(2009) 09 OHC CK 0025

In the Orissa High Court

Niranjan Rout and Another — APPELLANT

Vs

State of Orissa and Others — RESPONDENT

Date of Decision : 02-09-2009

Acts Referred:

Contract Act, 1872 — Section 23
Orissa Co-operative Societies Act, 1962 — Section 30

Citation : (2010) 109 CLT 7 : (2009) 2 OLR 167 Supp

Hon'ble Judges : R.N. Biswal, J;B.P. Das, J

Bench : Division Bench

Judgement

B.P. Das, J.—The Petitioners, who while working as workmen in Shree Sarala Weavers Co-operative Spinning Mills Ltd. were allowed to retire under the Voluntary Retirement Scheme (Annexure-1), have filed this Writ Petition to quash the resolution dated 23.12.2005 issued by the Govt. of Orissa in the Department of Public Enterprises, vide Annexure-4, by which the Govt. have altered their service conditions, i.e., the conditions stipulated in the Voluntary Retirement Scheme, for which the employer of the Petitioners is not releasing in their favour the benefits provided in the Voluntary Retirement Scheme, which are the legitimate claim of the Petitioners towards their unpaid arrear salary & other statutory benefits as mentioned therein. The Petitioners have also prayed for a direction to the Opposite Parties to implement the decision taken by the State Govt. in Annexures 1 & 2 & to pay them the balance dues, i.e., arrear salary (incremental) from 1.7.1990 to 31.12.1998, revised scale of pay with effect from 1.1.1999 as per the statement in Annexure-7 series.

2. The facts giving rise to this Writ Petition briefly stated are that the Petitioners were working as Junior Electrician & Ring Frame Head Jobber respectively in Shree Sarala Weavers Co-operative Spinning Mills Ltd. at Tirtol in Jagatsinghpur district (hereinafter called "Sarala Spinning Mill"), which is a State-owned Co-operative Enterprise. As the spinning mills in the State functioning under the Orissa State Co-operative Spinning Mills Federation Ltd. ("SPINFED" hereinafter) incurred huge loss due to mismanagement, overstaffing & shortage of raw

materials, etc., they required organizational restructuring & some of them required closure of the enterprises. In the meantime the State Govt. in Public Enterprise Department, O.P. No. 2, floated a Voluntary Retirement Scheme in 1998 for the employees working in the Co-operative Spinning Mills including the Sarala Spinning Mill under the control of the SPINFED & restricted application of such Scheme to regular employees of the spinning mills below the age of 55 years. The aforesaid scheme, annexed to the Writ Petition as Annexure-1, provided that an employee opting voluntarily retirement under the VRS would get all his arrears & 21 days ex gratia for every year of completed service plus gratuity plus leave encashment. In addition thereto, the employee would be entitled to receive arrear salary, provident fund, Employee State Insurance unpaid bonuses & any other due which accrued over the years of service. The State Govt. in Textiles & Handloom Department (O.P. No. 2) by the memo dated 12.7.2001 issued instruction to calculate the dues under the VRS along with arrear salary/wages & bonus of the workmen working in Sarala Spinning Mill. On 25.8.2001 a meeting was held under the chairmanship of the Principal Secretary to Govt. in Textiles & Handloom Department to discuss issues relating to restructuring in textiles & handloom sector & as per the minutes of the said meeting, vide Annexure-2, it was decided, inter alia, that the arrear salary & other statutory dues would be cleared by the Public Enterprise Department in respect of the employees of the PSUs ordered to be closed/liquidated for which substantial restructuring plan was approved by the Govt.

According to the Petitioners, while they were continuing in their respective posts & were not paid their wages/salary, the Managing Director of Sarala Spinning Mill by the notice dated 28.7.2001, vide Annexure-3, compelled them to apply for VRS within a week failing which they were threatened with the consequence of retrenchment. The Petitioners finding no other alternative applied for retirement under the VRS, Annexure-1, & the management in its turn forwarded such applications to O.P. No. 4-Managing Director of SPINFED by letter dated 5.12.2001 indicating therein that the eligible employees would continue in employment till the disbursement of their final dues. In terms of the aforesaid letter dated 5.12.2001, the Petitioners were allowed to continue to discharge their duties & were relieved on 14.6.2006 but they were not paid their dues as per the Scheme, i.e., Annexures 1 & 2. But before the Petitioners were relieved on 14.6.2006, O.P. No. 3 forced them to sign on the undertaking to the effect that the amount to be received such as ex-gratia, gratuity, leave encashment, would be the full & final settlement of their dues from the Govt. & they would not claim any unpaid salary, ex-gratia & gratuity etc. It is alleged that under compelling circumstances & as they were passing through severe financial hardship due to nonpayment of salary since 1998 & their family members were virtually starving, they furnished the undertaking so directed & were relieved from service on 14.6.2006 but the same was given effect to from 1.11.2001. According to the Petitioners, the aforesaid undertakings were obtained on the basis of the resolution dated 23.12.1005 issued by the Public Enterprise

Department, vide Annexure-4, wherein the Co-operative Enterprises were directed to obtain undertaking from the employees applied to be covered under the VRS that they would not claim any dues from the State Govt. in any forum except 21 days of salary (basic pay + D.A. + IR, if any) for every completed year of service plus gratuity & leave encashment, as admissible under the Scheme. The Petitioners have challenged the aforesaid resolution in Annexure-4 & have prayed for the reliefs indicated hereinbefore.

3. O.P. No. 4-the Managing Director of SPINFED has filed a counter affidavit stating therein that the dues flowing from the VRS had already been paid to the Petitioners at the time of their relieve from the Mill on VRS. As regards the claim for incremental arrears from 1.7.1990 to 31.12.1998, the Opposite Party has stated that the Petitioners are not entitled to the same because in terms of the direction of this Court the Registrar of Co-operative Societies had already taken a decision u/s 30 of the Orissa Co-operative Societies Act, 1962 to give revised scale of pay with effect from 1.1.1999 since the spinning mills had no capacity to pay revised pay to their employees with effect from 1.7.1990 & the decision of the Registrar had already been communicated to all the spinning mills in the State.

4. O.P. No. 3-the Asst. Director, Textiles-cum-Liquidator of Sarala Spinning Mill has filed a counter affidavit taking similar stand as taken by O.P. No. 4 in his counter affidavit.

5. Shri Ashok Mohanty, Learned Senior Advocate appearing for the Petitioners, contended that the resolution issued by the State Govt., vide Annexure-4 is liable to be quashed because the direction given therein to obtain undertaking from each of the employees applied for voluntary retirement to the effect that they would not claim any dues from the State Govt. in any forum except 21 days of salary (basic pay + DA + IR if any) for every completed year of service plus gratuity & leave encashment, as admissible under the Scheme, cannot be enforced in law being illegal, unfair, unreasonable & opposed to public policy. According to the Learned Counsel, the Petitioners were lured/compelled to take VRS & after the applications for VRS submitted by them were accepted by the authorities, the same were kept pending for nearly five years & thereafter the authorities by the impugned resolution in Annexure-4 obtained undertakings from the Petitioners & other employees not to claim arrear salary & thereby the authorities backed out from the promise made to the employees under the VRS, vide Annexure-1, which is quoted hereunder:

You get all arrears owed to you from your Company, & much more. The benefits available under the scheme are 21 days ex-gratia for every year of completed service plus gratuity plus leave encashment. In addition to this you are entitled to receive arrear salary, Provident Fund, Employee State Insurance (ESI) unpaid bonuses & any other due which has accrued to your over the years of your service. This does not include temporary service, but if you worked more than three months in any given year, your service for that time will be treated as though it were a full year.

According to the Petitioners, though they had given undertakings, the same were obtained under coercion & under compelling circumstances & they had no other alternative as they were jobless & were not getting their salary & were maintaining their family with much financial hardship.

In this regard our attention was drawn to the Judgment passed by this Court on 29.4.2004 in W.P. (C) No. 11336 of 2003 (Smt. Labani Jena v. State of Orissa and Ors.) & similar other cases. The aforesaid Writ Petitions were filed by the employees of same Sarala Spinning Mill, who after being relieved from their duties on acceptance of their option to avail voluntary retirement benefits under the VRS, were not paid their dues under the said Scheme. While allowing the aforesaid Writ Petitions, this Court held in paragraph 6 of its Judgment as follows:

6. As it appears, it is the liability of O.P. No. 3 to pay the dues of the Petitioner as per the V.R. Scheme introduced by the SPINFED for the member Co-operative Spinning Mills under Annexure-2 & as per the order relieving the Petitioner from service vide Annexure-4. The counter affidavit filed by O.P. No. 3 discloses that the management is waiting for the financial assistance from the State Govt. to fulfil their part of the obligations as per Annexure-2 & Annexure-4. It is the look out of the management to arrange finance for which the employees have no role to play. It would not be proper on the part of the management to keep the employees waiting for an indefinite period on the plea of lack of resources. O.P. Nos. 1 & 3 would have thought over it before floating the scheme & allowing the employees to act on their promise made in the said scheme. O.P. No. 1 as well as O.P. No. 3, who represents the Spinning Mills which is an instrumentality of the State, cannot be absolved from the liability of payment of the dues to the employees as per the scheme. The State Govt. cannot just shift the liability on the Spinning mills & leave the employees like the Petitioner, who have retired since long, high & dry. However, looking into the gleam financial condition of the employer as well as the State, I direct O.P. Nos. 1 & 3 to pay the balance dues of the Petitioner under Annexure-4 within a period of six months from the date of receipt of this order. O.P. No. 3 is also directed to deposit the non-deposited provident fund amount of the Petitioner before the E.P.F. Commissioner within the aforesaid period.

6. The Petitioners in their rejoinder to the counter affidavit filed by O.P. No. 2 have stated that against the Judgment passed by this Court in W.P.(C) No. 11336 of 2003, the State Govt. had filed SLP No. 7057 of 2005 before the Apex Court but the same was dismissed on 28.3.2005 on the ground of limitation. Thereafter the State filed Review Petition No. 362 of 2006 seeking review of the order passed in the SLP but the same was also dismissed on merit. Ultimately the State Govt. complied with the order & sanctioned the arrear salary of 17 Writ Petitioners vide the sanction Order Dated 20.3.2006 annexed to the rejoinder as Annexure-22.

7. According to the present Petitioners, no reason has been indicated by the Govt. to force the employees including the Petitioners, who intended to retire under the VRS to furnish such undertaking as indicated above, when neither in the VRS floated by the State Govt. in Annexure-1 nor in the VRS notice issued in Annexure-3 there was any whisper about furnishing of such undertaking. That apart, Learned Counsel for the Petitioners submitted that the management of Sarala Spinning Mill also wrote a letter dated 5.12.2001 (Annexure-19) to the Managing Director of SPINFED enclosing a statement of arrear salary of the employees opted for voluntary retirement under the VRS along with other required documents & requested him to forward the proposal to the Govt. for necessary action indicating therein that pending such consideration the employees would continue in the employment till disbursement of their final dues. On 5.6.2007 the Textile & Handloom Department moved the Public Enterprise Department vide the letter in Annexure-20 for taking early steps for appointment of auditors for calculation of arrear, wages, salary etc. of the employees of Co-operative Spinning Mills for smooth privatization of the Mills.

8. Admittedly, the VRS, which was introduced for the employees working in the State Public Sector Undertakings vide Annexure-I, was adopted for all the Spinning Mills in the State including Sarala Spinning Mill in which the Petitioners were working because all the spinning mills in the State were incurring huge loss & were not financially viable. It is also a fact that the Petitioners as per the notice dated 28.7.2001, vide Annexure-3 applied for voluntary retirement & were made to wait till 2006 for being relieved even after giving undertakings in terms of the direction contained in the resolution issued by the Govt. in Department of Public Enterprises dated 23.12.2005, vide Annexure-4.

9. Though the Petitioners had given the undertaking, the settled legal position is that unless the employees are relieved of their duty after acceptance of their request for V.R., the jurat relationship of the employees & the employer does not come to an end. So in this case the jural relationship between the Petitioners & their employer, i.e., Sarala Spinning Mill, continued till they were relieved from their duties. Dealing with an undertaking obtained from the concerned employee that he would not claim salary of the higher post or any other benefit was held to be illegal by the Apex Court in Secretary-cum-Chief Engineer, Chandigarh v. Hari Om Sharma 1998 SCC (L & S) 1273. In paragraph 8 of the aforesaid decision, it was held thus:

8. Learned Counsel for the Appellant attempted to contend that when the Respondent was promoted in stop-gap arrangement as Junior Engineer I, he had given an undertaking to the Appellant that on the basis of stop-gap arrangement, he would not claim promotion as of right nor would he claim any benefit pertaining to that post. The argument, to say the least, is preposterous. Apart from the fact that the Government in its capacity as a model employer cannot be permitted to raise such an argument, the undertaking which is said to constitute an agreement between the parties cannot be enforced at law. The Respondent

being an employee of the Appellant had to break his period of stagnation although, as we have found earlier, he was the only person amongst the non-diploma holders available for promotion to the post of Junior Engineer I & was, therefore, likely to be considered for promotion in his own right. An agreement that if a person is promoted to the higher post or put to officiate on that post or, as in the instant case, a stop-gap arrangement is made to place him on the higher post, he would not claim higher salary or other attendant benefits would be contrary to law & also against public policy. It would, therefore, be unenforceable in view of Section 23 of the Contract Act, 1872.

10. In view of the aforesaid legal position & keeping in view the Judgment rendered by this Court in the Writ Petitions filed by similarly situated employees of the same Sarala Spinning Mill in W.P. (C) No. 11336 of 2003 & its batch of cases, which has already been complied with, & the fact that the employees covered by the said Judgment have already received their arrear dues, as stated by the Learned Counsel for the Petitioners & admitted by the Counsel for the State, we have no hesitation to quash Annexure-4 & direct the Opposite Parties to release the arrear salary of the Petitioners in terms of the V.R. Scheme basing upon which the Petitioners applied for voluntary retirement.

11. The Writ Petition is disposed of accordingly. There will be no order as to cost.

R.N. Biswal, J.

12. I agree.

