
(2000) 01 BOM CK 0034

In the Bombay High Court

Case No : Writ Petition No. 2037 of 1989

Mrs. Nandini Nitin Patil

APPELLANT

Vs

State of Maharashtra and another

RESPONDENT

Date of Decision : 25-01-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 8
Evidence Act, 1872 — Section 115

Citation : (2000) 2 ALLMR 98 : (2000) 3 BomCR 94 : (2000) 2 BOMLR 180 :
(2000) 86 FLR 280 : (2000) 2 LLJ 1253 : (2000) 3 MhLj 367

Hon'ble Judges : V.C. Daga, J;B.P. Saraf, J

Bench : Division Bench

Advocate : Prashant Bharati and N.Y. Gupte, for the Appellant; Ms. S.M. Dandekar, for the Respondent

Judgement

V.C. Daga, J.—The petitioner is seeking a writ of Mandamus under Article 226 of the Constitution of India against the respondents. Respondent No. 1 is the State of Maharashtra and respondent No. 2 is the Overseas Employment and Export Promotion Corporation of Maharashtra. Petitioner was employed in the services of respondent No. 2 as Executive Officer from 6th January, 1984. Some time in the month of August 1988, Respondent No. 2 took a decision to introduce voluntary retirement scheme (VRS for short) for the employees including officers of respondent No. 2 Corporation as the respondent Corporation was facing acute financial crisis. The respondent No. 2, therefore, by a Circular dated 22nd August, 1988 announced the voluntary retirement scheme and called upon the officers and employees to accept the voluntary retirement so as to enable the Corporation to overcome financial crisis.

2. The Circular dated 22nd August, 1988 did not contain attractive voluntary retirement scheme and consequently, there was no response from the employees or officers. No officer or employee came forward to accept voluntary retirement under the said scheme offered by the respondent No. 2 vide Circular dated 22nd

August, 1988 which inter alia suggested the voluntary retirement scheme with benefit of one month's salary (basic + D.A.) for each completed year of the service with the Corporation and for that purpose any employee who had completed the service of six months or more were to be entitled for one month's salary under the said voluntary retirement scheme announced by the respondent under Circular dated 22nd August, 1988. Since there was absolutely no response from the officers or employees and considering the financial crisis, and to make the scheme more attractive respondent No. 2 came out with another Circular dated 26-9-1988, which contained somewhat revised voluntary retirement scheme. The said circular dated 26-9-1988 offered compensation at the rate of 3 months salary (basic + D.A.) for each completed year of service with the Corporation. The other terms as offered remained the same as in accordance with the scheme announced under circular dated 22-8-1988. The petitioner finding the scheme attractive came forward and accepted the said representation of the respondent No. 2 Corporation contained in circular dated 26-9-1988. The petitioner, therefore, by her letter dated 21-10-1988 expressed her desire to accept the voluntary retirement scheme announced by the Corporation under circular dated 26-9-1988 specifically pleading therein that if she was to accept the voluntary retirement under circular dated 26-9-1988, she would not be completing 5 years service in the employment of respondent No. 2 and, therefore, requested respondent No. 2 to consider her request for gratuity considering and accepting as if the petitioner was in the employment of respondent No. 2 for a period of five years for the purpose of Gratuity only. The petitioner further expressed that if the said condition was acceptable to the respondent No. 2 her application dated 21-10-1988 be treated as an application for voluntary retirement as per the scheme announced by the Corporation under modified circular dated 26-9-1988.

3. The Managing Director of the respondent No, 2 Corporation vide its letter dated 21-10-1988 informed the petitioner that her request as contained in her letter dated 21-10-1988 has been considered and accepted by the Corporation. Petitioner was accordingly relieved from the services of the Corporation with effect from 6-12-1988 (A.N.).

4. The petitioner thus was in the services of the Corporation for the period from 6-1-1984 to 6-12-1988. The petitioner thus became eligible and entitled to receive the following payments from the respondent No. 2 Corporation.

1. Gratuity amounting to Rs. 6250/-

2. Retirement compensation at the rate of three months per year service from 6-1-1984 to 6-12-1988 i.e. 15 months salary (Basic + D.A.) amounting to Rs. 37,500/-

5. The aforesaid payments were not made by the respondent No. 2 Corporation to the petitioner at the time when the petitioner was relieved from her services. Consequently, the petitioner was required to make series of representations

requesting for said payments.

6. The respondent No. 2 Corporation on 6-1-1989 came out with a circular stating therein that the respondent No. 1-State of Maharashtra has partly modified the terms of voluntary retirement scheme as far as officers of the Corporation are concerned providing for payment of compensation of 1 1/2 months' salary per year of service instead of 3 months salary as earlier offered by way of compensation. The other terms remained the same. The petitioner was accordingly paid compensation at the rate of 1 1/2 months salary for each completed year of service amounting to Rs. 17,334/-. As such, petitioner was denied compensation at the rate of 1 1/2 months salary for each year of service. As the modified condition after retirement of the petitioner adversely affected the interest of the petitioner the petitioner served a legal notice upon respondent No. 2 dated 2-2-1989 contending therein that the respondent No. 1 has no authority to modify the terms of voluntary retirement. However, the said notice did not yield any positive results. The petitioner, therefore invoked writ jurisdiction of this Court under Article 226 of the Constitution of India against the respondents.

7. The respondents inspite of notice did not file any reply to the petition or affidavit controverting the allegations made in the petition. However, out of series of correspondence we came across a letter dated 25th October 1988 addressed to the petitioner, wherein the respondent No. 2 informed the petitioner that the respondent No. 2 Corporation has no objection for payment of gratuity amount amounting to Rs. 6750/- considering as if the petitioner as put in 5 years of service with respondent No. 2 Corporation. Consequently, we find no difficulty in allowing the claim of the petitioner so far as claim for payment of gratuity amounting to Rs. 6250/- is concerned.

8. So far as the claim of the petitioner pertaining to compensation at the rate of 3 months salary for each year of service from 6-1-1984 to 6-12-1988 i.e. for 15 months salary amounting to Rs. 37,500/- is concerned, an amount of Rs. 17,334/- has already been paid to the petitioner. Thus the petitioner has confined her claim to Rs. 20,166/- only.

9. The learned Counsel for the petitioner has raised a contention that the representation made by respondent No. 2 Corporation has been accepted by the petitioner to prejudice and relying upon said representation she applied for voluntary retirement and accepted the scheme announced by the respondent No. 2 Corporation vide its Circular dated 26th September 1988 (Ex. B). The petitioner has therefore, contended before us that the Corporation is "estopped" from denying the said benefit to the petitioner. The said contention raised by the petitioner has not been denied by the respondents. The averments made by the petitioner in her petition as already said hereinabove have not been controverted by the respondents either by filing return or counter affidavit. As such, we have no alternative but to proceed on the basis that the averments had been admitted by the respondents, in view of the law laid down by the Apex Court in the case of Smt. Naseem Bano Vs. State of U.P. and others, .

10. The circular dated 26-9-1988 nowhere mentioned that the said circular or the scheme floated therein for voluntary retirement was subject to the approval of the State Government. There was no such indication in the said circular dated 26-9-1988. Consequently, petitioner was perfectly justified in accepting the representation made by the respondent No. 2 Corporation and accordingly she accepted Voluntary Retirement. In other words, she accepted it to her prejudice by acting upon the said circular dated 26-9-1988. In these circumstances, we are satisfied that the respondent Corporation is estopped from denying the said benefit to the petitioner. The petitioner is entitled to retirement compensation at the rate of three months salary for each completed year of service from 6-1-1984 to 6-12-1988 amounting to Rs. 37,500/- after deducting an amount of compensation of Rs. 17,334/- which she has already received. Thus, she is entitled to balance amount of Rs. 20,166/-.

11. For the above mentioned reasons, we hold that the petitioner shall be entitled to claim gratuity amounting to Rs. 6250/- and retirement compensation amounting to Rs. 20,166/- from the respondent No. 2 Corporation as she was in the employment of respondent No. 2 an independent Corporation having independent status. No directions therefore, can be issued against respondent No. 1.

12. We therefore, allow this petition and in the result we hold and declare that the petitioner is entitled to get the above amount from the respondent No. 2 as determined by us.

Rule is accordingly made absolute in the above terms. No order as to costs.

13. Petition allowed.