
(2014) 04 AHC CK 0331

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 76489 of 2011

Bharat Pumps and Compressors Limited

APPELLANT

Vs

Anand Kumar

RESPONDENT

Date of Decision : 25-04-2014

Acts Referred:

Payment of Gratuity Act, 1972 — Section 2(q), 2(r)

Citation : (2014) 4 ADJ 708 : (2015) 1 AWC 909 : (2014) 141 FLR 990 : (2014) 3 UPLBEC 2012

Hon'ble Judges : Rajan Roy, J;Amreshwar Pratap Sahi, J

Bench : Division Bench

Advocate : P.K. Sinha and Naveen Sinha, Advocate for the Appellant; Sandeep Singh, Jitendra Kumar and S.C, Advocate for the Respondent

Final Decision : Allowed

Judgement

Rajan Roy, J.—Heard Sri Ravi Kant, learned senior counsel assisted by Sri P.K. Sinha, advocate for the petitioner and Sri Chandan Sharma, learned counsel for the contesting respondents. The respondents were employed in the petitioner company, i.e. Bharat Pumps and Compressors Limited, which is a Public Sector Undertaking of the Government of India. On 25.6.1999, the Government of India took a decision to revise the pay-scale of Board level and below Board level posts including non-unionised Supervisors in Public Sector Undertakings.

2. As proceedings relating to the petitioner company were pending before the B.I.F.R., i.e. Board for Industrial and Financial Reconstruction, since 1995, as such, the aforesaid decision of the Government of India was not enforced in respect of the employees of the company.

3. In the mean time, on 13.12.2001, a scheme for voluntary retirement was floated by the company, which was extended, from time to time, to reduce excess man-power in the company.

4. Under the Scheme ex gratia payment, calculated on the basis of Pay Revision

1992 was payable to the optees as the Pay Revision 1997 had not been implemented in the company.

5. As the Pay Revision 1997 was not implemented in the company, therefore, under the aforesaid voluntary retirement scheme, the company decided to pay 50% extra ex gratia amount to the optees.

6. On 22.3.2002, the company clarified by means of a circular that the ex gratia payment will be recalculated on the basis of the revised scale of pay in the event of implementation of Pay Revision 1997 and the 50% enhanced ex gratia amount paid would be adjusted upon recalculation of the ex gratia payment referred above.

7. Due to certain turn of events, involving writing off of planned and non-planned loans, interest etc. as well as budgetary and financial support provided to the company, the B.I.F.R. in its proceedings held on 6.2.2007 held that the company was no longer a sick industrial company.

8. In view of the relaxation granted by the Government of India, the company started earning profits from the year 2006 and onwards. Consequently, it recommended to the Government of India for approving the implementation of Pay Revision 1997 in respect of its employees, accordingly, the same was approved on 19.7.2008.

9. Though, the pay-scales were to be revised w.e.f. 1.1.1997, the actual payment of revised salaries to the employees, in such pay-scales, was to be made w.e.f. 1.4.2008. The payment of arrears was to be considered separately. No budgetary support was to be given by the Government to meet the expenditure towards salary, revision, payment of arrears etc.

10. Consequent to the aforesaid decision, the company issued a circular on 20.7.2008 regarding implementation of the Salary Revision 1997 mentioning the terms and conditions thereof.

11. The respondent No. 3, Sri Shri Kant Shukla retired from service on attaining the age of superannuation. This fact is admitted by the petitioner in paragraph-30 of the writ petition. The other respondents opted for voluntary retirement under the aforesaid scheme much prior to the issuance of the circulars of 19.7.2008 and 20.7.2008. They were not on the rolls of the company as on 20.7.2008.

12. As the respondents believed that they were also entitled to arrears of salary consequent to the aforesaid revision of pay-scales w.e.f. 1.1.1997, they filed an original application bearing O.A. No. 1619 of 2010 seeking following reliefs:

(a) To pass an order directing the respondents to pay entire amount accrued on revision of pay scale with effect from 1.1.1997, as stated in the Office Order dated 20.7.2008 till the date of superannuation/V.R.S. alongwith interest @ 18% per annum expeditiously within a stipulated time, which is to be framed by the

Hon''ble Tribunal.

(b) To issue any other order or direction as this Hon''ble Tribunal may deem fit and proper on the fact and circumstances of the case.

(c) To award cost of this application to the applicant.

13. After exchange of affidavits, the said original application was heard and decided by the Central Administrative Tribunal vide judgment and order dated 8.7.2011.

14. The learned Tribunal took notice of paragraph-13 of the counter-affidavit of the company as also certain letters issued by its officers to the applicants therein (respondents herein) and allowed the original application vide judgment dated 8.7.2011.

15. Being aggrieved, the petitioner filed review petition seeking review of the judgment and order dated 8.7.2011. The said review petition was also dismissed by the learned Tribunal on 15.11.2011.

16. In the aforesaid factual background, the instant writ petition has been filed challenging the judgment and order dated 8.7.2011 as also the judgment and order dated 5.11.2011, referred above.

17. The contention of the learned senior counsel appearing on behalf of the petitioner is that as per the circular dated 20.7.2008, the respondents, who had opted for voluntary retirement, were not entitled to the arrears of salary based on revision of pay-scales w.e.f. 1997. They were only entitled to the recalculation of the ex gratia amount paid to them, based on such Pay Revision. As per the letter of the company dated 22.3.2002, the company had already paid 50% enhanced ex gratia amount to them under the voluntary retirement scheme considering the fact that the said amount had to be granted on the basis of the Pay Revision 1992 as the Pay Revision 1997 had not been implemented by then.

18. He contended that having opted for voluntary retirement and having taken the benefits under the scheme of voluntary retirement prior to issuance of the circular dated 20.7.2008, it was not open for them to turn around and claim arrears of salary consequent to Pay Revision 1997 w.e.f. 1997. The respondents were not covered by the circular dated 20.7.2008 as they were not on the roll of the company on the date of its issuance and also as they did not fall in the category of retired employees as mentioned therein in view of the pronouncement of the Supreme Court in a similar matter pertaining to another company in HEC Voluntary Retd. Emps. Welfare Soc. and Another Vs. Heavy Engineering Corporation Ltd. and Others, . Moreover, the arrears of salary was payable only w.e.f. 1.4.2008. In the event such benefit is extended to the respondents, the company would be put to a great financial disadvantage and again slip into loss.

19. The learned counsel for respondents, on the other hand, submitted that the

petitioner's counter-affidavit filed before the Tribunal in O.A. No. 1619 of 2011 narrated a different story as it was categorically stated in paragraph-13 thereof that respondents applicants' case would also be considered without any discrimination and the wage revision arrears, if any, for the aforesaid period i.e. 1.1.1997 till 30.11.2002 would be made to the applicants as well as all eligible employees subject to availability of fund with approval of the competent authority. Various letters were issued to the respondents, who were not on the same lines and even certain calculations were made in pursuance thereof for adjusting the ex gratia amount towards the arrears of wages to which they were entitled.

20. The learned counsel further submitted that the judgment rendered in the case of Hec Voluntary Retired Employees Welfare Society was not applicable in the instant case as the language of the circular in the two cases was different. The word used therein was "superannuation" whereas in the instant case the word used is "retirement", which includes voluntary retirement. No valid classification can be made between "retirees" generally and the "voluntary retirees" for the purposes of Pay Revision.

21. The learned counsel for respondents has relied upon the definition of superannuation and retirement as contained in Section 2(q) and 2(r) of the Gratuity Act, 1972. It was submitted that the learned Tribunal had rightly allowed the original application and rejected the review petition of the petitioner.

22. After hearing the learned counsel for the parties and perusing the record, we are of the view that the moot point involved in the instant case is regarding the entitlement of the respondents to arrears of salary consequent to the Revision of Pay-scales w.e.f. 1.1.1997.

23. The answer to the aforesaid issue hinges upon the language of the circular dated 20.7.2008 and the meaning to be assigned to the word "retirement" as used in paragraph-3 thereof, i.e. whether it includes voluntary retirement or not.

24. The relevant extract of the circular dated 20.7.2008 is quoted hereinbelow:

3. All Executive employees who were on the rolls of the Company as on 1.1.1997 and also those who have subsequently joined services in the company and continue to be on the rolls of the company on the date of issue of this order will be entitled for the benefits of revision. The Executive Employees who have ceased to be in the services of the company on or after 1.1.1997 on account of resignation, retirement or death will also be entitled for the benefits of revision but on pro-rata basis, wherever due.

However the benefits of revision will not be admissible to such employees whose services in the company came to an end on the following grounds:

(a) Dismissal or removal from service.

(b) Resignation without notice or permission or proper relief.

(c) Resignation where disciplinary action for mis-conduct involving moral turpitude had already been initiated and was in progress.

(d) Resignation without notice, where bond liability had not been discharged.

25. Paragraph-3 of the circular, as quoted above, contains two parts. In the first part, such executive employees, who were on the rolls of the company as on 1.1.1997 and also those, who had subsequently joined services in the company and continued to be on the rolls of the company on the date of issuance of the circular dated 20.7.2008 have been held to be entitled for the benefits of pay revision.

26. The respondents herein, though, they were on the rolls of the company on 1.1.1997, undisputedly, were not on the rolls of the company on the date of issuance of the circular, i.e. 20.7.2008, therefore, none of them was covered by the first part of paragraph-3 of the said circular.

27. The respondents could be said to be covered by the second part of paragraph-3 provided they are considered at par with retired employees.

28. The word "retirement" generally connotes cessation of one's employment or career especially upon reaching a certain age. Retirement may be voluntary or involuntary.

29. However, the word "retirement" as used in the circular relating to implementation of the Pay Revision 1997 w.e.f. 1.1.1997 is to be read and understood in the context, in which it has been used keeping in mind the object and purpose of such revision, as also the scheme of voluntary retirement. It is not to be read and understood in general terms.

30. The voluntary retirement scheme was introduced in the year 2001, when the Pay Revision 1997 had not been implemented in the company on account of its bad financial condition and the proceedings pending before the B.I.F.R. A circular dated 22.3.2002 had been issued by the company clarifying that ex gratia payment as paid to the voluntary retirees consequent to their retirement based on the pay-scales of 1992 would be recalculated on the basis of the revised pay-scales as per Pay Revision 1997, as and when the latter was implemented in the company. It also stated that the 50% enhanced ex gratia amount paid to them would be adjusted upon such recalculation but there was no mention whatsoever in the said circular that such voluntary retirees would also be entitled to the arrears of salary consequent to Pay Revision 1997. In fact such retirees were given 50% enhanced ex gratia amount for the very reason that the ex gratia amount payable to them was being calculated on the basis of Pay Revision 1992 and not 1997. Thus, they were given an enhanced amount, which was not to be granted ordinarily.

31. It goes without saying that employer takes into account financial implications while introducing a voluntary retirement scheme. In this case, this factor was all the more relevant for the reason that the petitioner company, i.e. employer, was

suffering huge financial losses on account of which proceedings were going on before the B.I.F.R. and it had been declared as a sick industrial company.

32. The voluntary retirement scheme was introduced to reduce excess manpower in the company obviously with a view to revive and resurrect it from its bad financial condition. The Pay Revision 1997 was implemented in the year 2008 only after the financial condition improved with the financial support extended to it by various bodies.

33. Even while taking the decision for implementation of Pay Revision 1997, the Government of India as well as the petitioner company must have evaluated its financial capacity to bear the burden of such Pay Revision.

34. Accordingly, the circular dated 20.7.2008 was issued in the aforesaid factual background.

35. Once the respondents opted to retire voluntarily in terms of the scheme of voluntary retirement, which only promised ex gratia payment including 50% enhancement in respect thereof subject to recalculation of the same in the event of implementation of Pay Revision 1997, no further benefits such as arrears of salary could be claimed by them unless they were entitled under any statutory provision or a policy of the company itself.

36. The word "retirement" as used in paragraph-3 thereof has to be understood against the aforesaid backdrop keeping in mind the object and purpose of the voluntary retirement scheme as also the Pay Revision 1997 and the context in which the said word has been used.

37. The voluntary retirees including the respondents, who opted for voluntary retirement obviously took into consideration the future benefits, which they would receive under the scheme. Under the scheme, there was no promise nor any acceptance that they would be given arrears of salary in the event the pay-scales were revised w.e.f. 1.1.1997. The petitioner company never intended to extend such benefits to the voluntary retirees. The respondents, who retired voluntarily before attaining the age of superannuation, were not entitled to any post retirement benefits nor pension but only to ex gratia amount, therefore, they distinctly formed a different class vis-a-vis the retirees, who retired on attaining the age of superannuation. There is sufficient rational basis for such distinction.

38. In similar circumstances, a similar circular was considered by the Supreme Court in the case of Hec Voluntary Retired Employees Welfare Society. Paras-3.2 and 3.3 of the circular, which was considered in the aforesaid case read as under:

3.2 The revised Scales of Pay shall also be applicable on a pro-rata basis to only those Executives, Non-Unionised Supervisors and Employees in equivalent salary grades who were on the rolls of the Corporation as on 1.1.1992 but have subsequently ceased to be in service of the Corporation on account of superannuation or death.

3.3 Benefits of revision of Scales of Pay shall not be applicable to those Executives, Non Unionised Supervisors and Employees in equivalent Salary Grades of the Corporation who were on the rolls of the Corporation as on 1.1.1992 but have subsequently left the services of the Corporation for the following reasons:

3.3.1. Dismissal;

3.3.2. Discharge;

3.3.3. Resignation without permission;

3.3.4. Resignation in cases where disciplinary action for misconduct involving moral turpitude has been initiated or contemplated.

In the aforesaid case their Lordships of the Supreme Court held as under:

16. The question which arises for our consideration is whether in view of the fact that the employees who had opted for voluntary retirement having not been excluded from the purview of Clause 3.3 of the said Circular No. 5/97, would be treated to be included or the benefits thereof would be available to only such employees who come within the purview of Clause 3.2 thereof?

17. Construction of the aforementioned provisions undoubtedly would depend upon the purport and object of the voluntary retirement scheme vis-a-vis the retrospective effect given to the revision of pay in terms of the aforementioned circular dated 9th October, 1997.

18. The voluntary retirement scheme speaks of a package. One either takes it or rejects it While offering to opt for the same, presumably the employee takes into consideration the future implication also.

19. It is not in dispute that the effect of such voluntary retirement scheme is cessation of jural relationship between the employer and the employee. Once an employee opts to retire voluntarily, in terms of the contract he cannot raise a claim for a higher salary unless by reason of a statute he becomes entitled thereto. He may also become entitled thereto even if a policy in that behalf is formulated by the Company.

20. We have indicated hereinbefore that before floating such a scheme both the employer as also the employee take into account financial implications in relation thereto. When an invitation to offer is floated by reason of such a scheme, the employer must have carried out exercises as regard the financial implication thereof. If a large number of employees opt therefore, having regard to the financial constraints an employer may not accept offers of a number of employees and may confine the same to only a section of optees. Similarly when an employer accepts the recommendations of a Pay Revision Committee, having regard to the financial implications thereof it may accept or reject the whole or a part of it. The question of inclusion of employees who form a special class by themselves, would, thus, depend upon the object and purport thereof. The

appellants herein do not fall either in clauses 3.2 or 3.3 expressly. They would be treated to be included in clause 3.2, provided they are considered at par with superannuated employee. They would be excluded if they are treated to be discharged employee.

21. We have noticed that admittedly thousands of employees had opted for voluntary retirement during the period in question. They indisputably form a distinct and different class. Having given our anxious consideration thereto, we are of the opinion that neither they are discharged employees nor are superannuated employees. The expression "superannuation" connotes a distinct meaning. It ordinarily means, unless otherwise provided for in the statute, that not only he reaches the age of superannuation prescribed therefore, but also becomes entitled to the retrial benefits thereof including pension. "Voluntary retirement" could have fallen within the afore-mentioned expression, provided it was so stated expressly in the scheme.

22. Financial considerations are, thus, a relevant factor both for floating a scheme of voluntary retirement as well as for revision of pay. Those employees who opted for voluntary retirement, make a planning for the future. At the time of giving option, they know where they stand. At that point of time they did not anticipate that they would get the benefit of revision in the scales of pay. They prepared themselves to contract out of the jural relationship by resorting to "golden handshake". They are bound by there own act. The parties are bound by the terms of contract of voluntary retirement. We have noticed hereinbefore that unless a statute or statutory provision interdict, the relationship between the parties to act pursuant to or in furtherance of the voluntary retirement scheme, is governed by contract. By such contract, they can opt out for such other terms and conditions as may be agreed upon. In this case the terms and conditions of the contract are not governed by a statute or statutory rules.

23. The question came for consideration before the Division Bench of this Court in A.K. Bindal and Another Vs. Union of India (UOI) and Others, , wherein this Court took notice of the fact that in implementation of such a scheme a considerable amount has been paid to the employee ex gratia besides the terminal benefits in case he opts therefore. It has further been noticed that the payment of compensation is granted not for doing any work or rendition of service and in lie of his leaving the services of the company.

[See also Officers and Supervisors of I.D.P.L. Vs. Chairman and M.D. I.D.P.L. and Others,]

24. In State of A.P. and Another Vs. A.P. Pensioners Association and Others, , this Court categorically held that financial implication is a relevant criteria for the State Government to determine as to what benefits can be granted pursuant to or in furtherance of the recommendations of a Pay Revision Committee. A fortiori while taking that factor into account, an employer indisputably would also take into consideration the number of employees to whom such benefit can be

extended.

25. It will also be germane for such a purpose to take into consideration the question as to whether those who are no longer on the rolls of the company should be given the benefit thereof.

26. Considering the matter from that context, we are of the opinion that it cannot be said that the Company intended to extend the said benefits to those who had opted for voluntary retirement. Clause 3.2 of the circular includes only those who were on the rolls of the Corporation as on 1.1.1992, as also those who ceased to be in service on that date on account of superannuation or death. The appellants do not come in the said category. In view of the fact that they have not been expressly included within the purview thereof, we are of the opinion that although they have not been excluded by clause 3.3, they would be deemed to be automatically excluded.

39. A perusal of the aforesaid judgment reveals that a clear distinction has been made between "superannuation" and "voluntary retirement" and consequently, it was held therein that the voluntary retirees were not entitled to the benefit of arrears of Pay Revision.

40. In the instant case, instead of the word "superannuation", the word "retirement" has been used in para-3 of the circular dated 20.7.2008, but that does not make any difference to the outcome of the case. The word "retirement" used in the context of this case is a synonym for the word "superannuation". The instant case is covered on all its fours by the aforesaid pronouncement of the Supreme Court.

41. The reliance placed by the learned counsel for respondents upon Section 2(q) and 2(r) of the Gratuity Act is misconceived. Said definitions are only applicable for the purposes of the Gratuity Act and cannot be applied in the instant case.

42. In view of the above discussion, we are of the view that the word "retirement" used in paragraph-3 referred above, in the context in which it has been used, has a distinct meaning and does not include "voluntary retirement".

43. As the respondent No. 3, Sri Shri Kant Shukla did not opt for voluntary retirement but retired from service of the petitioner company on attaining the age of superannuation, as is admitted by the petitioner in paragraph-30 of the writ petition, therefore, the impugned judgment of the Tribunal in so far as it relates to the respondent No. 3 herein and directs the petitioner herein to calculate and pay the admissible amount of arrears of enhanced pay in terms of the office order dated 20.7.2008 does not suffer from any error and does not require any interference.

44. Before parting, we would like to observe that the circular dated 20.7.2008 was on the record of the Tribunal as part of the original application but was not considered by it resulting in the impugned judgment dated 8.7.2011. It appears that the Tribunal was misled by the incorrect and incomplete averments made by

the petitioner herein (respondent before the Tribunal) in its counter-affidavit nevertheless it ought to have considered the circular dated 20.7.2008. The complete and correct facts were placed before it by means of the review petition, which was dismissed on 15.11.2011.

45. Be that as it may, in view of the dicta of the Supreme Court in Hec Voluntary Retired Employees Welfare Society's case (supra), the respondents, with the exception of respondent No. 3, are not entitled to arrears of salary based on Pay Revision 1997. They are only entitled to recalculation of their ex gratia amount in terms of the circular dated 31.1.2001 and 22.3.2002. The impugned judgments, in respect to them, are, thus, not sustainable. Subject to the above, the impugned judgments are quashed. The writ petition is, accordingly, allowed.