(2014) 07 JH CK 0108

In the Jharkhand High Court

Case No : C.W.J.C. No. 1185 of 2001

Madan Prasad APPELLANT

Vs

Bharat Coking Coal Limited RESPONDENT

Date of Decision : 04-07-2014

Acts Referred:

Citation : (2014) 142 FLR 533

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Saurav Arun, Advocate for the Appellant; Anoop Kr. Mehta and Amit Kr. Sinha, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.—By Court: Heard counsel for the parties.

2. The petitioner joined Coal Mines Labour Welfare Organization (CMLWO) on 18th August 1964 as a Junior Engineer (Civil). The CMLWO was thereafter abolished by the Coal Mines Welfare Fund (Repeal) Act, 1986 and pursuant to the order dated 22nd September 1986 issued by the Department of Coal, Ministry of Energy, Government of India, all institutions of CMLWO were transferred to subsidiary companies of Coal India Limited and services of all regular full time employees including the officers, stood transferred to the respective coal company with effect from 01st October 1986. At the time of merger, employees of CMLWO were asked to exercise either of the three options namely, Option No. 1-to retain Government service; Option No. 2-to be absorbed in the Company''s pay scales and terms conditions or Option No. 3-to be absorbed in the Companies but retention of the Government pay scales and service conditions including pensionary benefit.

3. On acceptance of the 2nd option i.e. to be absorbed in the company''s pay scale and terms and conditions, he joined as a Engineer on 9th September 1988 in the scale of Rs. 1130-2400. The pay fixation chart of the petitioner is annexed

as annexure-D to the counter affidavit. Upon exercise of the option, persons who were in the CPC scale were to be placed in the pay scale of Rs. 2000-3500 as Assistant Engineer, whereas the Executive Engineers of Coal India Limited were allowed CIL pay scale of Rs. 1680-2700 in E-III grade. The petitioner consciously exercised the 2nd option. The petitioner thereafter superannuated on 31st January 1998 in the scale of pay applicable to those employees who had exercised option No. 2. Thereafter, the petitioner himself preferred a writ petition being CWJC No. 1844/2000 before this Court alleging that his pension and gratuity were not being paid. By the judgment passed in the said writ petition at annexure-G dated 1st March 2001 after considering the stand of the parties, petitioner was directed to vacate the quarter by 15th April 2001. Respondents were also directed to release gratuity and pay the same to the petitioner by 31st March 2001. Petitioner was also directed not to ask for interest on such gratuity amount. It was observed however that if the petitioner still claims interest, it would be open to the respondent to charge penal rent for the quarter in question for the period the petitioner remained beyond his age of superannuation, which they may adjust from the gratuity. Respondents were also directed to release the admitted pension including arrears within the stipulated period. It is not in dispute that the admissible post retirement dues were paid to the petitioner thereafter.

4. However, the petitioner has chosen to prefer this writ application in 2001 inter-alia seeking mandamus upon the respondents to revise the pay scale in terms of the Central Pay Commission Report as adopted by the Ministry of Coal by letter dated 15th September 2000 (Annexure-14) made effective from 01st January 1997, as also to pay arrears of salary and re-fix the entire retiral benefits in the revised pay scale. Further prayer has been made to accord proper fitment grade to the petitioner, protecting his scale of pay and seniority considering the length of service rendered in CMLWO as on 01st October 1986. Other consequential relief (s) have also been prayed.

5. Counsel for the petitioner in the wake of the aforesaid undisputed facts, has specifically relied upon the order of Government of India, Ministry of Coal dated 15th September 2000 (Annexure-14) and submitted that irrespective of the option exercised by the employees who were absorbed in Coal India Limited upon abolition of the CMLWO, the Coal India Limited was directed to consider the proposals for revision of pay in E-II Grade from Rs. 10750-18750 to Rs. 11200-16750 considering the fact that the initial basic pay of pre-revised scale of CIL starts from Rs. 5000/- whereas DPE''s pre-revised scale of CIL starts from Rs. 4800. According to the petitioner, the said communication squarely applies to all categories of optees including the petitioner.

6. Respondents have however contested the petitioner''s claim firstly on the ground that the plea raised by the petitioner is barred by constructive re-judicata as the petitioner had preferred the writ petition for payment of his post retirement benefits after his retirement on 31st January 1998 and never chosen

to seek the relief as prayed now on his behalf. All his retirement benefits have been paid in the scale in which his pay was fixed and revised from time to time as per option No. 2 exercised by him. Reference has been made to pay fixation chart of the petitioner in the said scale to buttress their submission that now, the scale which is being granted by the Central Government to the optees which is provided to the optees of option No. 1 and 3, cannot be sought by the petitioner. Therefore, according to the learned counsel for the respondents, no relief should be granted to the petitioner in the aforesaid facts and circumstances.

7. I have heard learned counsel for the parties and gone through the relevant materials on record. The undisputed facts, as borne out from the pleadings of the parties and their submissions, have been indicated earlier. The point to be considered in the present writ application is, as to whether after the petitioner had exercised the option to remain in the Coal India Pay Scale on his absorption upon abolition of CMLWO, is it open to him to now turn around and ask for pay revision in the Central pay scale as apparently been asked for by the communication of the Ministry of Coal dated 15th September 2000. As stated earlier, the petitioner had opted for option No. 2 and remained in the scale on revision from time to time and had retired on 31st January 1998 from the respondent company. After his retirement, he pursued a litigation by filing a writ petition before this Court for payment of his admissible post retirement dues. Apparently, all his retirement dues have been paid in the scale in which he had served the respondent organization, as per his option exercised. Lis between the parties apparently ended after payment of all admissible post retirement dues to the petitioner in terms of the judgment passed earlier in the earlier writ petition (CWJC No. 1844/2000) dated 01st March 2001 (Annexure-G).

8. In these circumstances, the plea raised by the petitioner now on the strength of Annexure-14, a communication of the Ministry of Coal made on 15th September 2000, does not appear to help the petitioner. The employees like the petitioner who had opted to remain in CIL scale after their absorption, obviously were bound by their exercise of option and after their retirement, such a plea cannot be sustained in the eye of law. Moreover, the petitioner in the first round of litigation, had not taken the plea for getting the benefit of the central pay scale, though the letter dated 15th September 2000 may have been issued after passing of the said judgment. In these circumstances, I do not find that the petitioner has made out any case for interference in the instant writ petition. Accordingly, the writ petition is dismissed.

