(2023) 11 UK CK 0039

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 3043 Of 2023

M/s Cavendish Industries Ltd. APPELLANT

Vs

State Of Uttarakhand And Six Others RESPONDENT

Date of Decision : 06-11-2023

Acts Referred:

Uttar Pradesh./ Uttarakhand Industrial Disputes Act, 1947 — Section 2(s), 6Q
Uttar Pradesh Industrial Disputes Rules, 1957 — Rule 43

Citation : (2023) 11 UK CK 0039

Hon'ble Judges : Pankaj Purohit, J

Bench : Single Bench

Advocate : Gopal Narain, A.M. Shukla, Yogesh Chandra Tewari

Judgement

Pankaj Purohit, J

1. Heard learned appearing counsel(s) for the parties.

2. It is contended by learned counsel for the petitioner that the respondent nos.3 to 7 were the employees of the petitioner-Company. Some time, in the year 2015-2016, due to some financial inviability, the Company introduced Voluntary Retirement Scheme (VRS) /Voluntary Separation Scheme (VSS). The respondent nos.3 to 7 accepted the said Scheme and, accordingly, in the year 2016, they were paid their entire dues together with their outstanding dues towards ex gratia and Gratuity for the balance months of service left. In order to substantiate his arguments, a bank cheque favouring one of the respondents, namely, Om Prakash (respondent no.5 herein) is also annexed with the writ petition. Now, the respondents have raised the industrial dispute which has been referred to the Industrial Tribunal/Labour Court, Uttarakhand, Haldwani (Nainital) vide the impugned reference order dated 14.08.2023, mentioned in the petitioner-Company Summoning Order dated 17.08.2023. The points of reference, so made by the private respondents, read as under: -

“A. Whether the "Voluntary separation scheme" implemented by the establishment is covered under the category of Retrenchment? In such a case, whether the former workers of the establishment (list annexed) at the time of expansion of the said industrial establishment Attached) are eligible for re-employment under Section 6-Q of the U.P./Uttarakhand Industrial Disputes Act, 1947 read with Rule 43 framed under the said Act? If so, to what extent the workers are entitled to receive the benefits?

B. Whether before implementation of the "Voluntary Separation Scheme", the establishment has adopted the process in accordance with the provisions of the Standing Orders Act, 1946"? And whether the said Scheme has properly been implemented under the Voluntary Separation Scheme of the Government of India? If not, then what benefits the workers are entitled to and to what extent?

C. Whether it is appropriate and legal to ban new appointments in the establishment till the process of adjudication of the said matter? If so, then what benefits the workers are entitled to receive and to what extent?"

3. It is further contended by learned counsel appearing for the petitioner-Company that acceptance of Voluntary Retirement Scheme (VRS)/Voluntary Separation Scheme (VSS) by the private respondents will not fall within the definition of 'retrenchment'. In order to substantiate his arguments, emphasis has been laid to the definition of 'retrenchment' as given in Section 2(s) of the Act of 1947, which reads as under: -

2 (s) 'Retrenchment' means the termination by the employer of the service of a workman or any reason whatsoever, otherwise than as punishment inflicted by way of disciplinary action, but does not include -

i) voluntary retirement of the workmen; or

(ii) retirement of the workmen on reaching the age of superannuation if the contract of employment between the employer and workman concerned contains a stipulation in that behalf;

4. It is argued by learned counsel that the definition of 'retrenchment' quoted above clearly specifies that the retrenchment will not include voluntary retirement of a workman from the industry.

5. Since in the case in hand, the private respondents took voluntary retirement and have been paid their dues in accordance with the Voluntary Retirement Scheme (VRS) /Voluntary Separation Scheme (VSS), the reference made at the behest of private respondents, in view of foregoing discussion, is prima facie bad in the eyes of law.

6. Learned counsel, in order to buttress his arguments, has also placed his hands on an authority of the Hon'ble Supreme Court in the case of 'A.K. Bindal and another v. Union of India and others' reported in (2003) 5 SCC 163, wherein, the Apex Court has dealt with the selfsame situation. For the sake of convenience, relevant portion of paragraph nos.33 and 34 is extracted hereinbelow: -

“33. The Voluntary Retirement Scheme (VRS) which is sometimes called Voluntary Separation Scheme (VSS) is introduced by companies and industrial establishments in order to reduce the surplus staff and to bring in financial efficiency. The office memorandum dated 5-5-2000 issued by the Government of India provided that for sick and unviable units, the VRS package of the Department of Heavy Industry will be adopted. Under this Scheme an employee is entitled to an ex gratia payment equivalent to 45 days' emoluments (pay + DA) for each completed year of service or the monthly emoluments at the time of retirement multiplied by the balance months of service left before the normal date of retirement, whichever is less. This is in addition to terminal benefits. The Government was conscious about the fact that the pay scales of some of the PSUs had not been revised with effect from 1-1-1992 and therefore it has provided adequate compensation in that regard in the second VRS which was announced for all Central public sector undertakings on 6-11-2001. Clause (a) of the Scheme reads as under:

(a) Ex gratia payment in respect of employees on pay scales at 1-1-1987 and 1-1-1992 levels, computed on their existing pay scales in accordance with the extant Scheme, shall be increased by 100% and 50% respectively.

34. This shows that a considerable amount is to be paid to an employee ex gratia besides the terminal benefits in case he opts for voluntary retirement under the Scheme and his option is accepted. The amount is paid not for doing any work or rendering any service. It is paid in lieu of the employee himself leaving the services of the company or the industrial establishment and foregoing all his claims or rights in the same. It is a package deal of give and take. That is why in the business world it is known as “golden handshake”. The main purpose of paying this amount is to bring about a complete cessation of the jural relationship between the employer and the employee. After the amount is paid and the employee ceases to be under the employment of the company or the undertaking, he leaves with all his rights and there is no question of his again agitating for any kind of his past rights with his erstwhile employer including making any claim with regard to enhancement of pay scale for an earlier period. If the employee is still permitted to raise a grievance regarding enhancement of pay scale from a retrospective date, even after he has opted for Voluntary Retirement Scheme and has accepted the amount paid to him, the whole purpose of introducing the Scheme would be totally frustrated.”

7. From a perusal of the aforesaid portion of the judgment rendered by the Apex Court, dealing with the issue, it is quite evident that after the acceptance of Voluntary Retirement Scheme (VRS) /Voluntary Separation Scheme (VSS), the relationship between the Company and the employee ceases to exist, and in such an eventuality, there cannot be any event of re-engagement of such persons back into the service.

8. Having heard learned Counsel for the appearing parties, and also having perused the documents annexed with the writ petition besides the case law cited

by the learned Counsel, this Court is of the firm opinion that the proceedings under impugned reference cannot continue.

9. Accordingly, it is directed that the impugned reference order dated 14.08.2023, mentioned in the Summon/Notice dated 17.08.2023 passed by respondent no.1 (Annexure No.5 to the writ petition) as also the entire proceedings of Adjudication Case No.11 of 2023, M/s Cavendish Industries Ltd. v. Subhash Singh and others, pending before the Court of Industrial Tribunal/ Labour Court, Uttarakhand, Haldwani (Nainital) shall remain stayed till the next date of listing.

10. Let notices be issued to respondent nos.3 to 7 returnable on or before the next date of listing. Steps to be taken within a week.

11. All the respondents are directed to file their counter affidavit in the matter within six weeks.

12. Petitioner may file its rejoinder, if any, to the counter affidavit(s) to be filed by the respondents, within two weeks thereafter.

13. List for further orders on 12.02.2024.

14. Stay application (IA/1/2023) stands disposed of accordingly.