(2011) 09 SHI CK 0037

In the High Court Of Himachal Pradesh

Case No : C.W.P. No. 870 of 2008

Khem Chand Sharma and Another APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 23-09-2011

Acts Referred:

Citation : (2011) 3 ShimLC 182

Hon'ble Judges : Surjit Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Surjit Singh, J.—Petitioners, who had been appointed as Development Officers by respondent No. 2, i.e. Oriental Insurance Company Ltd., in the year 1981 (in the case of petitioner No. 1) and 1984 (in the case of petitioner No. 2), have filed the present writ petition, seeking quashing of orders, dated 1.4.2003 and 16.4.2003, Annexures P-7, P-8 and P-9, by which they have been voluntarily retired and also issuance of writ of mandamus to the respondents, to reinstate them to the posts of Development Officers and to treat the period of their unemployment as duty period and to pay them pay and allowances for that period and also to give them all consequential service benefits. Petitioner No. 1 was appointed as Development Officer with Oriental Insurance Company, impleaded as respondent No. 2, in the year 1981, while the other petitioner was appointed in the same capacity, with the same Company, in the year 1984. Government of India, Ministry of Finance and Company Affairs (Department of Economic Affairs), Insurance Division, published a Scheme called General Insurance (Rationalization of Pay Scales and Other Conditions of Service of Development Staff) Amendment Scheme, 2003, vide Notification dated 2.1.2003. Scheme, as per clause 1 (2), was to come into force on the date of publication of the said Notification in the Official Gazette. The Scheme was published in the Official Gazette on 3.1.2003 and, therefore, it came into force on 3.1.2003. Clause 15C of the Scheme, which is reproduced below, provided for Special Voluntary Retirement Package for

Development Officers:

15C Special Option.--(1) A Development Officer may, within sixty days of the commencement of the General Insurance (Rationalization of Pay Scales and Other Conditions of Service of Development Staff) Amendment Scheme, 2003, opt:

(a) for Special Voluntary Retirement Package as per Annexure -I appended hereto; or

(b) to render his services as Development Officer (Administration) under paragraph 21A, as per Annexure II.

(2) A Development Officer, who does not exercise any of the options under sub paragraph (1) within the stipulated period of sixty days, shall continue to render service as such under the General Insurance (Rationalization of Pay Scales and Other Conditions of Service of Development Staff) Amendment Scheme, 2003.

2. Petitioners, vide their written requests, dated 3.3.2003, (Annexure P-2 in the case of Anil Vaidya, petitioner No. 2) applied for voluntary retirement, in accordance with Clause 15C. Their requests were acceded to and they were retired, vide communications dated 1.4.2003, copies Annexures P-7 and P-8. They were thereafter relieved.

3. Case of the petitioners is that Communications Annexures P-7 and P-8 were, in fact, issued and dispatched after they had written to the functionaries of respondent No. 2, for withdrawal of their requests for voluntary retirement. According to them, they had written communications, copies Annexures P-4 and P-5, for withdrawal of their requests for voluntary retirement on 9.4.2003 and it was only after they had submitted such requests, Annexures P-4 and P-5, that orders for relieving them, Annexures P-7 and P-8, were issued. The same were back dated, to create evidence that petitioners'' requests for voluntary retirement stood accepted, before they submitted communications, Annexure P-4 and P-5, for withdrawal of requests for voluntary retirement. It is also averred by the petitioners that though the Scheme provided for payment of ex-gratia money within 45 days of the officers being relieved, money on account of ex-gratia grant was sought to be paid to them after the expiry of 45 days period, as prescribed in clause (13) of the Scheme and because of this, orders of acceptance of their requests for voluntary retirement and their relieving, become infructuous.

4. Another ground pleaded by the petitioners is that a petition had been filed in the High Court of Punjab and Haryana, challenging the Scheme, Annexure P-1 and a Division Bench of that Court ordered for maintaining status quo. Copy of that order is Annexure P-3.

5. Respondents, in their reply, have stated that the Scheme has been upheld by the Hon''ble Supreme Court by a judgment, delivered in a bunch of cases, decided in the year 2008 and that option, once exercised under the said Scheme, cannot be withdrawn. Also, it is stated in the reply that options had been

exercised by the petitioners, within the time stipulated in Clause 15C of the Scheme. It has been conceded that ex-gratia money was sought to be paid to the petitioners, after the expiry of 45 days period, but it is alleged that delay in tender of ex-gratia money, does not have the effect of infructifying the orders of acceptance of requests of the petitioners for voluntary retirement, who already stood relieved before the tender of ex-gratia money.

6. I have heard learned Counsel for the parties and perused the record.

7. Learned Counsel, representing the petitioners, submits that the Scheme came into force on 2.1.2003 and the requests for voluntary retirement were made by the petitioners on 3.1.2003, or say on the 61st day of the commencement of the Scheme and hence the requests were not legal.

8. Submission has been noticed only to be rejected. Scheme, as per its clause 1 (2), was to come into force, from the date of its publication in the Official Gazette. In the reply, it is stated that Scheme was published in the Official Gazette on 3.1.2003. Petitioners have filed rejoinder, in which they have not denied this fact. That means, Scheme was published in the Official Gazette on 3.1.2003 and, thus, requests for voluntary retirement made by the petitioners, were within 60 days of the commencement of the Scheme.

9. Another submission made on behalf of the petitioners is that because of the stay granted by the High Court of Punjab and Haryana, vide order Annexure P-3, which is dated 31.3.2003, implementation of the Scheme stood stayed and hence respondent No. 2 could not have lawfully issued orders for the acceptance of requests of the petitioners for voluntary retirement and could also not have relieved them vide orders, Annexures P-7 and P-8. This submission is also without merit. Order Annexure P-3, was made applicable only in the area, within the jurisdiction of Punjab and Haryana High Court, as is clear from a bare reading of para 2 of the said order. Petitioners were working within the jurisdiction of this Court and, therefore, stay order, copy Annexure P-3, was not applicable in their case.

10. Also, petitioners, having once exercised their option for voluntary retirement, could not have withdrawn those options, in view of clause (4) of Para 5 of Annexure -I to the Scheme, Annexure P-1. Aforesaid clause (4) of para 5 says that a Development Officer shall not be eligible to withdraw the option once made for Special Voluntary Retirement Package.

11. Hon''ble Supreme Court, while dealing with a case arising out of this very Scheme, in New India Assurance Co. Ltd. Vs. Raghuvir Singh Narang and Another, has held that Special Voluntary Retirement Package is a Scheme, statutory in nature and the provisions of the Scheme, prevail over the provisions of the Contract Act or any other law or any principles of contract, having regard to the binding nature of the Scheme and an employee, upon exercising the option, cannot withdraw from the same, in view of clause (4) of Para 5 of Special Voluntary Retirement Package. So, this submission can also not be upheld.

12. Another submission made on behalf of the petitioner is that money payable to the petitioners, on account of ex-gratia, having not been offered within 45 days of their relieving, they are entitled to reinstatement. Scheme, Annexure P-1 does not provide that in case money, payable to a person seeking voluntary retirement, is not paid within the prescribed period of 45 days, the employee will be reinstated automatically or will be entitled to be reinstated on his asking. In the absence of any provision in the Scheme, the consequence of non payment of gratuity money, within the prescribed period can, at the most, be that the affected person can seek compensation or ask for payment of interest or even penal interest, on the amount of gratuity, which the petitioners, in the present case, have not claimed. Also, I find that money, on account of gratuity, payable to the petitioners, was offered to be paid to them within 10 days of the expiry of 45 days time, but they refused to accept the same. As a result of the above stated position, writ petition is dismissed.

