

(2016) 01 OHC CK 0063

In the Orissa High Court

Case No : W.P.(C) Nos. 10744, 9804, 9806, 9807, 9808, 9819 of 2003 and 1819 of 2004

Gouranga Pradhan and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 19-01-2016

Acts Referred:

Constitution of India, 1950 — Article 14
Industrial Disputes Act, 1947 — Section 25-O

Citation : (2016) LIC 1995 : (2016) 1 LLN 482

Hon'ble Judges : S.N. Prasad, J.

Bench : Single Bench

Advocate : Pradeep Ku. Das, S.N. Nayak and S. Mohanty, for the Appellant;

Final Decision : Allowed

Judgement

S.N. Prasad, J.—1. Since in these writ petitions common question are involved hence all writ petitions are disposed on the basis of common order.

2. The writ petitions have been filed for issuance of direction upon the opposite parties to treat the separation of the petitioners under Voluntary Retirement Scheme w.e.f. 31.05.2001 and accordingly disburse the benefits as provide under the Scheme.

3. Brief facts of the case is that the petitioners being permanent employee of Bhaskar Textile Mills Ltd., Jharsuguda joined their service on different dates and while working, a Scheme known as Voluntary Retirement Scheme (in short the VRS?) having been floated by the Public Enterprises Department had been adopted by the opposite party Nos. 2 and 3, in terms thereof all the petitioners have made their applications for separation under VRS, the same was accepted and the petitioners have been separated w.e.f. 31.05.2001 but the benefits under VRS has been extended in favour of the petitioners not on the basis of remuneration which the petitioners are getting as on 31.05.2001 but on the basis of the date on which the production in opposite party No. 2 has been closed

i.e., w.e.f. 31.05.1998.

4. According to the petitioners since the petitioners have opted for separation under VRS which was accepted to be separated w.e.f. 31.05.2001 hence they will be said to be separated w.e.f. 31.05.2001 and the opposite party Nos. 2 and 3 had fixed another cut off date for disbursement of benefit under VRS.

5. This Court has issued notice to the opposite parties, opposite party No. 1 has filed counter affidavit but opposite party Nos. 2 and 3 in spite of their appearance neither filed counter affidavit nor appeared today to represent the case hence stand of opposite party No. 1 justifying the action of opposite party Nos. 2 and 3 by submitting that since the opposite party No. 2 has ceased its production w.e.f. 31.05.1998 hence the date of cease of production has been taken as cut off date for employees for production side and the employees who are working in the administrative section, cut off date was fixed till their engagement i.e., 31.05.2001.

It has been stated that by taking cut off date as on 31.05.1998 all admissible dues has been released in favour of the petitioners as such there is nothing remains to be disbursed.

6. It has been contended by the learned counsel for the petitioners that since opposite party No. 3 itself has become sick and ceased its production hence there was no justification to fix the cut off date for separation taking ceasure of production.

7. Heard learned counsel for the parties and perused the documents on record.

Sole grievance of the petitioners is that when they have opted for separation under VRS which has been accepted w.e.f. 31.05.2001 then why it will be treated to be separated w.e.f. 31.05.1998.

In this respect rival submission has been made on behalf of the parties.

8. The contention of the petitioner is that when they have made applications for separation under resolution dated 21.10.1991 having made applications on 5.4.2001 which was accepted w.e.f. 31.05.2001 vide Annexure-2 hence the Management is duty bound to accept VRS from the date from which it has been accepted while on the other hand the plea has been taken by opposite party No. 1 that it is due to the closure of the unit since the production itself was closed from 31.05.1998 and the petitioners who were working in the factory due to closure of the production work they remain idle from 31.05.1998 hence the cut off date as on 31.05.1998 has been taken into consideration.

9. In order to appreciate the rival submission of the learned counsel appearing for the parties, it is relevant to see the resolution dated 21.09.2001 having been issued by the Public Enterprises Department, Government of Orissa prescribing certain conditions as a caption head i.e., "Model Separation Scheme (VSS) For the Employees of State Public Sector Undertakings.

10. From its perusal, it is evident that the main purpose for introduction of the policy decision of VRS was to rightsizing workforce in the State Public Section Undertakings. All regular employees having rendered minimum 10 years of continuous service and below 55 years of age have been made eligible for availing the facilities of VRS under the Scheme.

11. The Scheme has been made not applicable to work-charged and N.M.R. employees although they may have been engaged continuously for longer periods. The VRS package having been decided to be provided to the selected Public Sector Undertakings identified for substantial restructuring leading to reduction of at least 40% of the existing workforce has agreed to fund the Scheme to the extent of 80% of ex-gratia plus gratuity and leave encashment.

12. Procedure has been given for making application in prescribed format to be filled up by the eligible employees within the time frame as notified by the competent authority. Decision of the competent authority regarding acceptance or rejection of the VSS application shall be communicated to the employee within 30 days from the submission of the application. The competent authority to sanction Voluntary Separation is the Chairman-cum-Managing Director/Managing Director. The format of application form has also been made part of record which stipulates that an employee has to be given an undertaking not to join any post as per the conditions stipulated in the resolution 21.09.2001.

13. There are also another resolution annexed as Annexure-B/1 dated 13.03.2001 which was issued under the signature of Additional Secretary to Government dated 13.03.2001 meaning thereby the Department of Public Enterprises of Government of Orissa has come out with the resolution for separation under VRS from the month of March 2001 itself.

It is also evident from the resolution that certain terms and conditions has been given regarding eligibility, benefits and the option which is to be exercised by the employee of one or the other sick industries.

14. The petitioners in this case have made their option in terms of the decision of the Public Enterprises Department for separation under the said Scheme.

15. The competent authority has accepted the separation under the Scheme w.e.f. 31.05.2001 which is Annexure-2 to the writ petition having been issued under the signature of Managing Director/Authorised Officer with the specific condition that "your application for Voluntary Retirement Scheme thereto, has been accepted by the Management w.e.f. 31.05.2001".

16. The petitioners admittedly were working in the factory and have made option for separation under the VRS for being separated and to that effect applications have been submitted by them in the year 2001, if the option for separation would be accepted after submission of the applications so that they may get some financial benefit as provided under the Scheme from which they could be able to manage their liabilities which they are duty bound to meet out day-to-day

need of the family. But the authorities in a highly surprised manner declared that all the petitioners to be separated w.e.f. 31.05.1998.

17. This action of the opposite parties has been assailed in these writ petitions on the following grounds:-

(i) When the Scheme has come out for asking option from the employees/workers to be separated under the Scheme, in pursuance to the same they have made applications in the month of April 2001 which has been accepted to be separated w.e.f. 31.05.2001 hence the date of acceptance would be material and it cannot be shifted prior to 31.05.2001.

(ii) The Management has approached the Labour and Employment Department for closure of industrial unit w.e.f. 25.09.2001 for the reason set out in his application but that was refused by the competent authority in pursuance of the provision as contained in sub-section 2 of Section 25-O of the Industrial Disputes Act, 1947. For closure of the undertaking it is necessary that every employee in the undertaking shall be entitled to receive compensation at the prescribed rate but the employer has expressed his inability to pay the closure compensation in the event of closure, being permitted, there is no genuineness in the application as such it was rejected which would be evident from Annexure-4.

Hence, it has been submitted that the Management has frustrated the intent of the order dated 2.8.2001 i.e., for refusing closure of industrial undertaking since the Management has refused to pay the compensation but by shifting the date of acceptance of VRS w.e.f. 31.05.2001 to 31.05.1998 they had deprived legitimate benefit of these employees/workers which they are entitled to get till 31.05.2001.

(iii) The petitioners have got employment under the establishment and it is in case of closure of undertaking, the Scheme of Voluntary Retirement was adopted asking option from one or the other workers hence the petitioners being workers of the establishment are entitled to get all the benefits till their acceptance of separation under VRS i.e., w.e.f. 31.05.2001.

(iv) Specific stand has been taken that the date of separation of the petitioners has been decided to be fixed by taking 31.05.1998 as the cut off date because from that date onwards establishment has ceased its production work while it is made applicable who are working in the administrative section w.e.f. 31.05.2001 hence unreasonable classification has been made by the authorities which is not permissible.

On these grounds, the action of the opposite parties is under challenge in these writ petitions.

18. There is no denial of the fact that the Government has got power to close the unit which became sick and for that the Government is also empowered to come out with the Scheme to shorten the work strength of the employee working in the establishment in order to minimise the expenditure incurred in the establishment.

19. For these reasons the Department of Public Enterprises has come out with the resolution dated 21.09.2001 asking option from one or the other workers of the establishment, in pursuance of the same, the petitioners have given option for separation before the competent authority which was accepted to be separated w.e.f. 31.05.2001.

20. The opposite party is not disputing the fact that acceptance of separation under VRS has been affected w.e.f. 31.05.2001 but they on their own shifted the date of separation from 31.05.2001 to 31.05.1998, reason being was that from 31.05.1998 the production work of the establishment was ceased hence the petitioners being the workers in the factory involved in the manufacturing process had become idle. Hence, they have been said to be separated w.e.f. 31.05.1998 but this cut off date is absolutely arbitrary decision of the authorities for the reason that the Scheme of VRS is being introduced in order to shorten the strength of the establishment become sick.

21. The establishment in question for the reason production work has been ceased w.e.f. 31.05.1998, asked option from the petitioners who were working and involved in the manufacturing process for separation under VRS, the said application was filed in the month of April 2001, hence it cannot be said that the petitioners were not attending their office from 31.05.1998 till the date of their applications or till their acceptance.

22. The petitioners in anticipation of the fact that when they will make applications for separation they will get benefits under the prescribed Scheme taking the date of acceptance as the material date so that they may get some handsome amount which would helpful to meet out future family expenses because the petitioners also restrained for re-appointment under the State Government/any State P.S.U. or any autonomous agency of the State Government, as such it would have been the proper decision of the authorities to extend the benefit taking the date of actual separation from service i.e., 31.05.2001.

Moreover, the date of separation cannot be with retrospective effect that too when the applications were not filed by the petitioners at that time.

23. Here, in this case the applications have been filed in the month of April 2001 but the petitioners have been separated w.e.f. 31.05.1998 which is unilateral decision of the opposite parties hence is arbitrary.

The opposite parties have treated the petitioners by making unreasonable classification as because the employees working for administrative purpose like finalising accounts, VR work, security & watch & ward etc. have been treated to separated with actual date of separation i.e., 31.05.2001 but the petitioners have been discriminated by treating to be separated w.e.f. 31.05.1998, reason being the production work has been ceased but for that the petitioners cannot be made to suffer and as such they cannot be discriminated by making unreasonable classification as because the employees whether working in the factory or in the

administrative side have made their applications on the basis of one resolution hence all the applications were supposed to be treated similar then only it would be said that the authorities have followed Article 14.

24. Opposite parties have although tried to get permission from the Government for closure of the establishment under the provision of Section 25-O of the Industrial Disputes Act, 1947 but the said prayer was refused for the reason that establishment has refused to compensate the workers by way of giving retrenchment compensation as provided under the Industrial Disputes Act, 1947 which also suggests that the intent of the decision of the Government was to adequately compensate whether by way of closure or by way of separation under a Scheme and for that the Government has decided to extend the financial assistance to the establishment but by fixing the cut-off date unilaterally the permission was refused, has been tried to achieve indirectly by shifting the date of separation is not permissible.

25. In totality and entirety of facts and circumstances, decision of the authorities in fixing the date of separation w.e.f. 31.05.1998 is held to be unreasonable and arbitrary and accordingly the writ petition is allowed with the direction upon the opposite parties to decide the claim of the petitioners taking the date of separation as 31.05.2001 as per the decision of the competent authority who has taken decision of separation being the competent authority under the resolution.

26. Competent authority will complete the exercise and decide the claim as per the admissibility as provided under Voluntary Retirement Scheme and disburse the amount according to the entitlement within reasonable period preferably within 16 weeks from the date of receipt of copy of this order.

Accordingly, all writ petitions are allowed with the direction and observation made hereinabove.