
(2012) 10 P&H CK 0045
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 8422 of 2011 (O and M)

National Textile Corporation Limited

APPELLANT

Vs

Presiding Officer and Another

RESPONDENT

Date of Decision : 09-10-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (2013) 1 LLJ 729 : (2013) 169 PLR 71 : (2013) 1 SCT 330

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : H.N. Mehtani, for the Appellant; Pritam Saini, Advocate for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Bindal, J.—This order will dispose of CWP Nos. 8422, 8506, 8509, 8519, 8521, 8552, and 8574 of 2011, as the common questions of law and facts are involved therein. Briefly the facts of the case are that the respondents herein were working on different posts with the petitioner Corporation. They had sought voluntarily retirement as per the scheme framed by the petitioner. After they had already retired, they filed applications u/s 33C(2) of the Industrial Disputes Act, 1947 (for short, "the Act"), before the Labour Court, U.T. Chandigarh, (for short, "the Labour Court") seeking payment of certain emoluments which, according to them, were due for the period they were in service. The posts on which the respondents were working, the date on which they sought voluntarily retirement, the date on which the application u/s 33C(2) of the Act was filed, and the amount paid on voluntarily retirement in lump sum, are given below:-

2. The respondents who were serving on the posts, as mentioned above, sought voluntary retirement and were paid the lump sum as per the scheme framed. More than three to five years thereafter, they filed application u/s 33C(2) of the Act claiming that on account of merger of 50% Dearness Allowance with the

basic pay with effect from 1.4.2004, they were entitled to increased emoluments upto their date of retirement. The claim was accepted by the learned Labour Court vide common impugned award dated 4.2.2011, which has been impugned by the petitioner Corporation before this court in the present bunch of writ petitions.

3. Learned counsel for the petitioner submitted that firstly the respondents herein cannot be termed to be the workmen. They were working on senior positions in managerial capacity. Accordingly, they were not entitled to invoke the jurisdiction of the Labour Court. Secondly, he submitted that after the respondents had sought voluntarily retirement and the lump sum amount as per retirement scheme had been paid to them, the relationship of master and servant came to an end. Thereafter, they could not seek any benefit which may be due to them during their period of service.

4. Learned counsel for the petitioner further submitted that even on merits as well, the respondents have no claim for the reason that merger of 50% dearness allowance with the basic pay was to take effect from 1.10.2006, whereas the respondents had already retired prior thereto. The aforesaid decision was partially modified and the effective date of merger was changed to 1.4.2004. However, it was applicable only for the employees, who were on the rolls of the company as on 1.3.2008. Hence, even on merits, the respondents were not entitled to the relief which has been granted to them by the Labour Court. In support of his arguments, he placed reliance upon judgments of Hon"ble the Supreme Court in A.K. Bindal and Another Vs. Union of India (UOI) and Others, , HEC Voluntary Retd. Emps. Welfare Soc. and Another Vs. Heavy Engineering Corporation Ltd. and Others, and judgment of Delhi High Court in W.P. (C.) No. 8425 of 2009-Inderpal Singh v. National Textile Corporation Limited dated 24.2.2010.

5. On the other hand, learned counsel for the respondents submitted that the respondents are seeking the benefits in terms of a clause in the policy whereby arrears of salary/wages payable due to revision, etc. are to be included while computing the benefits and difference is required to be paid. Once, the decision was taken by the authorities for merger of 50% dearness allowance with basic pay, the consequential increased emoluments are payable to the respondents.

6. Heard learned counsel for the parties and perused the paper book.

7. The facts of the case, as have been enumerated above, that the respondents herein sought voluntarily retirement on the dates, as mentioned in paragraph No. 2, and were paid emoluments in terms of the scheme, are not in dispute. The dispute in the present case is only pertaining to some increase in the emoluments on account of merger of 50% dear-ness allowance in the basic pay for the period the respondents were in service. What is required to be considered is as to whether such a claim is maintainable at this stage ?

8. A similar issue came up for consideration before Hon"ble the Supreme Court in

A.K. Bindal's case (supra), where voluntary retirement scheme framed by a public sector undertaking was under consideration. It was held therein that voluntary retirement scheme is some times called Voluntary Separation Scheme. These are introduced to reduce the surplus staff and to bring in financial efficiency. The employees are paid considerable amount as ex-gratia besides terminal benefits. It is in lieu of the employee himself leaving the job. It is a kind of package deal of give and take. It is also commonly known as "Golden Handshake". The sole object of paying huge sum is to bring about a complete cessation of the jural relationship between the employer and the employee, as a result of which he leaves all his rights and there is no question of entertaining any claim pertaining to his period of service later on. If he is still permitted, the scheme itself would be frustrated. The relevant paragraphs thereof are extracted below:-

32. The units of the companies have already suspended their operations quite some time back and as on date no unit is functioning nor any production is being made. There is also no denial of the fact that the companies have suffered huge losses and salaries of the employees who were practically doing no work has been paid by the Government for a considerable long period. The employees accepted VRS with their eyes open without making any kind of protest regarding their past rights based upon revision of pay scale from 1.1.1992.

33. The Voluntary Retirement Scheme (VRS) which is some times 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 Government of India provided that for sick and unviable units, the VRS package of 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 + D.A.) 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 1.1.87 and 1.1.92 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 forgoing all his

claims or rights in the same. It is a package deal of give and take. That is why in 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.

9. The issue was again considered by Hon"ble the Supreme Court in HEC Voluntary Retd. Emps. Welfare Soc.'s case (supra), wherein it was observed that once an employee opts for voluntary retirement, in terms of a contract, he cannot raise a claim for a higher salary unless by reason of a statute or a policy framed by the employer he becomes entitled thereto. The employee, who opts for voluntary retirement scheme, makes a planning for future considering his status at that time and not keeping in view that in future there may be pay revision. At that time he knows where he stands and is prepared to cease his relationship with the employer by resorting to "Golden Handshake". The relevant paras thereof are extracted below:-

18. The voluntary retirement scheme speaks of a package. One either takes it or rejects it. While offering to opt for the same, presumably the employee takes into consideration the future implication also.

19. It is not in dispute that the effect of such voluntary retirement scheme is cessation of jural relationship between the employer and the employee. Once an employee opts to retire voluntarily, in terms of the contract he cannot raise a claim for a higher salary unless by reason of a statute he becomes entitled thereto. He may also become entitled thereto even if a policy in that behalf is formulated by the Company.

20. We have indicated hereinbefore that before floating such a scheme both the employer as also the employee take into account financial implications in relation thereto. When an invitation to offer is floated by reason of such a scheme, the employer must have carried out exercises as regard the financial implication thereof. If a large number of employees opt therefor, having regard to the financial constraints an employer may not accept offers of a number of employees and may confine the same to only a section of optees. Similarly when an employer accepts the recommendations of a Pay Revision Committee, having regard to the financial implications thereof it may accept or reject the whole or a part of it. The question of inclusion of employees who form a special class by themselves, would, thus, depend upon the object and purport thereof. The appellants herein do not fall either in clauses 3.2 or 3.3 expressly. They would be

treated to be included in clause 3.2, provided they are considered at par with superannuated employee. They would be excluded if they are treated to be discharged employee.

21. We have noticed that admittedly thousands of employees had opted for voluntary retirement during the period in question. They indisputably form a distinct and different class. Having given our anxious consideration thereto, we are of the opinion that neither they are discharged employees nor are superannuated employees. The expression "superannuation" connotes a distinct meaning. It ordinarily means, unless otherwise provided for in the statute, that not only he reaches the age of superannuation pre-scribed therefor, but also becomes entitled to the retrial benefits thereof including pension. "Voluntary retirement" could have fallen within the aforementioned expression, provided it was so stated expressly in the scheme.

22. Financial considerations are, thus, a relevant factor both for floating a scheme of voluntary retirement as well as for revision of pay. Those employees who opted for voluntary retirement, make a planning for the future. At the time of giving option, they know where they stand. At that point of time they did not anticipate that they would get the benefit of revision in the scales of pay. They prepared themselves to contract out of the jural relationship by resorting to "golden handshake". They are bound by there own act. The parties are bound by the terms of contract of voluntary retirement. We have noticed hereinbefore that unless a statute or statutory provision interdict, the relationship between the parties to act pursuant to or in furtherance of the voluntary retirement scheme, is governed by contract. By such contract, they can opt out for such other terms and conditions as may be agreed upon. In this case the terms and conditions of the contract are not governed by a statute or statutory rules.

10. The aforesaid judgments were followed by Delhi High Court in Inderpal Singh's case (supra).

11. If the facts of the present case are considered, keeping in view the enunciation of law as referred to above, in my opinion, the impugned award of the Labour Court cannot be sustained and is liable to be set aside.

12. In the present case, the respondents have been paid, whatever amount they were entitled to as per the voluntary retirement scheme. With their eyes open they offered to take voluntary retirement which was accepted by the employer. Now they cannot be allowed to turn around and state that there was some increase in emoluments for the period they were in service, hence, are entitled to be paid the same, as there was complete cessation of the jural relationship between the employer and the employee.

13. Even otherwise, the decision taken by the petitioner Corporation for merger of 50% dearness allowance with the basic pay was circulated on 28.12.2006 (Annexure P-6). It was to take effect from 1.10.2006. The same was revised vide office order dated 2.5.2008 (Annexure P-7) directing that the effective date of

merger of 50% dearness allowance with basic pay will be 1.4.2004, to all those CDA pay pattern employees who were on the rolls of the company as on 1.3.2008. It is not in dispute that the respondents herein had retired in terms of their offer of voluntary retirement much prior thereto. Hence, even as per the scheme, the respondents will not be entitled to the benefit of merger of 50% dearness allowance with the basic pay.

14. In view of my aforesaid discussions, the impugned award passed by the Labour Court deserves to be set aside. Ordered accordingly.

15. As the award of the Labour Court could not be sustained on merits, I do not find any necessity to go into the issue as to whether the respondents were workmen or not. The writ petitions are allowed.