**(2004) 11 DEL CK 0124**

**In the Delhi High Court**

**Case No :** WP (C) . 17999 of 2004

P.K. Bhattacharya APPELLANT

Vs

Steel Authority of India Ltd. and Another RESPONDENT

**Date of Decision :** 22-11-2004

**Acts Referred:**

**Citation :** (2005) 193 CTR 285 : (2004) 115 DLT 576 : (2005) 80 DRJ 195

**Hon'ble Judges :** Manmohan Sarin, J

**Bench :** Single Bench

**Advocate :** C.S. Rathour, for the Appellant; Nemo, for the Respondent

**Final Decision :** Dismissed

## Judgement

Manmohan Sarin, J.—Petitioner seeks a writ in nature of certiorari for quashing the impugned undated letter and reworking of calculation of income tax sheet as indicated and disclosed vide Annexure P-5 and also a restraint on respondent No. 1-company from deducting the Income Tax at source against the monthly retirement benefits under the Voluntary Retirement Scheme, 1998.

2. Petitioner further seeks a writ, order or direction commanding respondent No. 1 to pay and continue to pay regularly the monthly retirement benefits due to the petitioner as per the terms and conditions of Voluntary Retirement Scheme, 1998 and continue to pay at such rate as was being paid from the month of his voluntary retirement in July, 1998 till March, 2003. In the alternative, petitioner seeks direction for re-employment in his services forthwith.

3. Petitioner who was working with respondent No. 1 had exercised his option under the Voluntary Retirement Scheme which was offered on 1.3.1998. Petitioner''s option was accepted on 2.7.1998 as the petitioner had completed 20 years of service and had also attained the age of 50 years. Petitioner has already received the amount due under the Voluntary Retirement Scheme from 1998 till the quarter of July, 2003 and there is no grievance in that regard.

 

4. Petitioner''s grievance emanates out of what he claims to be excessive and unauthorised deduction of income tax resulting in payment of reduced amount to the petitioner from the quarter of July, 2003. Respondent No. 1 claims to have sent a computation sheet showing deduction of income tax at source from payments being made Voluntary Retirement Scheme. The deductions of tax are claimed to be as per the directions of Calcutta High Court in SAIL-DSP Employees Association-1998 V. Union of India and Ors. The basis of computation was also given. Therefore, it appears that reduced payment was made as a result of less tax having been deducted which was made good.

5. Learned counsel for the petitioner submits that it is open for the petitioner at any stage before his retirement to retract from the Voluntary Retirement Scheme and Therefore, he sought direction for re-employment. Counsel for the petitioner while relying on a decision of the Supreme Court in J.N. Srivastava Vs. Union of India (UOI) and Another, , submits that it is permissible for the petitioner to withdraw the voluntary retirement notice prior to his retirement. In my view, the said judgment refers to an employee withdrawing Voluntary Retirement notice prior to his retirement. The reference to retirement is in context of acceptance of voluntary retirement. It is not intended to enable a party to exercise the option for Voluntary Retirement Scheme and receive payment for five years and then say that he has not reached the age of superannuation and Therefore, he is entitled to withdraw from Voluntary Retirement Scheme and seek a direction for re-employment. The Supreme Court in A.K. Bindal and Another Vs. Union of India (UOI) and Others, , held that "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." The petitioner''s right thus ceased the day, he received the amount in terms of Voluntary Retirement Scheme. Moreover, it appears to be a case where the petitioner is simply aggrieved by what he terms as excessive deduction of tax at source to which in any case, he is entitled to seek refund or adjustment from tax authorities. It would not be a fit case to be entertained in the exercise of writ petition. In case, respondents are acting in breach of the said scheme or unauthorised deduction is sought to be made, it would be for the petitioner to enforce his pecuniary right in civil forum.

 