

(2013) 11 P&H CK 0225
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 7168 of 2001

Ashok Huria

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 19-11-2013

Acts Referred:

Citation : (2014) 2 SCT 472

Hon'ble Judges : Ajay Tewari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Tewari, J.—By this petition the petitioner has challenged the action of the respondents in not counting his service of 11 years and 5 months in Hindustan Zinc Limited, Udaipur (H.Z.L.) while computing the pension payable to him when he sought voluntary retirement from the Hindustan Machine Tools Limited, Pinjore (H.M.T.). The undisputed facts are that while working in H.Z.L. The petitioner applied for the post of Engineer in H.M.T. through proper channel. He was selected, resigned from H.Z.L. and joined in H.M.T. The gratuity amount payable to him was received by him in cash while the amount to his credit in provident fund account was transferred to H.M.T. In the year 2000, the Government of India promulgated the Voluntary Retirement Scheme (V.R.S.) which was applicable to all the Public Sector Undertakings including H.M.T. under which one of the conditions was that an employee must have 10 years service and at least 40 years of age to be eligible to apply for voluntary retirement under the V.R.S. The petitioner applied for V.R.S. and mentioned in the application against the column of service that he had more than 20 years of service in the H.M.T. and 11 years and 5 months of service in the H.Z.L. His request for V.R.S. was accepted and he was retired on 30.11.2000. After retirement he represented that while calculating the computation to be paid to him his previous service in the H.Z.L. was not counted and he prayed that the benefit thereof may be granted to him. The prayer having been rejected by letter dated 15.01.2001

(Annexure P-9) he filed the instant writ petition.

2. The controversy has to be determined in the light of Clause VI(b) of the said Scheme which is quoted herein below:-

VI. General Conditions:-

b). When an employee moves from one PSU to another with a mutual consent of both the PSUs, where the application was forwarded through proper channel, and the various statutory liabilities such as PF, Gratuity, Earned Leave, half pay leave etc., were accepted by the borrowing PSU, the service rendered in the previous PSU would be taken into account for the purpose of determination of VRS ex-gratia under the scheme. If an individual does not satisfy the above condition, then his service in the borrowing PSU would be treated as De-novo and the previous service in the lending PSU would not be counted for the purpose of VRS compensation.

The contention of learned counsel for the petitioner is that since the petitioner had applied through proper channel and his provident fund was duly transferred he would be covered by the said clause.

3. On the contrary, the assertion of learned senior counsel for the respondents No. 2 to 4 is that key words are "borrowing PSU" and "lending PSU". As per him, the benefit of previous service in another PSU could only be granted if an employee was sent on deputation to another PSU and the mere fact that the petitioner had applied through proper channel or that his provident fund was transferred would not be determinative.

4. In my opinion, the argument of learned senior counsel for the respondents No. 2 to 4 have to prevail. A perusal of Clause VI(b) of the said Scheme reveals that a host of conditions have been imposed before service under one PSU can be counted for benefits under another PSU and all of them have to be satisfied individually. It is not a case where these conditions have to be satisfied in the alternative. For instance, merely because the application was made through proper channel would not mean that the other conditions have been eroded. Thus, unless the petitioner could show that he had satisfied all the conditions he would not be entitled to the benefit claimed.

5. The second argument raised by the learned counsel for the petitioner is that Clause VII (wrongly numbered as VIII) of the said Scheme states if the Committee does not recommend voluntary retirement it has to indicate reasons for its denial. As per the learned counsel, neither the Recommending Committee gave any reasons for denying the benefit of the previous service nor was this fact mentioned in the order permitting him to retire. He further states that once the respondent-H.M.T. had unconditionally accepted his request it cannot now turn around and impose conditions on the acceptance.

6. Learned senior counsel for the respondents No. 2 to 4 has argued that in the first instance the Committee was to give reasons only if the request of voluntary

retirement has to be refused. In the present case, the request of voluntary retirement having been accepted by the Committee the job of computing the benefits was to be done by the Accounts branch and not by the Committee. The second argument raised by the learned senior counsel is that what would determine the rights of the petitioner is the contents of the Scheme and not the acceptance or rejection thereof. If a particular employee is entitled to something then he has to be granted the relief even if the Committee or the competent authority has rejected it and if an employee is not entitled to a particular relief he cannot be granted the same merely because the Committee or the competent authority did not specifically refuse it at the first instance. I find weight in these arguments also.

7. In my opinion, the petitioner not having been established his rights to the relief claimed, the fact that it was not refused at the first instance would not render him eligible to claim it. Resultantly, no relief can be granted to the petitioner.

8. Petition is dismissed. Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.