(1999) 12 PAT CK 0047

In the Patna High Court

Case No : C.W.J.C. No. 3286 of 1998 (R)

Md. Israil Khan and Another — APPELLANT

Vs

Heavy Engineering Corporation Ltd. and Others — RESPONDENT

Date of Decision : 10-12-1999

Acts Referred:

Citation : (2000) 2 BLJR 1197 : (2000) 2 PLJR 601

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Radha Mohan Prasad, J.—In this writ petition, petitioners have prayed for quashing of the order dated 12.9.1998, contained in Annexure-6 whereby and whereunder representations filed by them claiming the benefits of L.T.A. have been rejected.

2. In short, the relevant facts are that Heavy Engineering Corporation Limited, Ranchi (Respondent No. 1) introduced voluntary retirement scheme, 1990 vide circular No. 15/90 with effect from 22.10.1990. A photostat copy of the said scheme has been annexed as Annexure-1. Petitioners opted for the said scheme and their offers were accepted with effect from 31.7.1992 and 24.12.1992 respectively and they were accordingly allowed to retire. The benefit of L.T.A. was, however, not paid to them for which they filed C.W.J.C. No. 3749 of 1997 (R) which was disposed of by order dated 13.7.1998 (Annexure-3) with a direction that the petitioner may file representation before the Respondent-authority, who will hear them and dispose of the same by speaking order. It was further observed that if the claim of the petitioner is found to be genuine, an appropriate order must be passed forthwith. Thereafter, the petitioners filed representation and also sent legal notice vide Annexure-4. Petitioners were given opportunity of hearing and thereafter, Respondent-authority rejected their claim vide impugned order, contained in Annexure-6.

3. From the impugned order, it appears that on consideration of the fact that date of application for voluntary retirement is commencement of the notice for cessation of service, the Government decided that notice pay is not payable in cases where the notice period has lapsed; and that the case of the petitioners being so was rejected.

4. A counter-affidavit has been filed on behalf of the Respondents in which the facts aforementioned are not in dispute. It is, however, stated that on objection being raised by the Audit Department as to the principle for computation of notice period, a clarification was made by the Government, which was adopted by the Corporation vide circular No. 3/96 dated 29.1.1996 in which it was clarified that notice pay full or part, thereof will be admissible only in case where an employee released before expiry of the notice as provided in the offer of appointment from the date of application/option of an employee, i.e., notice pay will be paid only in those cases where the notice period has not lapsed. The Respondents in the counter-affidavit have admitted that a sum of Rs. 8,604/- and Rs. 9,968/- respectively was payable to the petitioners towards L.T.A. for the block year 1992-93, but a sum of Rs. 8,128.23 paise was recoverable from them on account of excess payment of notice pay as per the audit objection and directives of the Government of India.

5. Learned Counsel for the petitioners has contended that the Respondents were not legally justified in withholding the payment of the amount of L.T.A., pursuant to the decision/circular issued after their retirement, as the rights accrued in them cannot legally be interfered with from retrospective date. It was further submitted that as per the initial scheme contained in Annexure-1 an employee becomes entitled for the benefits admissible under the scheme only after acceptance of the request for voluntary retirement and the competent authority has full right to accept or reject at his discretion the request in the interest of the Corporation. As such, the crucial date for admissibility of the benefit is the date when an employee is relieved of his duties by acceptance of the request for voluntary retirement and consequently the notice period for cessation of service can also be treated to be effective after the date of retirement.

6. On the other hand, Mr. Sinha, learned Counsel appearing for the Respondents has submitted that there is no question of retrospective application of the said circular. The said circular was issued only in clarification of the main scheme. It was further submitted by him that the petitioners want to take double benefit which is not permissible in law. According to the learned Counsel for the Respondents, petitioners were paid full salary till they were relieved of their duties on 31.7.1992 and 24.12.1992 respectively as under the scheme the notice period required for cessation of service was to be the same as provided in the offer of appointment which was three months in the case of the petitioners and in their case, the said period had lapsed from the date of application.

7. This Court finds substance in the submission of the learned Counsel for the Respondents. The question of retrospective application of the decision of

Government of India does not arise in the present case. In fact, Clause 5.2.3 itself defines the term ''notice, period which means the notice period required for cessation of service as provided in the offer of appointment. It is not disputed that the offer of appointment provided for giving three months notice for cessation of service. Under Clause 5.1.0 an employee is entitled to make request by giving notice for voluntary retirement under the scheme and on acceptance of the same by the competent authority lie becomes entitled for the various benefits admissible under the scheme vide clauses 5.1.1. to 5.1.6 and the term ''notice period'' refers to the notice period required for cessation of service as provided in the offer of appointment. By letter the Government simply issued clarification which was adopted by the Corporation vide circular No. 3/96 dated 29th January, 1996 in which it was clarified that the notice pay will be paid only in those cases where the notice period had not lapsed, obviously because the Respondents could not have allowed voluntary retirement without giving the pay for the notice period as provided in the offer of appointment. The object of giving three months notice was obviously for acquainting the employee about the date of his relinquishment from the post/office to avoid any hardship, which, in my opinion, stand satisfied in the instant case, where the petitioners themselves requested by giving notice to the employer seeking voluntary retirement under the scheme.

9. Thus, in my opinion, there is no infirmity in the impugned order, contained in Annexure-6, whereby pursuant, to the clarification of Government of India, the date of application for voluntary retirement has been treated to be the date of notice for cessation of service, and notice pay has not been found payable in the cases of the petitioners in whose cases, the notice period lapsed with their retirement. However, this Court finds it pertinent to add that if actual work has been taken from an}'' employee even beyond the notice period, then they would be entitled to get full pay for the said period.

The writ application is, thus, dismissed, but without costs.

