(2011) 04 KAR CK 0097

In the Karnataka High Court

Case No : W.A. No''s. 620 of 2006 and 2539-2562 of 2011

Karnataka Agro Industries Corporation Voluntarily Retired Employees Welfare Association (Regd) and Others	APPELLANT
Vs	
State of Karnataka and Karnataka Agro Industries Corporation Limited	RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 12 (3), 18 (3)
Karnataka Industrial Disputes Rules, 1957 — Rule 59 (1)

Citation : (2011) 04 KAR CK 0097

Hon'ble Judges : N.K. Patil, J;H.G. Ramesh, J

Bench : Division Bench

Advocate : R.S. Hegde, for the Appellant; Manjula R. Kamadolli, HCGP for R1 and P.S. Manjunath, for R2, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—The Appellant No. 1 is the Karnataka Agro Industries Corporation Voluntarily Retired Employees Welfare Association (Registered) represented by its President and Appellant Nos. 2 to 25 are the Voluntarily Retired Employees of the second Respondent- Karnataka Agro Industries Corporation Limited (for short ''Corporation''). The Appellants, assailing the correctness of the order dated 8th March 2006 passed in W.P. No. 171/2001 by the learned Single Judge, have presented these writ appeals.

2. The Appellants herein have filed a writ petition before the learned Single Judge, seeking a mandamus directing the Corporation to refix their compensatory allowance and other emoluments to all the employees who have opted for voluntary retirement as per the Circular dated 27.5.1999, contending that, they were the employees of the Corporation and it has introduced a Voluntary Retirement Scheme to reduce the surplus staff and to make the Organisation viable. The Appellants have submitted their application opting for

voluntary retirement under the said scheme. The Corporation has accepted their applications and relieved them from duty between June 1999 to November 1999 and the Appellants- 2 to 25 have accepted the compensatory benefits under the scheme. Be that as it may. The Government of Karnataka revised the pay scales under the Karnataka Civil Services (Revised pay) Rules, 1999, retrospectively from 1.4.1998. Pursuant to introduction of the said pay scale with retrospective effect, the Appellants who have retired under the Voluntary Retirement Scheme, claimed that they are entitle for re-fixation of their compensatory allowance w.e.f. 1.4.1998 and when their claim is not considered by the Corporation, Appellants have filed the writ petition invoking the extra ordinary jurisdiction under Article 226 of the Constitution of India, seeking a mandamus to direct the Corporation to refix their compensatory allowance as per Karnataka Civil Services (revised pay) Rules, 1999 and to release the amount with interest.

3. The said writ petition had come up for consideration before the learned Single Judge on 8th March 2006. The learned Single Judge, after hearing learned Counsel for both the parties and after careful perusal of the terms and conditions of the Voluntary Retirement Scheme introduced by the Corporation and by following the judgment of the Apex Court in the case of A.K. Bindal and Another Vs. Union of India (UOI) and Others, has observed that, voluntary retirement scheme is a package deal of give and take. The jural relationship between the employer and employee will come to an end on relieving the employee from duty. Further, the learned Single Judge has observed that, Appellant Nos. 2 to 25 by accepting the terms of the Scheme, opted for voluntary retirement and Clause- 5 of the said Scheme specifies that, any employee retiring under the Scheme shall not have any claim against the company on any account except for the amount payable under the said Scheme and therefore, the revision of pay scales made by the Government of Karnataka as per notification issued in the month of January 1999 by giving retrospective effect from 1.4.1998 will not be extended to the employees who have retired from service and since the Appellants are retired under the voluntary retirement Scheme which is a package by itself, and declined to consider the prayer sought by the Appellants and dismissed the said writ petition.

4. We have heard the learned Counsel for the Appellants and the learned Counsel for the second Respondent -Corporation.

5. The specific submission of the learned Counsel and the ground urged in the memorandum of appeal is that, the Government has introduced the revised pay scale in the month of January 1999 by giving retrospective effect from 1.4.1998 and the said benefit may also be extended to the employees of the Corporation who have retired from service under Voluntary Retirement Scheme introduced by the Corporation and the same cannot be taken away from the Appellants. Therefore, he submitted that the order impugned passed by the learned Single Judge is liable to be modified by extending the said benefit to the Appellants.

6. As against this, learned Counsel for the second Respondent-Corporation, Sri.

P.S. Manjunath, submitted that, the learned Single Judge after considering the relevant material available on file, after going through the Karnataka Civil Services (Revised Pay) Rules and other relevant material on file and after perusal of the Voluntary retirement scheme introduced by the Corporation, has rightly declined to entertain the relief sought by the Appellants, stating that the said revised pay scale of the Government extended retrospectively w.e.f. from 1.4.1998 is not applicable to the persons who have taken voluntary retirement before the said Rules came into effect. To substantiate the said submission, he has taken us through the Memorandum of Settlement u/s 12(3) and 18(3) of the Industrial Disputes Act, 1947 read with Rule 59(1) of Industrial Disputes (Karnataka) Rules and submitted that, so far as Revision of Pay Scales is concerned, the parties have agreed for implementation of revised pay scales, extended to the employees of the Government of Karnataka as per Government order No. FA/48/SRP/98 dated 7th January 1999 and subsequent related orders issued by the Government, to the serving employees of the Corporation w.e.f. 1.7.2001. Further, the learned Counsel for the Corporation placing reliance on the decision of the Apex Court in the case of HEC Voluntary Retired Employees Welfare Soc. and Anr. v. Heavy Engineering Corporation Ltd. and Ors. reported in AIR 2006 Supreme Court 1420, submitted that, if once the employees have taken voluntary retirement under the scheme, such persons are not entitle to claim the benefit of the subsequent revised pay scale and the decision taken by the competent authority. Therefore, learned Counsel for the Corporation submitted that, interference by this Court is not called for and even the Appellants have not made out any good grounds to consider the relief sought by them in these appeals.

7. After having heard the learned Counsel for the parties and after careful perusal of the order impugned passed by the learned Single Judge, we do not find any error or illegality or much less material irregularity as such committed by the learned Single Judge in dismissing the writ petition filed by the Appellants. It is not in dispute that the Corporation has introduced Voluntary Retirement Scheme, Appellant Nos. 2 to 25 have filed their applications seeking Voluntary Retirement under the said Scheme, their applications have been accepted and as per the terms of the said Scheme, Appellants have been granted voluntary retirement. It is significant to note that Clause V of the said Scheme specifies that, an employee retiring under the scheme shall not have any claim against the company on any account, except for the amount payable under the scheme and therefore, after retirement and relieved from duty they ceases to be the employees of the Corporation and cannot have any claim against the company.

8. The bone of contention made by the learned Counsel for the Appellants is that, after they have taken Voluntary Retirement under the Scheme introduced by the Corporation, the Government of Karnataka has issued notification in January 1999, revising the pay scales of the Government Employees by giving retrospective effect form 1.4.1998, the Appellants are entitle to the said benefit and therefore, the same may be extended to the employees who have taken

Voluntary retirement also. The said specific contention of the Appellants cannot be accepted for the reason that, Appellant Nos. 2 to 25 have taken voluntary retirement under the Scheme, which is a package by itself and therefore, they are not entitle for the benefit under the revised pay scale of 1999. Further, as rightly pointed out by the learned Counsel for the Corporation, there is a Memorandum of Settlement entered into between the Registered Association of the Employees and the Corporation bearing No. IDA:2:CR-77:2001-2002 dated 25th July 2001 and the Circular dated 26th July 2001, wherein, the terms of settlement regarding the revised pay scale is arrived to the effect that, ''the parties have agreed for implementation of revised pay scales, extended to the employees of the Government of Karnataka as per Government order No. FD:48:SRP:98 dated 7.1.1999 and subsequent related orders issued by the Government to the serving employees of the Corporation w.e.f. 1.7.2001. But no such benefit is extended to the persons who have taken voluntary retirement under the Scheme introduced.

9. Further, as rightly pointed out by the learned Counsel for the Corporation that in the case HEC Voluntary Retd. Emps. Welfare Soc. and Another Vs. Heavy Engineering Corporation Ltd. and Others, , the Apex Court has held that, as the matter relating to voluntary retirement is not governed by any statute, the provisions of Indian Contract Act, 1872, therefore, would be applicable to''. It is worth while to extract the law laid down by the Apex Court in para 11 of the said judgment, which reads thus:

11. An offer for voluntary retirement in terms of a scheme, when accepted, leads to a concluded contract between the employer and the employee. In terms of such a scheme, an employee has an option either to accept or not to opt therefore. The scheme is purely voluntary, in terms whereof the tenure of service is curtailed which is permissible in law. Such a scheme is ordinarily floated with a purpose of downsizing the employees. It is beneficial both to the employees as well as to the employer. Such a scheme is issued for effective functioning of the industrial undertakings. Although the Company is a "State" within the meaning of Article 12 of the Constitution of India, the terms and conditions of service would be governed by the contract of employment. Thus, unless the terms and conditions of such a contract are governed by a statute or statutory rules, the provisions of Contract Act would be applicable both at the formulation of the contract as also the determination thereof. By reason of such a scheme only an invitation of offer is floated. When pursuant to or in furtherance of such a voluntary retirement scheme an employee opts therefore, he makes an offer which upon acceptance by the employer gives rise to a contract. Thus, as the matter relating to voluntary retirement is not governed by any statute, the provisions of Indian Contract Act, 1872, therefore, would be applicable to.

Further, the Apex Court has held that, the subsequent revision of pay scale with retrospective effect is not applicable to the persons who have taken Voluntary Retirement under the Scheme. It is applicable only to the employees who were on rolls of company and those who ceased to be in service on that date on account of superannuation or death and therefore, the employees who have taken voluntary retirement cannot claim benefit of revised pay without there being any Government letter clarifying that the circular was applicable to voluntary retired employees and the company is not binding in absence of any statutory provision though it was a Government Company.

10. Taking all these aspects of the matter into consideration, we are of the considered view that, the revised pay scales introduced by the Government of Karnataka to the government servants by giving retrospective effect cannot be applicable to the employees who have taken voluntary retirement under the scheme, for the reason that, after retirement and relieved from duty, they ceases to be the employees of the Corporation and cannot have any claim against it. Therefore, we do not find any legal infirmity, illegality or unreasonableness in the order impugned passed by the learned Single Judge and decline to interfere in the impugned order passed by the learned Single Judge.

11. For the foregoing reasons, the appeals filed by the Appellants are liable to be dismissed as devoid of merits. Ordered accordingly.