-2001 of the Corporation, the request of the Petitioners for voluntary retirement was accepted with effect from 28th February, 2001. They were also directed by the said letter to hand over charge, if any, by 15th February, 2001. Thus there can be no controversy that the Petitioners continued as employees of the Corporation till February, 2001. Fact remains, due to stringent financial condition the Corporation became defunct from 1998 and the State Government took a decision for its closure.

16. This Court while disposing of OJC No. 14611 of 1997 without interfering with the said decision of the State Government directed the Corporation to pay the arrear dues of the employees towards their salary, etc. which were payable under law.

17. Law is well settled that an employee as long as he continues to be in service will be entitled to his salary and other benefits unless of course any order has been passed against him in any disciplinary proceeding. According to the Petitioners, they served the Corporation to the best of their ability as along as it functioned and were ready and willing to continue to serve. Thus the normal rule of ''no work no pay'' could not be applied in their cases.

18. In the case of Union of India Vs. K.V. Jankiraman, etc. etc., , it was held:

The normal rule of ''no work no pay is not applicable to such cases where the employee who is willing to work, is kept away from work by the authorities for no fault of his. It is not a case where the employee remained away from work for his own reasons although the work is offered to him.

19. Perusal of the counter-affidavit does not indicate that the Petitioners were at any time assigned work and they were not willing to do that. Even otherwise, it is not the case of the Corporation that due to disobedience or non-attendance in duty any action was ever taken against the Petitioners or even a show-cause notice was issued to them. In absence of such averments, it has to be presumed that the Petitioners were always willing to serve the Corporation. That apart, in the rejoinder to the counter-affidavit the Petitioners have specifically averred that some other employees of the Corporation similarly placed like them were paid arrear salary up to 28th February, 2001 on acceptance of their applications for voluntary retirement. Thus denial of similar entitlement to the Petitioner

amounted to discrimination and was in violation of Articles 14 and 16 of the Constitution.

20. This Court is conscious of the fact that the Corporation is not in a financial position to pay the arrear salary of the Petitioners as claimed by them.

21. In the case of Kapila Hingorani Vs. State of Bihar, , it was held that the Government Companies/PSUs being ''States'' would be constitutionally liable to respect life and liberty of all persons in terms of Article 21 of the Constitution. They therefore must do so in cases of their own employees. The State in question has made itself liable to mitigate the sufferings of the employees of the PSUs or Government Companies.

22. Thus, according to the Supreme Court, if a State owned Corporation is not financially sound to pay arrear salary of any of its retired employees, the State owes a duty to make such payment. But to the present cases, the State being not a party, no effective orders can be passed. This Court therefore disposes of the Writ Petitions directing the Petitioners to file appropriate representation before the State Government with regard to payment of their arrear salary for the period as stated above. In that event, this Court directs, the State Government shall consider the same strictly in consonance with the ratio of the decision of the Supreme Court in Kapila Hingorani case (supra) or any other case covering the field and pass necessary orders. The exercise will be completed within a period of six months from the date of filing of the representation by each of the Petitioners.

