

(2003) 12 PAT CK 0023
In the Patna High Court
Case No : C.W.J.C. No. 10994 of 2003

Balram Vishwakarma and Others

APPELLANT

Vs

Acting General Manager, Hindustan Fertilizer Corporation
Limited and Others

RESPONDENT

Date of Decision : 02-12-2003

Acts Referred:

Citation : (2004) 2 PLJR 210

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Advocate : R.N. Mukhopadhyaya, for the Appellant; K.N. Gupta, for Corporation,
for the Respondent

Final Decision : Dismissed

Judgement

R.S. Garg, J.—Heard learned Counsel for the parties.

2. As these three, writ applications raise common question of law and fact and have been argued together, these are disposed of by this common order.

3. Each of the Petitioner worked as an employee with Hindustan Fertilizer Corporation Limited. The Hindustan Fertilizer Corporation Limited and other Corporations owned and managed by the Union of India suffered a grate deal therefore, the Union of India through its Corporations floated the scheme of voluntary retirement schemes/voluntary separation schemes. Annexure-1 in C.W.J.C No. 10994/2003 is the Circular No. 68 dated 19.9.2002 providing for VSS as per the approved scheme circulated by the Department of Public Enterprises vide O.M. No. 2(32)/97-DPE (WC) dated 5.5.2000. The scheme provided that the same would be in operation for the period of three months with effect from 21st September, 2002 to 20th October, 2002. All the employees were obliged to opt for voluntary separation under the scheme during this period. Workers not availing the offer of voluntary separation during this period were to be paid retrenchment compensation under Industrial Disputes Act, 1947 after

obtaining permission from the competent authority. The scheme further provided that the officers not availing of the offer of voluntary separation shall be governed by the terms of their appointment. Undisputedly the voluntary separation scheme (VSS) was much lucrative *than the amount of compensation to be paid on retrenchment under the Industrial Disputes Act, therefore, not only the Petitioners but number of the others opted for VSS. Paragraph 4.2.1 says that the compensation under VSS will consist of ex-gratia payment equivalent, to 45 days emolument (basic pay+D.A.) 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. Paragraph 4.2.2 of the scheme further provided that those who have completed not less than 30 years of service will be eligible for a maximum of 60 months salary as compensation. It is also provided that this would be subject to the amount not exceeding the salary/wages for the balance period of service left at the time of voluntary separation. It appears that because of some confusion the Department/ the Corporation was not in a position to decide the entitlement of the persons/ employees opting for VSS. On 31.12.2002 vide Annexure-3 the Chief Manager (PIR) of the Corporation informed that Clause 5(ii) of DPE OM dated 5.5.2000 on VRS/VSS has been examined and a clarification has been sought for from the Government. He observed that the calculation for ex-gratia under VSS is to be made on the basis of 45 days for each completed year of service even for the employees who have completed not less than 30 years of service. He also observed that this would be the subject to amount not exceeding salary/wages for the balance period of service left (at the rate of monthly salary/wages at the time of VSS).

4. The Petitioners submit that the Respondents while issuing these clarifications are trying to change the VSS (Voluntary Separation Scheme) itself and this can not be allowed. According to them the persons who have completed not less than 30 years of service would be eligible for a maximum of 60 months salary as compensation and if the letter as contained in Annexure-3 is applied to the persons who have completed 30 years service then their entitlement would fall down to 45 months only. Because on the strength of the calculation of 45 days for one completed year, for the total period of 30 years the entitlement would be 45 months. It is submitted by the Petitioners that the Respondents are not entitled to change the scheme after alluring their employees to opt for the VSS.

5. Today a supplementary affidavit has been filed in C.W.J.C. No. 12100 of 2003, reliance is also placed on Annexure-9 series of the said writ application. The Respondents have contended that Clause 4.2.1 can not be read in isolation of Clause 4.2.2 of the said scheme. According to them Clause 4.2.1 and Clause 4.2.2 are to be read in juxtaposition and only then an intelligible answer is to be derived. Along with the counter they have filed a copy of the letter dated 27.1.2003 issued by the Government of India, Ministry of Chemicals and Fertilizers to submit that the Central Government/Union of India has decided the matter and has observed that in what particular manner the computation of the

VR compensation for employees having put in 30 years or more service have to be decided.

6. In C.W.J.C. No. 12100/2003 Annexure-9 refers to a letter of the Chief Engineer wherein he has given the calculations on strength of which the compensation is to be decided.

7. It would be necessary even at this stage to refer to a judgment of the Supreme Court in the matter of A.K. Bindal v. Union of India reported in 2003 LabIC 2140. In the said matter the questions before the Supreme Court was that whether a particular person would be entitled to the compensation after revision of his pay-scale or on the strength of the pay-scale which he was getting at the time of his retirement/voluntary retirement. The Supreme Court in the said matter referred to the creation of the Corporations known as Hindustan Fertilizer and Chemical Corporation Limited and Sindri Fertilizers and Chemicals Corporation Limited. It also looked into the reasons and grounds which lead to the sickness of these two Corporations and to their ultimate closure. The Supreme Court observed that in a given case if a person is entitled to 45 days emoluments as ex-gratia payment for each completed year of service then the said payment is also a burden to exchequer. The Supreme Court also observed that in a given case the closure of the Corporation/Company should not be a windfall in favour of the employees, who are opting for the separation/retirement schemes. Paragraphs 32, 33 and 34 of the judgment throw much light on the scheme and about acceptability of the schemes. According to the Supreme Court the main purpose of paying this compensation/this amount was to bring out a complete cessation of the jural relationship between the employer and the employee. According to the Supreme Court 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, when his erstwhile employer including making any claim with regard to enhancement of his pay-scale for the earlier period. In the present matter it is to be seen that paragraph/Clause 4.2.1 says that the compensation under VSS will consist of ex-gratia payment equivalent to 45 days emoluments for each completed year. It can not be disputed by anybody that in each completed year 45 days emoluments (basic pay+D.A.) would be payable to the employee opting for VSS.

8. If paragraph 4.2.2 is read in isolation it would mean that a person who has completed the services for 30 years or more would be eligible for a maximum of 60 months salary. If the argument raised by the Petitioners is accepted then any person who has completed 30 years or more services would be entitled to 60 months salary as compensation for 30 years meaning thereby two months or 60 days salary for each completed year. If this interpretation is accepted then Clause 4.2.1 would be destructive of 4.2.2. The golden rule of interpretation is of harmonious construction. Nothing is to be spelt out, nothing is to be excluded and nothing is to be added. If observing this rule a proper interpretation can be

given to the words employed either in the Act, Statute and in the Scheme then such interpretation would be beneficial to both the parties.

9. If both these clauses are read together, it would simply mean that the compensation under VSS will consist of ex-gratia payment equivalent to 45 days emolument for each completed year. If the person has worked for 30 years then he would be entitled to 45 months emoluments and this limit in maximum would be 60 months. For earning 60 months the man has to work for 40 years. If a man works for 40 years then obviously on the date of the scheme of retirement either he would be retiring or would be on the verge of retirement. The policy as contained in 4.2.1 says that he would be entitled to 45 days emoluments 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. The voluntary retirement scheme/voluntary separation scheme is a boon, which is known as golden handshake in the commercial/business world. The man asks his employee to have the ex-gratia compensation and walk out with full satisfaction and with all your emoluments to which you are entitled. But that would not become a windfall. In a given case an employee left with two years service would not be entitled for five years compensation. In such a case if five years compensation or 60 months salary is paid to him ex-gratia as compensation then the same would be unjust and would lead to a chaotic condition.

10. Neither Clause 4.2.1 nor Clause 4.2.2 are to be read separately. They are part of paragraph 4.2 which relates to Department of Heavy Industries Manual. In the opinion of this Court the harmonious construction only would be that for each completed year the employee would be entitled to 45 days emoluments (basic pay+D.A.) and at the very same time the capping limit would be 60 months which would further be governed by Clause 5.2 and the other clauses which provide that the compensation would not exceed the amount which would be payable to the employee had he continued in the services.

11. I am unable to accept the contentions raised by the Petitioners. The Respondents are justified in interpreting these two clauses after reading the same in juxtaposition. All the three writ applications are dismissed.