

(2005) 05 DEL CK 0027
In the Delhi High Court
Case No : Writ Petition (C) 308 of 1997

Bisram Singh Verma

APPELLANT

Vs

Balmer Lawrie and Co. Ltd.

RESPONDENT

Date of Decision : 04-05-2005

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2005) 82 DRJ 281

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : Aparana Bhardwaj, for the Appellant; Inderjeet Singh, for the Respondent

Judgement

Swatanter Kumar, J.—The Petitioner Bishram Singh Verma sought voluntary retirement on 22nd December, 1992. This application of the Petitioner for voluntary retirement was accepted by the Respondent on 18th January, 1994. In the order of acceptance which was communicated to the Petitioner inter alias it was stated that "superannuating benefits will be applicable to you from the date of notional retirement viz. 31st March, 1995". In furtherance to this letter the Petitioner was relieved from his duties which was accepted by him. The Petitioner in normal course would have retired on 1st April, 1995. Prior thereto the Petitioner moved an application to the Respondents for grant of retirement benefits including pension to the Petitioner. This letter was sent by the Petitioner to the Respondents on 23rd December, 1994. Vide letter dated 22nd February, 1995 this request of the Petitioner was declined and the letter dated 18th January, 1994 was clarified by the Respondents. It will be useful to refer to the contents of this letter which have been annexed to the Writ Petition as Annexure P-3.

"Kindly refer to our letter Ref. CPD/VR/02/ESV/M-0349 dated 18th January, 1994, accepting your VR application and releasing you from the service of the company at the close of business hours on 31st January, 1994.

Since you have not completed 15 years of service, you will not be entitled to any pension under the company's superannuating Benefit Fund Scheme, but will be entitled to a refund of your own contribution (fixed i.e. percentage of salary) without any stances Therefore, clause (ii) at page 1 of our above letter will stand modified as follows:-

"(ii) superannuating benefit will be payable to you after 21st January, 1994, upon receipt of an application from you as per format enclosed."

We sincerely regret for the inconvenience caused.

Thanking You,

Yours faithfully

for Balmer Lawire & CO. Ltd.,"

2. The challenge in the present writ petition under Article 226 of the Constitution of India is to the legality and correctness of this letter. The contention raised is that keeping in view the voluntary retirement scheme which was made effective by the Respondents on 8th October, 1992 read in conjunction with the provisions of the superannuating Scheme started by the Respondents on 1st January, 1988 the Petitioner would be entitled to get the pensionary benefits. It is further averred that the petitioner will be entitled to get the benefits even on the equitable principles of estoppel. Upon notice the Respondents have opposed the prayer and they have taken preliminary objection in regard to maintainability, territorial jurisdiction of this Court as well as contested the case on merits stating that the Petitioner does not satisfy with the requirements of the relevant rules. As such the petitioner cannot get any pension.

3. The first preliminary objection raised in this writ petition is that the Respondent Company is not amenable to writ jurisdiction of this Court under Article 226 of the Constitution of India inasmuch as it is not a State within the meaning and ambit of Article 12 of the Constitution of India. However, in view of the judgment of a Division Bench of Allahabad High Court in the case of Brigadier B.B. Chadha v. Balmer Lawris & Co. Ltd. and Ors. 1989 Lab I C 50 (Allahabad) where the Respondent Company was held to be a State the Petition is not pressed.

4. The said Petition raised on behalf of the Respondents is in regard to the territorial jurisdiction of this Court. It is stated that Petitioner was appointed in the Office of the Respondent Company at Mathura and he served there for all these years and finally sought voluntary retirement in the year 1994 which was granted to him at Mathura as such no cause of action or part thereof has arisen within the territorial jurisdiction of this Court, Therefore, the Writ Petition should be dismissed on this ground alone. In this regard the learned counsel appearing for the Respondent has placed reliance upon the judgments of the Supreme Court in the case of S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, and Oil and Natural Gas Commission Vs. Utpal Kumar

Basu and Others, and even a judgment of this Court in the case of New Delhi General Mazdoor Union v. Govt. of Delhi and Ors. 2000 L L R 770 and in the case of D.L.F. Universal Ltd. v. Govt. of National Capital Territory of Delhi and Ors. 2003 (1) SLJ 77. It is true that for entertainment of a petition under Article 226 of the Constitution of India, cause of action or part thereof should arise within the jurisdiction of this Court. This principle of civil jurisprudence has often been extended to writ jurisdiction as well. But the basic distinction between the codified law and allied principle thereto applicable to the writ jurisdiction, is the principle of equity. If the Court has no jurisdiction then party by consent or otherwise cannot vest jurisdiction in the Court even in cases falling under Article 226 of the Constitution of India. In the present case there is no dispute to the fact that the petitioner was interviewed at Delhi and finally at Mathura and was given his appointment at Mathura. However, after his retirement from service, he was receiving his medical and other benefits from Delhi. The learned Counsel appearing for the Petitioner had placed reliance upon the letter issued by the Respondents on 18th April, 1995 wherein it was stated that the petitioner is settled in Haryana and he would prefer to receive all claims through Delhi Office for which the necessary correspondence have been sent to the Delhi Office.

5. The Petitioner had served at Mathura and had taken his retirement from Mathura itself but all his claims post retirement were payable by Delhi Office and they were to be handled by the Office at Delhi. In terms of the last letter issued by the Respondent to the Petitioner, claims were to be settled by Delhi Office. In these circumstances, it cannot be said that no part of cause of action had arisen within the territorial jurisdiction of this Court.

6. Be as that it may, it will not be otherwise just and fair that when the Court had issued show cause notice under order dated 27.1.1997 the present writ petition should be dismissed on the ground of territorial jurisdiction.

7. There is hardly any dispute on facts of the case. The application of the Petitioner for voluntary retirement was duly accepted by the Respondents on 18th January, 1994. In the said letter as already noticed it was specifically stated that the Petitioner will be entitled to superannuating benefits. However, payment thereof was deferred with effect from 31st March, 1995 which would actually be the date for superannuating of the Petitioner in normal course. The Petitioner was due to retire on 1st April, 1995. The superannuating Benefit Funds Scheme of the Respondent Company was made effective from 1st January, 1988 while the Voluntary Retirement Scheme was given effect from 8th October, 1992. Clause IV(a)(i) of the Scheme is the Clause relied upon by the Respondents to contend that the Petitioner would not be eligible to receive pension as he had not completed 15 years of service as on the date of acceptance of his request for voluntary retirement. In terms of this rule the person has to have 15 years of service as qualifying service and should have contributed to the Scheme for a period of 5 years before taking advantage of the pensionary benefits under the Scheme of the pension. However, there was an exception to the rule which reads

as under :-

"If a member has completed five years of service but he has not completed 15 years of service and if he leave on superannuating on reaching the normal retirement age, the Trustees shall grant him a pension, provided the member has paid at least 5 years contribution."

8. In terms of this exception a person who does not satisfy twin conditions stated in the principle rule would still be entitled to receive pensionary benefits if he was in service for 5 years and was retiring from service on the normal date of his retirement. The request of the petitioner for grant of voluntary retirement was specifically accepted by the Respondents and it was stated he would be entitled to receive the pensionary benefits in terms of letter dated 18th January, 1994. The Respondent appears to have relied upon the provisions of Voluntary Retirement Scheme floated by the Respondents themselves on 8th October, 1992 while accepting the request of the Petitioner for voluntary retirement. Under that scheme the person can be granted voluntary retirement with payment of benefits but actual payment thereof had to be deferred till attainment of the date of retirement of the employee in terms of the service regulations of the Respondent Corporation. It is not in dispute that 58 years was the age of retirement of the Petitioner at the relevant time. The Petitioner had attained the age of 57 years at the time when his request for voluntary retirement was accepted and he could have served for one year more to satisfy the condition carved out in the exception to the Rule IV (a)(i) of the Scheme framed by the Respondent Company itself.

9. Firstly, there is no conflict between the provisions of the Voluntary Retirement Scheme or the superannuating Scheme started by the Respondent Company. They are capable of being given effect to, in their own field and the purpose of implementation of such Scheme being welfare to the interest of the employee. It could not be said that the letter dated 18th January, 1994 was issued under some mistaken impression.

10. In any case on the basis of letter dated 18.1.1994, the Petitioner had acted to his prejudice. He had left the employment on a valid expectation that the retirement dues including the pension would be paid to the Petitioner after 31st March, 1995. The Respondent in the entire year took no steps to correct if there was any error, but they issued the letter dated 22nd February, 1995 only to make an excuse which is not tenable in law. The Petitioner having altered his position to his prejudice on the assurance given by the Respondents, the Respondents cannot be permitted to wriggle out of the said statement by stating that it was written under an error.

11. In the event, even if it is assumed for the sake of argument that the Respondents could take the stand as taken in its letter dated 22nd February, 1995 then they could have stated this fact in their letter dated 18th January, 1994 whereupon it was for the Petitioner to decide whether he would seek the

voluntary retirement or not. The Petitioner could have easily served for few months more and satisfied the prescribed conditions in regard to qualifying service which would be coinciding with the date of his actual retirement.

12. In the case of Deokinandan Prasad Vs. The State of Bihar and Others, and in the case of State of Punjab and Others Vs. Harbans Singh Gill, , the Supreme Court has clearly held that right to pensionary benefits is a right which is earned by an employee and thus is not at the mere discretion and fancy of an employer much less that it could be termed as a bounty. Furthermore, in the case of AIR 1997 565 (SC) , their Lordships of the Supreme Court held that there has to be a specific order in consonance with the rules to deprive an employee of pension for which he has already put in the requisite service despite the fact that under Regulation 16-B if an employee seeks retirement, then there would be automatic forfeiture of pensionary benefits on voluntary resigning.

13. In view of the above well enunciated principles of law it is difficult for this Court to hold, that having made the Petitioner act on an assurance given by the Respondent that he would be entitled to superannuating benefits, the Respondents can be permitted to go back on their statement. They would be bound by principles of equitable estoppel.

14. For the reasons aforesaid I would set aside the Order dated 22nd February, 1995 and direct the Respondents to consider the request of the Petitioner for payment of pensionary benefits in accordance with law within three months from today.

15. Parties are left to bear their own costs.