(1980) 02 KAR CK 0002

In the Karnataka High Court

Case No : Writ Petition No''s. 3236 to 3257 of 1977

M. Punyamurthy and etc. APPELLANT

Vs

Union of India and Another RESPONDENT

Date of Decision : 19-02-1980

Acts Referred:

Citation : AIR 1980 Kar 216

Hon'ble Judges : M.P. Chandrakantaraj URS, J

Bench : Single Bench

Advocate : M. Narayanaswamy, for the Appellant; K.J. Shetty and U.L. Narayana Rao, for the Respondent

Judgement

1. The petitioners in the'' above writ petitions are all employees of the 2nd respondent Bharath Gold Mines Limited, for short, referred to herein as "B. G. M. L.". These writ petitions were filed as common petitions as their grievance and the facts- leading to the writ petitions were also common.

2. However, at the conclusion of the arguments, the learned counsel appearing for the petitioners stated that Writ Petition No. 3257 of ''1977 of Shri Radhakrishna stood on a different footing and the facts in respect of his case were somewhat peculiar and distinct from the other writ petitions. He, therefore, sought permission of this Court to withdraw that petition to agitate his grievance separately, if so advised. Accordingly, Writ Petition 3257 of 1977 is dismissed as withdrawn.

3. The facts that may be necessary for disposal of these writ petitions may be stated briefly as follows:

The Petitioners in Writ Petitions Nos. 3236 to 3256 were all employees of the Kolar Gold Fields Mining Undertaking. The Government of India was running the 1st respondent herein as a Departmental Undertaking the said Undertaking. It is unnecessary to go into the earlier history of this Undertaking. In or about April 1972 the 2nd respondent B.G.M.L. was incorporated and the Undertaking of the

1st respondent was transferred to the newly incorporated body. In that process the former employees along with the petitioners were all required to be absorbed in the service of the B.G.M.L. In that behalf the 1st, respondent addressed a letter to the Chairman of the B.G.M.L setting out the terms and conditions under which the employees of the 1st respondent may be permitted to exercise their option to join the service of the B.G.M.L. In para 5 of the said letter of 7th March, 1972 the Chairman of the 2nd respondent B.G.M.L. was directed: to give to each officer concerned, under due acknowledgment, a copy of that letter along with copies of Forms I and 11 with a letter addressed to him by the Chairman of B.G.M.L. calling upon him to exercise the option.

4. All the petitioners exercised their option in Form No. 1 on 13th March 1972 as evidenced by one of the enclosures to Exhibit B which is a letter addressed to one of the petitioners in terms of the letter of 7-3-1972. Even the letter dated 7-3-1971 forms one of the enclosures to Exhibit B to the petition. The grievance of the petitioners in these petitions is that the petitioners have not been given the benefit of pensions for the period they remained employees of the 1st respondent-Union of India though they were eligible for that pension. This claim is founded on the basis of two memorandums of the 1st respondent dated. 7th July 1964 and 16th June 1967. These memorandums were issued by the 1st respondent laying the policy and setting out the terms and conditions under which the employees of the 1st respondent Union of India could be absorbed on exercising their option, in any of the Public Undertakings owned or controlled by the 1st respondent. In other words, the petitioners have not been extended the pensionary benefits for the period of service rendered by them in the service of the Ist respondent before they opted to become the employees of the 2nd respondent. It is alleged by the petitioners that the 1st respondent had given such benefit of pension or gratuity as the case may be to all the officers whose services were on contract and also to those who were daily hired employees resulting in discriminatory treatment of the petitioners.

5. Respondents Union of India and B.G.M.L. have filed their statement of objections. The stand taken in the statement of objections by the respondents is that the petitioners are not entitled ''to any benefits other than those conferred by the terms and conditions under which the petitioners accepted employment under the 2nd respondent which are traceable only to the letter of 7-3-1972.

6. Therefore, the short question that falls for consideration in these writ petitions is:

Whether the petitioners are entitled to pensionary benefits under the Fundamental Rules of the 1st respondent applicable to its employees for the period of service rendered by the petitioners to the 1st respondent?

7. Sri M. Narayana Swamy, learned counsel for the petitioner has strenuously contended that whatever was done for the officers who opted to be absorbed in Public Undertakings between 1964 and 1967 in terms of the memorandum

Issued in that behalf by the 1st respondent should also be extended to the petitioners. It is difficult to see how the petitioners can base their claim for such benefits when their entire absorption to the service of the B.G.M.L. is controlled only by the letter of 7th March 1972 under the terms of which the petitioners voluntarily exercised their option. It is convenient to set out the relevant portions of the letter which in my opinions are subparts (ii), (iv) and (xi). of para 2 and para 5:

"2. The question of the absorption of the staff of the M.G.M.U. by the proposed Bharat Gold Mines Private Ltd., consequent on the conversion of the undertakings into a company, has been examined. It has been decided that the proposed company would employ such of the existing staff of the undertaking as are willing to serve the company, subject to the following terms and conditions:

(i) xx xx xx (ii) All the covenanted and other officers in service with the undertakings will be allowed in the first instance, an option to serve under the Company. Such of the officers who do not wish to serve under the company will be allowed terminal benefits as applicable to them according as they are permanent, quasi-permanent or temporary in respect of the officers governed by Central Government Service Conditions and in terms of their contracts in respect of covenanted officers.

(iii) xx xx xx (iv) The officers governed by Central Government service conditions, who opt to continue in the service of the company, will be allowed to exercise a further option within a period of one year from the date of formation of the company or within a reasonable period of the date on which the company formulates the terms and conditions of service, whichever is later, either to continue on the terms and conditions of service including pay and allowance applicable to them immediately before the formation of the Company or the terms and conditions of service including pay and allowances as might be finalised by the Company. If the officers opt for the existing terms and conditions of service, such terms and conditions would be protected only as long as they continue to hold the post which they held at the time of exercising the option referred to in sub-para (11) above: on the appointment/advancement of the officers to higher posts under the company, they will automatically be brought on the terms and conditions of service including the pay and allowances of the company.

(V) to (viii) xx xx xx (ix) The officers who are at present entitled to pensionary benefits under the undertakings will continue to do so under the company in accordance with the provisions of the Ministry of Finance O.M.F. 2 (6)/E/V/(A)62 dated 5-11-1964.

5. I am directed to request that the Undertakings may kindly give to each officer concerned, under due acknowledgement a copy of this letter along with copies of Forms I and 11 and a letter to be addressed to him by the Chairman and Managing Director calling upon him to exercise his option. I am also to request

that the undertakings may kindly forward one copy of the option of each officer to this department and retain the other copy. The undertakings, may maintain proper record of the options received from the officers."

8. It is not disputed by learned counsel for the petitioners that the petitioners were all officers who fell within the description indicated in sub-para (ii) of Para 2 above. Therefore, there, is no controversy in fact as, to the application of that sub-para, to the petitioners. The controversy is in respect of subparts (iv) and (ix) of para 2 and para 3 as extracted above.

9. Mr. Narayana Swamy, learned counsel for the petitioner has strenuously advanced the contention that under sub-para (iv) of para 2 of the letter the right of the petitioners to the pensionary benefits is not taken away but kept in. It is difficult to accede to such a contention. A proper analysis of that sub- indicates that the petitioners and the like of them could exercise two options first in terms of para, 2 to join or he absorbed in the service of B.G.M.L or continue in the service of the 1st respondent. Further, those who opted to the service of B.G.M.L. were required to make a second option within the date of incorporation, of B.G.M.L or, till the Company so incorporated formulated the terms and conditions of service which ever was later. The option to be exercised for the second time was to continue on the terms and conditions including the pay and allowances applicable to them immediately before the formation of the Company (In other words, to be governed by the Fundamental Rules of the 1st respondent) or to be governed by the conditions of service formulated by the Company. This exercise of second option was further qualified in the can of those who, opted for being governed by the fundamental rules of the 1st respondent. That qualification was to the effect that they would cease to be governed by the Fundamental Rules of the 1st respondent immediately on the first promotion or advancement of their services under the B.G.M.L.

10. It in the instant case, all the petitioners have exercised their option to be governed by the conditions of service of the B.G.M.L. as evidenced by Exhibit E to the petition, which is the Form signed by one of the petitioners and it is not disputed that the others have similarly exercised their option. Once the petitioners opted voluntarily, after seeing the terms and conditions set out in the letter of the 7th March, 1972, cannot now be permitted to say that their rights under the Fundamental Rules of the 1st respondent survive regard being had to what is contained in para 5 extracted above.

11. Sri Narayana Swamy, learned counsel further contended that some officers elected to retire from the service of the Ist respondent, before exercising the option and thereafter they were reemployed by the 2nd respondent thus enabling themselves to receive the pensionary benefits under the Fundamental Rules as well as the emoluments paid by the 2nd respondent B.G.M.L. This, according to him, amounts to victimising the petitioners. It is difficult to see how the petitioners are victimised. They also had the same liberty to retire from service of the 1st respondent -Union of India without exercising the option in

terms of subparts (ii) and (iv) of para 2 of the letter of 1072 and seek re-employment in the 2nd respondent if they chose to do so. The learned counsel for the 2nd respondent that there is no pleading to this effect in the pleadings correctly points it out. Nevertheless as the contention is raised, it has been noticed and rejected for the reason given above.

12. There cannot be any discrimination when then are two distinct classes, that is, one consisting retired or re-employed officials in the 2nd respondent and another consisting only the former employees of the 1st respondent who opted to be absorbed in the service of the B.G.M.L. I do not see any class discrimination as contended.

13. Similarly, identical argument is founded and advanced by the learned counsel for the petitioner an the basis of sub-paragraph (ix) of Para 2 of the letter of 1972. There is no merit in this contention as well because it has limited application to officers who had already joined Undertakings in terms of the offer made in 1964 and 1967 and therefore, fall into a different class from the officers who were required to opt in 1972 in terms of the conditions of the letter of 1972. As it was open to the petitioners not to opt for services under B.G.M.L. they cannot be permitted to say that they have a right to insist upon the same terms and conditions which were given to the officers at an earlier point of time. As stated earlier by me the petitioners with their eyes open and with full knowledge of the terms and conditions of the letter of 7th March, 1972 have opted to the services of the B.G.M.L. If sub-para (iv) of para 2 of the said letter has the effect of depriving the petitioners of their Pensionary benefits under the Fundamental Rules of the 1st respondent they only are to blame and not others.

14. In this view of the matter, the pensioners have not established any legal right to claim the pensionary benefits under the Fundamental Rules and therefore not entitled to the relief prayed for in the petitions.

15. The petitions are rejected and the Rule is discharged. In the circumstances of the case parties will bear their own costs.

16. Rule discharged.