(2001) 05 JH CK 0002

In the Jharkhand High Court

Case No : CWJC No. 2916 of 2000 (R)

Bokaro Karmchari Panchayat APPELLANT

Vs

Hindustan Steel Works Construction Ltd. and Others RESPONDENT

Date of Decision : 01-05-2001

Acts Referred:

Citation : (2001) 05 JH CK 0002

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : T. Sen, T. Kabiraj, Akbar Hussain and Mukesh Kumar, for the Appellant; M.M. Banerjee and R.S. Mazumdar, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—The petitioner, Bokaro Karmchari Panchayat, a registered Trade Union, has preferred this application in a representation capacity against Circular, dated 28th August, 2000 issued by the Assistant General Manager (Personnel), whereby and whereunder, certain decision given for recovery and non-payment of half pay leave and additional dues.

2. As the case can be disposed of on short point, it is not necessary to discuss all the facts, except the relevant one.

3. A number of employees, members of petitioner-Union were In services of the respondents Hindustan Steel Works Construction Ltd. (HSCL), posted at Bokaro. While so functioning, the respondents HSCL came out with a Voluntary Retirement Scheme (VRS). vide Circular No. GM (P&A)/ESTT/16/18. dated 10th November, 1988. Benefits on obtaining voluntary retirement under such scheme of 1988 was prescribed and allowed to those, who obtained retirement in terms with such scheme.

The respondents HSCL subsequently issued a Circular No. PER/RR/531 on 18th November, 1993 and extended time to apply for voluntary retirement in terms with the old scheme up to 31st December. 1993. In order to improve the financial package and to provide counselling support to the individuals after voluntary separation, the respondents decided to extend further relaxation and support services making the same available to employees, who have applied for voluntary retirement, but have not been released as on the date of circular (18th November, 1993). The financial package and counselling support as was prescribed in the said Circular, dated 18th November, 1993, apart from the benefits shown in 1988 scheme are. as follows -

"3.1 Travelling & Transportation expenses for settlement.--At present the employees on superannuation or on separation through VRS are given reimbursement of travelling expenses and cost of transportation of personal effects (by shortest route) to the recorded home town only (as per entitlement). This payment is being released as one-time payment at the time of such separation.

If, the employees are opting for VR, they will be entitled to reimbursement of travelling expenses and cost of transportation of personal effects (by shortest route & as per entitlement) either to recorded home-town or to the place where children of the employees are settled or to any other place in India on the employee''s certification as to the intended place of settlement except far fetched places like Andaman and Nicobar. Lakshadweep and Minicoy Islands. Such payment will continue to, be treated as one-time payment.

3.2 Half-pay leave.--Employees opting for VR will be permitted to encash half-pay leave subject to the condition that commuted leave during the entire period of service shall be limited to a maximum of 180 days. For the purpose of encashment commuted leave already availed of will be deducted from the limit of 180 days. For this purpose, for the workmen, who are covered by Standing Orders/Administrative Orders, the accumulation and commutation of half-pay leave shall be governed by the provisions of such orders of the specified units/ offices.

3.3 Earned leave for workmen.--Such workmen as are covered by Standing Orders/Administrative Orders of the specified units/offices and who will opt for VR will be deemed to have earned, for the period prior to 1.10.1989 additional 15 days'' earned leave or equivalent thereof per year corresponding to earning of 1 day''s earned leave for every 20 days of actual work performed, and such additional leave may be permitted to be encashed. This is, however, subject to an accumulation of 240 days as per rules.

Benefits of this additional leave and its encashment is only in the event of voluntary separation under the scheme by such workmen within 31.12.93,

For the period with effect from 1.10.1989, the existing rules will continue to prevail, i.e., the additional leave of maximum 15 days shall not be allowed to be accumulated or encashed.

3.4 Employees Resources Centre (ERC) for workers & non-executives.--To provide support services in the form of counselling, information, guidance, advice, etc. for regeneration of separated employees after VR in their respective trades, vocations, self-employment ventures, investment portfolio, etc. Employees Resources Centres will be opened at Bokaro and Bhilai. Such employees will also be provided with Employee Identity Cards containing the profile of employees'' educational/technical/vocational/professional qualification, skills preferences, etc.

If groups of such individuals form Cooperative Societies, they may be considered on case-to-case basis for award of jobs that are available.

If, such employees opt for utilising the services of ERG, where necessary, they may be paid a stipend.

4.0 It is once again brought to the notice of all that the aforesaid benefits and services would be available to only employees, who opt for VR Scheme within the extended date i.e., 31.12.1993 and also provided that responses from the employees are significant.

5.0 considering the opportunities and avenues available, realise that loss of job does not mean loss of income and the individual continues to remain a useful productive member of the community.

It is, therefore, a fervent appeal to the conscience of all to come forward and willingly opt for VR to utilise the life- time opportunity.

6.0 All illustrative statement highlighting the benefits arising out of the above relaxations as compared with the earlier benefits on the subject is enclosed. The statement is an indicative one, based on certain assumptions.

This issues with the approval of the competent authority."

4. According to the petitioner, a number of its members/employees, who applied "for voluntary retirement in terms with 1988 Scheme, had not been released as on 18th November. 1993, applied within the extended date, i.e., 31st December, 1993, office orders were also allowing additional benefits in terms with Circular, dated 18th November. 1993, some of which have been enclosed as Annexure 2 series. The formal orders of release were issued on 14th February, 2000 and other orders issued on 3rd June, 2000 and onwards.

5. After issuance of such release orders, the Management suddenly issued impugned Circular dated 20th August, 2000, whereby and whereunder, the decision of Board of Directors in respect to VR benefits was communicated, relevant portions of which are set out hereunder :

"The Board of Directors after detailed discussions on the subject-matter decided as hereunder :

1. The travelling expenses and cost of transportation of personal belongings (household goods) to any place in India with retrospective effect will be paid to the employees opting for VR submission of the employees actual claim and not

on the basis of certification in supersession of all earlier decisions circulated from time-to-time.

2. The encashment of half pay leave in respect of employees opting for VR with retrospective effect will not be permitted for CDA pattern employees in supersession of all earlier decisions in this regard circulated from time-to-time.

3. In supersession of all earlier decisions with retrospective effect the company will recover from the amount payable to the employees, who have made fraudulent certification if any.

4. The Board in supersession of earlier decisions has further decided that encashment of additional leave prior to 1.10.1989 in respect of workmen (opting for VR) covered by Standing Orders/Administrative Orders will not be allowed.

The aforementioned decisions of the Board are to be complied with strictly by all concerned."

6. The case was taken up on 14th February, 2001, when Mr. M.M. Banerjee, counsel for the respondents made statement that clause (2) of decision dated 28th/29th August. 2000, which relates to half-pay leave will not affect the workmen, other than CDA pattern employees. It was further informed that clause (4) of the said decision dated 28th/29th August, 2000 will also not affect the workmen who applied by 31st December. 1993, the cut-off date, as was prescribed.

7. In the counter-affidavit while the respondents accepted that the VR Scheme issued on 10th November, 1988 was subsequently extended up to 31st December. 1993, have taken plea that the Circular No. 531, dated 18th November, 1993 was issued with bona fide and good intention to motivate the employees to avail the opportunities in their own benefits, particularly, in view of the economic crisis, the Respondents HSCL, which are facing through due to surplus man power.

So far as Circular, dated 28th August. 2000 is concerned, according to the Respondents, no claim of any employee for additional benefits granted by Circular dated 18th November, 1993 can be entertained over-looking the fraud, if any, committed by employee. The actual benefits given by way of motivation was withdrawn by Circular, dated 28th August. 2000 in view of the audit objection as was raised. The Respondents being an agency and instrumentality of the Administrative Ministry of SAIL, Government have no authority whatsoever to deviate from and/or highlight any conditions, benefits of the VRS as well as the conditions of the approval/financial res-tructuring-cum-financial assistance package,

8. The stand of the respondents, as referred above, is vague as it failed to mention the reason to supersede/or to modify the benefits, as were allowed, vide Circular, dated 18th November, 1993.

Once the Respondents motivated the employees to opt for voluntary retirement by meeting the financial package, and providing counselling support, after option for such voluntary retirement in terms with such scheme and release of employees on its acceptance, it cannot deny the benefit as were promised.

9. From the Proviso to clause 5.0 of Circular dated 18th-November. 1993, it would be evident that the Management made fervent appeal to the conscience of all to come forward to opt willingness for VR to utilise the life-time opportunity and such promise having made and acted upon by the parties, it was not open to the Respondents to go back from such promise by issuance of subsequent Circular (28th August, 2000 herein) after their release.

10. Having regard to the facts and circumstances, the Court hold that the employees of HSCL, who applied for VR prior to 18th November. 1993, but not released when the Circular No. 531 was issued on 18th November, 1993, if applied within the extended period by 31st December, 1993, if the application was acted upon and such employee was allowed to retire prior to 20th August. 2000, in their case, the Circular, dated 28th August. 2000 cannot be given effect. If, further amount is due to one or other such employee, who fall within the ambit of Circular, dated 18th November. 1993, it should be released in favour of such employee without deducting any amount/or withholding any amount in terms with Circular, dated 28th August. 2000.

11. The writ petition stands disposed of with the aforesaid observations and declaration. However, in the facts and circumstances, there shall be no order, as to costs.

12. Petition disposed of.

