(2004) 05 OHC CK 0019

In the Orissa High Court

Case No : Writ Petition (C) No''s. 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2330, 2301, 2302, 2303, 2304, 2305, 23

Mohan Dakua APPELLANT

Vs

Steel Authority of India Limited and Others RESPONDENT

Date of Decision : 06-05-2004

Acts Referred:

Citation : (2004) 98 CLT 261 : (2004) 102 FLR 1118

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : S.K. Sanganeria, P.C. Patnaik and A.K. Sahu, Jagnnath Patnaik and B. Mohanty, T.K. Patnaik, P.K. Nayak, A. Patnaik, P.K. Patnaik, A.K. Panda and A.A. Das, for the Appellant; S.D. Das, H.S. Satpathy, B.K. Sinha, B.R. Bhokta and B.R. Behera, S.K. Padhi, D. Mohapatra, B.K. Sahu and G. Misra, for the Respondent

Judgement

A.S. Naidu, J.—According to Mr. Sanganeria, learned counsel for the Petitioners in all these Writ Petitioners, the petitioners are neither litigants, nor litigation is their hobby, but then the arbitrary action of the opposite party-management has thrust litigations upon them which they are bound to prosecute willy nilly by approaching the portals of this Court.

2. To make the long story short, the petitioners are the erstwhile employees of the Steel Authority of India Limited (for short ''SAIL''), a Government of India Public Sector Undertaking, and were serving at the Rourkela Steel Plant at Rourkela. They opted for retirement in consonance with the Voluntary Retirement Schedule (for short ''VRS'') along with more than six hundred other employees. The VRS stipulated certain benefits under Clause 4. The relevant portion of the said Clause is quoted hereinbelow for better appreciation :

"Clause 4.0. Benefits under the Scheme :

4.1 An employee whose offer for Voluntary Retirement is accepted will be entitled to the following benefit(s) : 4.2 An employee whose offer for Voluntary retirement is accepted will not be entitled to any future increase due to annual increments or dearness allowance, etc. or prospective wage/salary revision. However, wage/ salary revision implemented from a date prior to date of voluntary retirement will be considered for increase in Monthly Benefit."

A perusal of the said Memorandum, Annexure-6, reveals that an embargo was cast with regard to revision of wage/salary of sick industries. Clause 14 of the Memorandum reads as follows :

"There should be no notional revision of pay for the purpose of determining of VRS in Sick Enterprises."

Mr. Sanganeria forcefully submitted that Rourkela Steel Plant though was initially weak at a stage during the years 2002-03, it became a profit-making industrial unit and has earned huge profits.

Relying on Clause 4.2 of the Voluntary Retirement Scheme coupled with the Memorandum, Annexure-6, issued by the Government of India, Ministry of Industries, Department of Public Enterprises, Mr. Sanganeria submitted that as revision of wage/salary with respect to the employees working in the establishment of the opposite party-management was actually given effect from 1.1.1997 and the differential arrear salary is sought to be disbursed, the petitioners who opted for retirement under VRS are also entitled to the said benefit for the period they were in service.

To strengthen his arguments, Mr. Sanganeria relied upon a circular issued by SAIL, Rourkela Steel Plant dated 21.1.2004, vide Annexure-5, expressing the intention to disburse the differential arrear amounts accrued on implementation of pay revision in the shape of ad hoc adjustable advancement to different employees.

The grievance of the petitioners is that though revision of wage/salary was made and benefit was given to the employees who were in the service under the management in the shape of adjustable advancement for the period from 1.1.1997 to 31.12.2000, the said benefit was not extended to the employees who took voluntary retirement. This action, according to Mr. Sanganeria, was arbitrary, contrary to Clause 4.2 of VRS, unjust and illegal. The petitioners pray to issue a Writ of Mandamus directing the opposite party-management to extend the financial benefits to them as extended to other employees due to implementation of revision of scales of pay with effect from 1.1.1997 till 31.12.2000 consequent upon revision made in the year 2001 pursuant to a settlement reached at the National/Tripartite Forum.

3. A counter-affidavit has been filed on behalf of the opposite party-management repudiating the claim advanced by the petitioners. It has been averred that in July, 2001 wage revision in respect of the workmen of SAIL including Rourkela

Steel Plant was made at National level by a duly constituted Committee, called "National Joint Committee for Steel Industries" (for short ''NJCS'') constituting of the representatives of the management and various Central Trade Unions operating in the Steel Industries and a Memorandum of Agreement was signed on 23rd July, 2001 determining revision of pay and other benefits of the employees. It was agreed that revision of scales of pay would be made notionally with effect from 1.1.1997, but actual financial benefits would be given with effect from 1.1.2001. Clause of the Agreement reads as follows :

"3.1.5.3 Fixation of pay in the revised scale of pay would be effected from 1.1.1997. However, this fixation will be notional from 1.1.1997 and the actual payment would commence from 1.1.2001 in the revised scales of pay."

It is further averred that basing upon the aforesaid Agreement at National level, a Tripartite Agreement was signed at Plant level in Rourkela on 25.7.2001 incorporating similar Clause, as per Clause 3.2.5.3 above. It is submitted that the NJCS Agreement is applicable only to non-executives working in different Units of SAIL As per the Office Order dated 16.6.2001 of SAIL with regard to revision, of scales of pay of executives below the Board level of SAIL it was provided under Clause 91 as follows :

"8.1 For the purpose of pay fixation in the revised scales of pay the same would be notionally from 1.1.1997 and the actual payment would be from 1.1.2001. The revised scales of pay shall be operative till 31.12.2006."

4. Relying upon the aforesaid two Clauses, Mr. Jagannath Patnaik, learned Senior Advocate appearing for the opposite party-management, forcefully submitted that in consonance with the Agreement, notional revision of scales of pay was made from 1.1.1997. Therefore, the employees like the petitioners who had opted for retirement under VRS are not entitled to any benefit. It is further submitted that the actual financial benefit in terms of the Agreement would be effective from 1.1.2001 only.

5. Disputing the averment made in the counter-affidavit, the petitioners have filed a rejoinder affidavit. Para-4 of the rejoinder affidavit, so far as relevant for the purpose, is quoted below :

"4. That during pendency of the aforesaid Writ application filed by the petitioner, the petitioner learnt that Shri Raman Kumar, Executive Director (P & A) of Steel Authority of India Limited, the opposite party No. 1, sent a letter to the opposite party No. 2 on 19.12.2003 that pursuant to the decision of the Board of Directors in their 2980th Meeting held on 30th October, 2003, the employees of SAIL would be paid ad hoc adjustable advance in respect of the wage revision with effect from 1.1.1997 to all employees, who were on roll of the companies as on 1.1.1997 and continued to be on roll as on 30.10.2003 and the aforesaid ad hoc adjustable advance would be adjusted in respect of payment arising out of wage/ salary revision as and when finalized for the period from 1.1.1997 to 31.12.2000."

6. It is pertinent to mention here that a reply to the rejoinder affidavit has also been filed by the opposite party SAIL denying the allegation that arrear differential salary arising out or revision of scales of pay for the period from 1.1.1997 to 31.12.2000 was paid to the employees. For the sake of better appreciation, para-4 of the reply to the rejoinder affidavit is quoted hereinbelow :

"4. That payment of financial benefit on account of wage revision or in other words the arrear of wage revision for the period 1.1.1997 to 31.12.2000 has not been finalized so far and therefore any claim of the petitioner in respect of the above is premature. If in future it will be decided by the opposite parties to pay arrear for the period 1.1.1997 to 31.12.2000 to its regular employees the petitioner''s case shall be duly considered in accordance with his entitlement as per Clause 4.2 of Annexure- 1"

7. In course of hearing Mr. Sanganeria reiterated the stand taken in the Writ Petitions and the counter-affidavits and submitted that the opposite party-management is trying to somehow or other wriggle out of the terms and conditions embodied in the Voluntary Retirement Scheme. The terms embodied in the Scheme are binding upon the management and also the petitioners who opted retirement under the Scheme. Thus the management should not be permitted to violate any of the conditions stipulated in the Scheme.

8. Mr. Patnaik as well as other counsel appearing for the opposite parties indifferent cases at the other hand submitted that the opposite parties are sacrosanctly following the terms embodied in the Voluntary Retirement Scheme and any allegation to the contrary is unfounded.

9. Be that as it may, in view of the clear statement made on solemn affirmation in the affidavit sworn to by the Senior Manager (Personnel), I.R. & Rules, SAIL, Rourkela Steel Plant in reply to the rejoinder affidavit filed by the petitioners that if in future it will be decided by the opposite party-management to pay arrear differential salary to its regular employees for the period from 1.1.1997 to 31.12.2000, the petitioner''s case will be duly considered in accordance with their entitlement as per Clause 4.2 of the Voluntary Retirement Scheme, I find nothing more is left to be decided in these Writ Petitions.

10. The grievance of the petitioners, as it appears from their Writ Petitions, rejoinder affidavits, further affidavits as well as the submissions made by Mr. Sanganeria in Court is that they are entitled to the benefits flowing from revision of scales of pay from 1.1.1997 to 31.12.2000 if the differential arrear salary for the said period is disbursed to their counterparts who are still in service. At the other hand, a specific stand has been taken by the opposite party-management that fixation of pay in the revised scales would be notional from 1.1.1997 and the actual payment would commence from 1.1.2001 and as such the petitioners are not entitled to any financial benefit as claimed in consonance with the terms of the Scheme.

11. At the same time, an alternative submission has been made by the opposite

party-management in reply to the rejoinder affidavit filed by the petitioners that in future if it will be decided by the opposite party-management to pay arrear differential salary consequent upon revision of scales of pay for the period from 1.1.1997 to 31.12.2000 to its regular employees, the cases of the petitioners will be considered in accordance with the provisions embodied in Clause 4.2 of the Scheme.

12. The rights, liabilities and obligations inter se between the employees who availed voluntary retirement vis-a-vis the management are to be governed according to the provisions of the Scheme for Voluntary Retirement. Clause 4.2 of the Scheme supra clearly reveals that if any benefit is extended consequent upon revision of salary to any employee who is in the roll of the management for period prior to implementation of the Voluntary Retirement Scheme, the same shall ipso facto be extended to the employees who have taken voluntary retirement in consonance with Voluntary Retirement Scheme. The specific case of the opposite party-management in the present Writ Petitions is that revision of scales of pay was only notional and shall be given effect to only from 1.1.2001 and as all the petitioners had opted for voluntary retirement prior to that date, they are not entitled to any financial benefit. It is also stated on affidavit by the opposite party 0-management that in future, if it will be decided to pay the arrear differential salary for the period from 1.1.1997 to 31.12.2000 to its regular employees the cases of the petitioners shall be considered in terms of Clause 4.2 of the Voluntary Retirement Scheme, Annexure-1.

13. In view of the aforesaid submission made before this Court on behalf of the opposite parties on affidavit, I dispose of all these Writ petitions with a direction that if the opposite party-management decides to pay arrear differential salary consequent upon revision of scales of pay of their regular employees for the period from 1.1.1997 to 31.12.2000, the petitioners shall be entitled to the same benefit in consonance with Clause 4.12 of the Voluntary Retirement Scheme. In course of hearing of some analogous matters, an additional affidavit was filed on behalf of the petitioners inter alia submitting that opposite party No. 1 has in the meantime approved/sanctioned differential arrear wage/salary for payment to its regular employees for the period from 1.1.1997 to 31.12.2000 as per report of Justice Mohan Commission by the end of first week of June, 2004. If the submission is true, then liberty is given to the petitioners to approach the authorities by filing appropriate applications claiming the financial benefits, which according to them they are entitled to receive towards arrear differential salary in consonance with Clause 4.2 of the Voluntary Retirement Scheme and if such applications are filed, the opposite party-authorities shall dispose of the same in consonance with the provisions of the Scheme and the undertaking given before this Court in para-4 of their reply to the rejoinder affidavit (supra) expeditiously.

14. With the aforesaid observation/direction all these Writ Petitions are disposed of. Parties to bear their own costs.