
(2012) 08 DEL CK 0236

In the Delhi High Court

Case No : R.P. No. 52 of 2011 in Writ Petition (C) 1902 of 2010

DTC

APPELLANT

Vs

Surender Kumar

RESPONDENT

Date of Decision : 16-08-2012

Acts Referred:

Citation : (2012) 08 DEL CK 0236

Hon'ble Judges : Pradeep Nandrajog, J; Manmohan Singh, J

Bench : Division Bench

Advocate : Avnish Ahlawat with Ms. Latika Chaudhary and Mr. Nitesh Singh, for the Appellant; Kittu Bajaj, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—A batch of writ petitions including the instant writ petition were disposed of vide judgment dated August 10, 2010. The dispute pertained to the claim by employees of DTC, who had sought voluntary retirement, to be paid pension. The origin of the claim was traced in the decision to employees of DTC having filed a petition in the Supreme Court praying that DTC be directed to frame and bring into operation a pension scheme. DTC gave an assurance to the Supreme Court that it would be introducing a pension scheme for its employees, including retired employees, and pursuant thereto on November 27, 1992 DTC notified a pension scheme, to be operated by Life Insurance Corporation of India.

2. The scheme contemplated that as regards the serving employees if they gave no option, they would be deemed to have opted for the pension scheme and as regards the retired employees they had to give specific option. In other words serving employees had to give specific options to be retained in the Contributory Provident Fund Scheme.

3. Unfortunately, the pension scheme was notified without working out the modalities with the Life Insurance Corporation of India. Post haste, DTC notified a Voluntary Retirement Scheme on March 03, 1993 in which it was stated that

those who opt for voluntary retirement would be entitled to pension as per the pension scheme notified on November 27, 1992. Soon thereafter, another Voluntary Retirement Scheme was notified on March 16, 1993.

4. The decision dated August 10, 2010 notes that of the various employees who were litigating with DTC in the various writ petitions, some had specifically opted for the pension scheme notified on November 27, 1992 and some had not submitted any option, and hence were to be treated as deemed optees for pension. Some had specifically opted to continue to be the members of the Contributory Provident Fund Scheme. Qua those who have specifically opted to continue to be members of the Contributory Provident Fund Scheme, it was held that these employees would obviously have no claim to be paid pension.

5. Proceeding to further consider the relevant facts in relation to those who had specifically opted for the pension scheme or those who had not submitted any option, and hence were required to be treated as deemed optees for pension, the Division Bench noted that the ill-conceived, half-baked, pension scheme notified in November 1992 never took off because DTC had not worked out the terms and conditions with Life Insurance Corporation of India. It was only around the year 1994 that DTC formally introduced its own pension scheme.

6. On December 05, 1994, DTC introduced another Voluntary Retirement Scheme and in which it was expressly stated that the terms and conditions of the Voluntary Retirement Scheme dated March 03, 1993 would apply, but with an express stipulation that those who opt for voluntary retirement under the scheme would not be entitled to join the pension scheme. The Division Bench thereafter noted various dates under which various respondents had sought voluntary retirement and as regards the instant case it was noted that the respondent in the instant writ petition had sought voluntary retirement under the scheme notified on March 03, 1993. It was noted by the Division Bench that since the payment of pension under the pension scheme notified in the year 1992 had resulted in a stalemate, many persons who had either not submitted any option or had submitted a positive option to opt for the pension scheme chose to opt out of the pension scheme.

7. As regards the respondent in the instant writ petition, it was noted that on July 14, 1995 he specifically opted to opt out of the pension scheme and revert to the Contributory Provident Fund Scheme.

8. In view thereof all such writ petitions filed by DTC, which pertained to employees who had either not submitted any option at the first instance, and were thus required to be treated as deemed optees for the pension scheme, or those who had submitted options to become members of the pension scheme, but had later on expressly opted out of the pension scheme, would not be entitled to any pension.

9. The claims made by such employees for pension were negated.

10. While deciding the batch of writ petitions it was observed in para 41 as under:

41. The argument of the said respondents has to be noted and rejected for the reason nothing prevented the parties to novate the contract. It is settled by now that a VRS Scheme has an element of contract. The VRS Scheme is an invitation to offer. The employees make an offer under the scheme being, to retire on the terms notified as per the scheme. On being accepted, the letter of offer results in the contract being concluded and the employees become entitled to the dues as per the VRS Scheme. But, nothing prevents the parties to novate the contract. In the instant case the contract got novated when the said respondents wrote that instead of being paid pension as per the scheme they be paid the dues as per the CPF Scheme and thereafter they received even the management's share under the CPF Scheme. It is settled law that one manner of accepting an offer is to perform the obligation to be performed as per the offer. Thus, by making payment under the CPF Scheme the Corporation accepted the offer of these employees to forego claim for pension and instead entire due under the CPF Scheme be paid.

11. Picking on the observation in para 41 of the decision dated August 10, 2010 the respondent has sought review informing that he has not received the management contribution in the Contributory Provident Fund Account maintained in his name and thus as regards him it has to be held that he would be entitled to pension.

12. Suffice would it be to state that the legal position culled out in para 41 of the decision dated August 10, 2010 was with respect to such employees who had opted for the pension scheme, or were to be treated as deemed optees under the pension scheme, but thereafter had received even the management share in the Contributory Provident Fund Account. Qua these employees, obviously, it would be a case of novation. But, qua such employees, as is the respondent i.e. those who were either deemed optees of the pension scheme or had expressly opted to become members of the pension scheme, but had later on expressly opted out of the pension scheme and positively chose to continue to be members of the Contributory Provident Fund Scheme, observations in para 41 would have no application, for the reason qua them it would be a case of an express opting out of the pension scheme.

13. It is not in dispute that when the respondent was voluntarily retired with effect from June 01, 1993 he was paid all dues including his share in the Contributory Provident Fund Account and thereafter he was sent various letters with a request to collect the Management's share lying credited in the Contributory Provident Fund Account but he did not do so.

14. A controversy was sought to be raised by the respondent with respect to whether at all he was sent letters to receive the Management's share lying credited in the Contributory Provident Fund Account, but Learned Counsel for the respondent gave up said issue in view of the pleadings of the parties which

evidence that the pleadings of DTC to said effect had not been controverted by the respondent.

15. Accordingly, we dismiss the Review Petition and at the same time would impress upon the respondent to take the Management's share lying in the Contributory Provident Fund Account.

16. At this stage, we would also like to note that the decision dated August 10, 2010 was challenged by various parties affected before the Supreme Court and vide order dated December 03, 2010 all petitions seeking Special Leave to Appeal were dismissed and the order reads:

No ground is made out for our interference with the impugned judgment. The Special Leave Petitions are dismissed.

17. Thereafter various Review Petitions were filed seeking review of the order dated December 03, 2010, which were dismissed by the Supreme Court vide order dated March 03, 2011. The same reads as under:

These Review Petitions have been filed against the order dated 3rd December, 2010 whereby the Special Leave Petitions were dismissed.

Delay in filing Review Petition(Civil) Nos.637-638/2010 in SLP (Civil) Nos.31416 and 31846 of 2010 condoned.

We have gone through the Review Petitions and the relevant documents. In our opinion, no case for review of order dated 3rd December, 2010 is made out. The Review Petitions are dismissed.

18. We further note that similar orders were passed in as many as six other Review Petitions pertaining to six other Petitions for Special Leave to Appeal sought. In other words the Supreme Court dismissed the petitions by giving reasons, howsoever brief.

19. However, the respondent of the instant writ petition withdrew the petition seeking Special Leave to Appeal filed by him as per order dated January 04, 2011 passed in SLP(C)No.33762/2010, stating before the Supreme Court that he would like to seek a review of the order dated August 10, 2010.

20. The Review Petition is dismissed. No costs.