

(2023) 07 DEL CK 0125

In the Delhi High Court

Case No : Civil Writ Petition No. 4082 Of 1997

Mohinder Singh

APPELLANT

Vs

D.T.C. & Anr

RESPONDENT

Date of Decision : 13-07-2023

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2023) 07 DEL CK 0125

Hon'ble Judges : Gaurang Kanth, J

Bench : Single Bench

Advocate : Saurabh Kansal, Arjun Giri, Aashish Gupta, Avnish Ahlawat, Tania Ahlawat, Palak Rohmetra, N.K. Singh, Laavanya Kaushik, Aliza Alam

Final Decision : Dismissed

Judgement

Gaurang Kanth, J

1. The Petitioner vide the instant Writ Petition is impugning the validity of the retirement order dated 31.10.1995 ("impugned order") issued by the Respondent Corporation. Petitioner is seeking quashing of the impugned order on the grounds that vide the impugned order, the Respondent Corporation retired the Petitioner from service without providing him the pensionary benefits as envisaged under Voluntary Retirement Scheme introduced by the Respondent Corporation.

FACTS RELEVANT FOR THE ADJUDICATION OF THE PRESENT WRIT PETITION

2. The Petitioner was working as a conductor with the Respondent Corporation. The Respondent Corporation vide Office Order dated 27.11.1992 introduced a Pension Scheme and it was stated in the said Office Order that the date of effect of Pension Scheme would be 03.08.1981. The aforesaid Pension Scheme was open to all the existing employees, including those retired w.e.f. 03.08.1991 onwards subject to their opting for the Scheme. However, the said Scheme was made compulsory for all those employees joining the Respondent Corporation

w.e.f. 23.11.1992.

3. Later, an order dated 03.03.1993 titled as "Voluntary Retirement of Employees of Delhi Transport Corporation" was issued by the Respondent Corporation vide which a Voluntary Retirement Scheme (V.R.S.) was introduced. The Scheme was applicable to all regular employees of the Respondent Corporation i.e., workers and Executives who were appointed against the regular vacancies in the Corporation. Order dated 03.03.1993 has been extracted herein below:

"The matter pertaining to the introduction of voluntary retirement scheme for the employees has been under the consideration of Delhi Transport Corporation. Salient Features of the proposed voluntary retirement Scheme are as under -

1. Applicability:

The scheme will be applicable to all regular employees of the corporation, i.e. workers and executives who are appointed against regular vacancies in the corporation.

2. Eligibility:

An employee must have completed ten years of service in this corporation or completed 40 years of age to qualify for consideration under the scheme. For this purpose, period of deputation/retention of lien in the parent office in lieu of deputation prior to absorption in the regular service of the corporation will be excluded.

3. Conditions governing voluntary retirement.

a) Voluntary retirement will be normally allowed only in cases of incumbents of the posts which have been declared surplus or redundant. However, voluntary retirement scheme could also be allowed in other cases depending on the merits of each case and in the interest of the corporation.

b) Voluntary retirement cannot be claimed by any employee as a matter of right. The corporation will have the right not to grant voluntary retirement for reasons to be recorded in writing. Under no circumstances will the relief under this scheme be allowed from a date earlier than the date of passing the orders.

c) An employee in whose case any disciplinary case is pending will not be considered under this scheme until the disposal of the same.

4. An employee who taken voluntary retirement will be eligible to the following refunds/permanents:-

a) Balance in his PF Account as per rules of provident fund applicable to him.

b) Encashment of refused leave and accumulated Earned Leave as per rules of the corporation applicable to him as if he retires under the moral rules of retirement.

- c) Gratuity as per payment of Gratuity Act and Gratuity Rules of the Corporation applicable to him.
- d) Three months' notice pay as is applicable in the individual case as per the terms of his/her employment.
- e) An ex parte payment equivalent to 1-72 month's basic pay plus DA for such completed year of service limited to one month multiplied by the number of whole months of service left before normal date of retirement.
- f) Expenses for travelling for the entitled class for the employee and his/her family comprising his/her spouse and dependent members from the place of his/her posting to the place where he/she in to settle down in India.
- g) Pensionary benefits as per office order No.15 dt.27.11.92.

All amounts due to the corporation will be adjusted against the payment under d& (e) above and the employee concerned should clear any outstanding dues/ advances taken before the date of effect of voluntary retirement.

Employees working on the post of conductor in the corporation are proposed to be conversed under the voluntary retirement scheme in the first instances. Such conductors who are desirous of seeking voluntary retirement in the proposed scheme may give their option in the prescribed programme throughout proper channel within 15 days to the concerned unit officers who will forward the name to the secretary D.T.C. Board."

4. Vide order dated 16.03.1993, the Respondent Corporation extended the V.R.S to all its employees. The Respondent Corporation on 06.10.1995 notified its employees that all such employees who opt for the V.R.S. would not be entitled to join Pension Scheme if they are allowed retirement under the V.R.S.

5. The Petitioner, vide letter dated 16.10.1995, opted for V.R.S. as per the Scheme dated 03.03.1993. The Respondent Corporation vide its letter dated 31.10.1995 accepted the request of the petitioner for the voluntary retirement and thereby retired him from the services of the Corporation w.e.f. 31.10.1995 (AN). Along with the aforesaid letter, a cheque no. 758390 amounting to Rs. 1,09,724/- was paid to the Petitioner towards his retirement benefit as per the Scheme.

6. It is from this juncture, the dispute between the Petitioner and the Respondent Corporation began. The Petitioner has been aggrieved by the fact that the Corporation retired him from the services without paying him the pensionary benefits as per the V.R.S rolled out on 03.03.1993.

7. The petitioner filed the present Writ Petition for quashing the order of retirement dated 31.10.1995 as no pension was granted to him by the Respondent Corporation. During the pendency of the present Writ Petition, it was submitted by learned Counsel for the Respondent Corporation that an identical issue is pending consideration before the Hon"ble Division Bench of this Court.

Hence, based on the submission of learned Counsel for the Respondent Corporation, this Court, vide order dated 09.08.2000, adjourned the present matter with a direction to list the same after the disposal of the LPA and the parties were also given liberty to revive the present Writ Petition as and when the said LPA is disposed of. There was no application filed by any of the parties for reviving the present Writ Petition for 18 years. Hence, this matter was listed before this Court on 28.11.2018 on an office note. During the course of further proceedings, it was revealed that LPA No. 62/2001 titled as "DTC v. Mool Chand" raising similar issue was pending before the Hon"ble Division Bench and that the Hon"ble Division Bench has dismissed the said LPA vide order dated 06.11.2001. The Respondent Corporation preferred an SLP against the said order dated 06.11.2001. The said SLP was eventually converted as Civil Appeal No. 7258/2002 titled as "DTC v. Moolchand". The Hon"ble Supreme Court, vide order dated 02.12.2008, allowed the said Civil Appeal. In view of the same, the present Writ Petition is revived and taken up for hearing.

8. The Respondent Corporation filed an additional Affidavit, highlighting the following facts:

(a) Subsequent to the filing of the present Writ Petition, the Petitioner herein preferred another writ petition, W.P (C) No. 5335 of 1997 titled as "Shri Mohinder Singh v. Delhi Transport Corporation" before this Court, through another counsel, seeking a prayer to reinstate him back in service of the Respondent Corporation. During the course of arguments in the said Writ Petition, the Petitioner restricted his prayer to the limited extent of reconsideration of the issue by the Respondents. Hence the learned Single Judge of this Court vide order dated 24.09.2002 disposed of the said Writ Petition by observing that "the Petitioner may approach the Respondents to reconsider the issue. The Respondents may reconsider the issue only if it deems it appropriate."

(b) The Respondent Corporation reconsidered the Petitioner"s representation, as per the direction of this Court passed vide order dated 24.09.2002, and rejected the same vide order dated 05.02.2003.

(c) The Petitioner filed another Writ Petition i.e., W.P(C) No. 5037/2003 titled as "Mohinder Singh v. DTC" challenging the order dated 05.02.2003. During the course of the said proceedings, the Respondent Corporation raised an objection qua the maintainability of the said Writ Petition on the ground of availability of the alternative remedy. In view of the same, the learned Single Judge of this Court, vide order dated 10.10.2005, permitted the Petitioner to withdraw the said Writ Petition with liberty to approach the appropriate Government to raise an industrial dispute with regards to the issues raised in the petition.

(d) An Industrial Dispute was raised by the Petitioner, which was subsequently referred by the appropriate Government to the Learned Labour Court in I.D. No. 03/08 with the following terms of reference:

"Whether Sh. Mohinder Singh S/o Sh. Jage Ram, conductor, badge No 11501

could withdraw option for voluntary retirement after its acceptance by the management and if yes, is he entitled to be reinstated in service in the facts and circumstances of the dispute?"

(e) Learned Labour Court passed an Award dated 09.04.2009 in I.D. No. 03/08 and decided the dispute in favour of the Respondent Corporation, with the following observation: -

"6. In view of above discussion, I come to the conclusion that workman had opted for VRS not covered under pension scheme. I am, therefore, of the view that when workman had opted for VRS voluntarily and had accepted the benefits under VRS scheme of 1993, his request for reinstatement can not be held to be justified. Case of the workman is that he was entitled to pensionary benefits under VRS scheme. However, to his own admission in Ex MW1/4, he had opted for gratuity not covered under pension scheme. It means that he did not opt for VRS under pension scheme. If the workman feels that he was entitled for pensionary benefits under the VRS scheme he had opted for, he can seek separate remedy to get the said relief. Since the question of admissibility or otherwise of the pensionary benefits to the workman is outside the scope of terms of reference, this tribunal is not competent to go into that question. But once he had taken VRS voluntarily and had accepted benefits accruing thereunder, he cannot be allowed to revoke the option exercised by him. If such an option is allowed to be exercised by the workman, it is fraught with serious consequences for the management in as much as each and every retired employee will come forward for reinstatement. and every case will be reopened. Therefore, I am of the view that workman can not withdraw the option for VRS already exercised by him after it was accepted by the management. When he can not be allowed to revoke VRS already availed by him under the scheme, he is not entitled for reinstatement in service. This issue is accordingly decided in favour of management and against the workman

17. Relief:- In view of my findings on issue No 1,I hold that workman could not withdraw option for voluntarily retirement after its acceptance by the management nor he is entitled to be reinstated in the service of management in the facts and circumstances of the dispute. Reference stands answered. An award is passed accordingly..."

(f) The Petitioner never challenged the said Award dated 09.04.2009 and hence, the said Award attained finality.

9. The Petitioner filed reply to the said additional Affidavit in which he has admitted the various litigations as narrated by the Respondent Corporation in its additional Affidavit.

10. Based on the records placed before this Court, this Court heard the arguments advanced by both the parties.

SUBMISSIONS MADE ON BEHALF OF THE PETITIONER

11. Mr. Saurabh Kansal, learned counsel appearing on behalf of the petitioner has submitted that the Respondent Corporation, on the basis of a Circular dated 06.10.1995, unfairly snatched away the pensionary benefits from the Petitioner in a discriminatory manner. There was clear communication from the Respondent that the Petitioner will be granted pension if he opts for the Voluntary Retirement Scheme. However, Respondent Corporation illegally deprived the petitioner by not providing him with the pensionary benefits admissible to him as per the Scheme.

12. It is further submitted that the learned Labour Court vide order dated 09.04.2009 has not touched upon the issue of pensionary benefit, but only limited itself to the issue of reinstatement of the workman. However, the present Writ Petition has been filed to raise the issue of payment of pensionary benefits. Therefore, no inference with respect to the merits of the present case can be drawn from the aforesaid order.

13. Based on these submissions, learned counsel for the Petitioner prays for setting aside of his retirement order.

SUBMISSIONS MADE ON BEHALF OF THE RESPONDENT CORPORATION

14. Mrs. Avnish Ahlawat, learned counsel appearing on behalf of the Respondent Corporation has brought this court's attention to the previous rounds of litigations initiated by the Petitioner. It was submitted that the Petitioner lost the earlier filed cases against the Respondent wherein the Hon'ble Court adjudicated the dispute in favour of the Respondent. It has been settled by learned Labour Court that the Petitioner is not entitled for reinstatement in service, since he himself opted for the voluntary retirement under the Scheme. Moreover, the petitioner opted for the updated V.R.S. under which no pensionary benefits were to be provided to those opting for voluntary retirement. Therefore, the Petitioner cannot be allowed to claim reinstatement in the service after his request for voluntary retirement has been accepted by the Corporation.

15. Learned counsel further relied upon the judgment delivered by the Hon'ble Supreme Court in DTC v. Mool Chand, reported as (2009) 1 SCC 255 wherein the Hon'ble Apex court allowed the appeal filed by the Respondent Corporation by observing that the workman is not entitled to the pensionary benefit since he opted for voluntary retirement under the updated VRS scheme dated 13.12.1995, which specifically excluded workman from seeking pensionary benefit.

16. With these submissions, learned counsel for the Respondent Corporation prays for the dismissal of the present Writ Petition.

LEGAL ANALYSIS

17. This court has heard the rival contentions advanced on behalf of the parties and have perused the relevant documents and judgments with assistance of the learned counsels.

18. A perusal of the record shows that all the issues between the parties are already settled through various litigations initiated by the Petitioner. In pursuance of the directions of this Court dated 24.09.2002 passed in W.P.(C) 5335/1997, the Respondent Corporation reconsidered the grievance of the Petitioner and rejected the same. It is to be noted that during the proceedings before this Court in W.P.(C) 5335/1997, the Petitioner restricted his prayer limited to the reconsideration of his grievance by the Respondent Corporation. The Respondent Corporation reconsidered the grievance of the Petitioner and rejected the same vide order dated 05.02.2003. The Petitioner raised an Industrial Dispute challenging his retirement and non-grant of pension. Learned Labour Court, vide Award dated 09.04.2009 negated the contention of the Petitioner and passed an Award in favour of the Respondent Corporation. The said Award dated 09.04.2009 was never challenged by the Petitioner and it attained finality. Hence, the grievance raised by the Petitioner is already adjudicated and the said findings have attained finality. The Petitioner is not challenging the findings of the learned Labour Court before this Court and hence this Court, while exercising jurisdiction under Article 226 of the Constitution of India, is not inclined to interfere with the findings recorded by the learned Labour Court.

19. It is also to be noted that the issue raised in the present proceedings is no more res integra as the Hon"ble Supreme Court in "DTC v. Moolchand" (Supra) has already settled the issue by holding that the employees will get benefits only as per the terms of the VRS Scheme. In the present case also, there is a specific provision in the VRS Scheme which disentitles the Petitioner from claiming pensionary benefits. Hence, following the dicta of Hon"ble Supreme Court, this Court is of the considered view that the Petitioner is not entitled for the pensionary benefits. Further, the Petitioner opted for the V.R.S. Scheme and availed all the benefits as per the said Scheme. In compliance of the direction of this Court, the Respondent Corporation reconsidered the grievance of the Petitioner and rejected the same vide a reasoned order dated 05.02.2003. In view of the same, he cannot be allowed to be reinstated, at this stage, as the Respondent Corporation acted in accordance with the specific terms of the VRS Scheme.

20. In light of the above discussion, it is safe to conclude that the Petitioner himself without any coercion opted for the Voluntary Retirement Scheme. Once his decision to opt for the retirement had been accepted by the Respondent Corporation, he shall not be permitted to take a step back and take plea of ignorance about terms and conditions of the Scheme. If such a demand put forward by the Petitioner is accepted, it will not only result in inconvenience for the Respondent Corporation but will also act as a bad precedent wherein every retired employee will claim ignorance of terms and conditions to demand reinstatement in service. It was the responsibility of the Petitioner to understand the features of the Scheme which were to govern his retirement from service. The said Circular is applicable to the Petitioner since he opted for voluntary retirement after publishing of the said Circular. Therefore, this court is not

inclined to exercise its power conferred under Article 226 of the Constitution of India, hence, no interference is warranted in the retirement order dated 31.10.1995 issued by the Respondent corporation.

21. Accordingly, the present Writ Petition is dismissed. No order as to costs.