

(2019) 05 DEL CK 0490

In the Delhi High Court

Case No : Letters Patent Appeal No. 303 Of 2019

Pradeep Kumar & Ors

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 24-05-2019

Acts Referred:

Central Civil Service (Commutation Of Pension) Rules, 1981 — Rule 10A

Citation : (2019) 05 DEL CK 0490

Hon'ble Judges : G.S.Sistani, J;Jyoti Singh, J

Bench : Division Bench

Advocate : S.P. Saxena, Suparna Srivastava, Nehul Sharma, L.R. Khatana

Final Decision : Dismissed

Judgement

Jyoti Singh, J

1. The appellants have challenged the order dated 21.01.2019 passed by the learned single judge in a writ petition filed by the appellants bearing no. W.P.(C) 623/2019 whereby the learned single judge dismissed the writ petition on the ground of delay and latches.

2. From a somewhat sketchy writ petition and an equally sketchy appeal, we have been able to gather certain facts involved in the present case and which are that the three appellants in the present appeal worked in the Export Inspection Agency-Delhi (referred to as "Agency" hereinafter), under the Administrative Control of the Ministry of Commerce on various posts. The Ministry of Commerce had moved a note on 4.4.1994 to the Cabinet Secretariat for reduction of the surplus staff of Export Inspection Council (referred to as "Council" hereinafter) and the Agency.

3. This was a phase when there was a lot of uncertainty as to whether the Council/Agency would continue and therefore the employees also had a justified apprehension that they may lose their employment. In the given scenario a scheme for Voluntary Retirement of the employees of the Council and the Agency

was formulated and a Circular in this regard was issued on 21.5.1994. The said Voluntary Retirement Scheme (referred to as "VRS" hereinafter) had the approval of the Central Government. The salient features of the said VRS were:

"i) Half a month's Gratuity per year of service subject to a ceiling of Rs. 1 Lakh as admissible under the Gratuity Rules of EIC/EIAs.

ii) Full matching CPF contribution from the Export Inspection Council/Agency side irrespective of whether such employees have completed five years service. (Applicable to such employees, if any, who have not opted for the pension scheme).

iii) Full commutation of pension.

iv) This offer will remain valid for a period of 60 days only from the date of issuance of the letter.

v) The payment under the scheme is subject to employees agreeing to adjust or clearing the advances against him or her such as House Building Advance, Conveyance Advance, LTC Advance, Festival Advance etc., and any other outstanding dues. The employees are to either pay the amount of advance first or agree for its adjustment in full against payments that will be made under EIC/EIAs Voluntary Retirement Scheme.

vi) The option once exercised is final and cannot be withdrawn under any circumstances."

4. It is an admitted fact that till the formulation of the VRS the employees of the agency including the appellants herein were subscribers of the pension scheme/ General Provident Fund (GPF) and appropriate deductions were being made from their monthly salary and were being appropriated towards the GPF Accounts.

5. Since the employees were uncertain of their future employment with the agency, they, in the given situation, decided to opt for the VRS. The appellants herein like most of the other employees, chose the path of a "golden handshake" and opted for VRS under an eminent threat of the Agency being wound up and their employment coming to an end.

6. The options of the appellants were received by the Agency on 18.7.1994 and on acceptance of the VRS, they were relieved with effect from 19.7.1994. Since one of the conditions of the VRS was full commutation of pension, on being relieved, the appellants received the entire pension amount as commuted value of pension. Since 100% pension was commuted, the appellants did not get any monthly pension thereafter, and since VRS did not have any provision for restoration of any part of the pension, no portion of the pension has been restored.

7. As the averments in the writ petition reveal, between 1994 to 2014 there was complete inaction on the part of the appellants. In 2014, the appellants applied for certain information under the RTI Act and received certain notings, which

according to the appellants revealed that there was an issue of surplus staff in the Agency and the Council and therefore steps were being taken in the Ministry to re-deploy or retrench the staff. The noting revealed that the respondents had acted outside the CCS (Commutation of Pension) Rules, 1981. In the alternative, efforts were being made to formulate VRS with certain benefits being offered thereunder to the employees. The appellants have also averred that based on the information that they received under the RTI, they made a representation in 2017 for restoration of pension after 15 years from the date of their retirement in accordance with Rule 10A of the CCS (Commutation of Pension) Rules, 1981. Legal notices were also sent by appellants on 01.10.2017 and on 04.10.2017.

8. Having received no response to the representation and the legal notices the appellants approached this Court by way of W.P.(C) No.623/2019. The relief sought in the said writ petition is as under:-

"i. To implement retirement benefits under retirement rules from the date of stood retired and relieved on 19-07-1994 conveyed decision on 19-04-1994 by the Additional Secretary, Cabinet Secretary.

ii. That the respondents may also be directed to re-calculate the retirement benefits of pension w.e.f. 19-07-1994 under CCS (Pension) Rules, 1972 only adjusting the amount paid to the petitioners under circular dated 21-05-1994 (Ann.P-2 and 3) because the respondent-4 has accepted in 2017 that they had acted outside the purview of CCS (Pension) Rules, 1972 and issued circular dated 21-05-1994 which was without authority and denied the restoration of retirement benefits under the rule.

iii. That an advance of Rs. 2 Lac to each petitioners may please be paid and adjusted at the time of final payment as the petitioners were retired on 19-07-1994 and also get the restoration of pension under rules.

iv. Any relief or compensation which this Hon"ble Court may deem fit may also be awarded under the circumstances."

9. The learned Single Judge by way of the order dated 21.1.2019, impugned before us, has dismissed the writ petition on the ground of delay and laches.

10. The contention of the learned counsel for the appellants is that the Hon"ble Supreme Court in its judgment dated 9.12.1986 in W.P. No. 1958-61/1983 held that all Central Government pensioners governed by CCS (Commutation of Pension) Rules, 1981 who have commuted the admissible portion of their pension would be entitled to have the commuted portion restored on expiry of 15 years from the date of retirement. It is submitted that this decision of the Apex Court was implement by the Government and Rule 10A was inserted in the CCS (Commutation of Pension) Rules vide Notification dated 9.11.2010. It is argued that under the Rules 1/3rd of the entire pension can be commuted by a government servant and the commuted amount has to be restored after 15 years from the date of retirement and this being the Rule position, the VRS which

enabled 100% commutation was in conflict with the Statutory Rules. Since the VRS cannot supersede the Pension Rules, 100% commutation permitted to the appellants was incorrect. Thus, the submission is that the respondents be directed to restore the pension in accordance with Rule 10A of the CCS (Commutation of Pension) Rules, 1981 and grant monthly pension to the appellants.

11. Mr. L.R. Khatana, learned counsel for respondent Nos. 4 and 5 submits that the appeal is barred by delay and laches. The appellants had opted for VRS in 1994 and for 100% commutation of pension under the said Scheme. If they had any grievance, they ought to have approached the Court in and around the year 1994. It is too late in the day for them to now contend that restoration of pension be made as per the Rules and monthly pension be granted. They cannot take support of any cabinet decision, even assuming that there is one in their favour. He submits that the present appeal deserves to be dismissed on the ground of delay and laches alone. Without prejudice to this condition, he further submits that in any case having exercised an option to opt for VRS and 100% commutation, they cannot now seek restoration of pension and grant of monthly pension. It was open to the appellants to have opted or not to have opted for the VRS, with its terms and conditions, as nobody had pressurized them into exercising such an option. The learned counsel further contends that in any event this issue is directly covered against the appellants by several judgments of this Court as well as the various other High Courts and is no longer res integra. In support of this submission, he has relied upon various orders/judgments as under:

Sl. No.

Case No.

Date of Order

1.

C.W. 6482/99

23.04.2001

2.

LPA 256/2001

17.05.2001

3.

Civil Misc. Writ Petition No.43851/1999 (High Court of Allahabad)

27.03.2003

4.

C.W. 658/2001

27.02.2001

5.

LPA 454/2001

23.01.2003

6.

W.P.(C) 4740/2008 & 5332/2010

09.08.2010

7.

W.P.(C) 10212/2015

02.11.2015

8.

LPA 5/2016

05.01.2016

12. Learned counsel for respondent nos. 1 to 3 adopts the arguments made by learned counsel for respondent Nos. 4 to 5. She contends that the Apex Court has held in several judgments that a belated claim cannot be entertained except in a case where it is a continuing wrong. In support of her submission, the learned counsel relies upon a judgment dated 6.5.2014 whereby several LPAs were decided by a Coordinate Bench of this Court, wherein two propositions were decided viz. stale claims should not be entertained and that the employees who have taken voluntary retirement years ago, without any demur or protest, cannot be given any relief.

13. We have heard learned counsels for the parties and examined their respective contentions.

14. The main issues that this court is required to adjudicate are:

(i) whether the VRS scheme can have an overriding effect over the statutory Pension Rules?

(ii) whether the appeal is barred by delay and laches?

(iii) whether the appellants having opted for VRS and 100% commutation with open eyes can be permitted restoration of pension and grant of monthly pension at this stage under the Pension Rules?

15. The gist of the arguments of the appellants is that the writ petition was not barred by delay and laches, since it was only in the year 2014, that they learnt

through the RTI about certain Cabinet decision in their favour and after which, they made representation, followed by legal notices in 2017 and on getting no response, filed the writ petition in 2019. On merits, the argument was that CCS (Commutation of Pension) Rules permit only 1/3rd of the pension to be commuted which has to be restored after 15 years from retirement and thus any scheme contrary to the Pension Rules cannot take away the rights conferred under a statutory provision.

16. The gist of the arguments of the respondents collectively, per contra, is that the writ was barred by delay and laches and has rightly been dismissed by the learned Single Judge. The appellants had opted for the scheme for voluntary retirement with open eyes and were completely aware of the terms and conditions, one of them being 100% commutation. Once an employee opts under a particular scheme with open eyes, he cannot be permitted to take shelter of any Rule. The appellants have waived their rights under the Rules and are estopped from claiming any benefit thereto.

17. There is no dispute about the fact that owing to the uncertainty that was prevalent in the year 1994 wherein the agency was on the verge of closure, the VRS scheme was formulated. The employees including the appellants herein were also apprehensive that they may lose their jobs. It is in this background that the VRS scheme came as a golden handshake but it is relevant to note that this scheme had certain essential terms and conditions which were an integral part of the scheme. The conditions of the scheme were well known to the appellants and hence their option to seek voluntary retirement under the scheme was subject to their accepting the terms and conditions of the scheme as a package. Two conditions under the scheme are significant and we quote as under:

"...

(iii) full commutation of pension

...

(vi) option once exercised is final and cannot be withdrawn under any circumstances."

18. The appellants had, with their open eyes, opted for VRS and knew that they would have to commute 100% of their pension and the option once exercised would be final. They also knew that there would be no monthly pension after commuting 100% pension. The acceptance of VRS was without any protest or demur.

19. Needless to say that schemes like the VRS are usually introduced where there is surplus staff or financial difficulties and the employer wants to reduce the staff. Commonly called as a "golden handshake", the VRS works as a two-way formula. The employer is saved from employing the employees for a longer period and the employee instead of being discharged or retrenched with little or no money is given a considerable amount besides some terminal benefits. The

amount is paid not for rendering any service but for leaving the services earlier than he would have and foregoing some of his claims and rights. It is, in fact, a package deal and with this the jural relationship of the employer-employee ceases. Having left the employment with a golden handshake, the path of agitating any issue or making any further claims against the erstwhile employer, is blocked.

20. We rely on the judgment of the Apex Court in the case of HEC Voluntary Retd. Employees Welfare Society v. Heavy Engg. Corpn. Ltd., (2006) 3 SCC 708 wherein the Apex Court relying upon the judgment of the Apex Court in the case of A.K. Bindal v. Union of India, (2003) 5 SCC 163 held as under:

"11. An offer for voluntary retirement in terms of a scheme, when accepted, leads to a concluded contract between the employer and the employee. In terms of such a scheme, an employee has an option either to accept or not to opt therefor. The scheme is purely voluntary, in terms whereof the tenure of service is curtailed, which is permissible in law. Such a scheme is ordinarily floated with a purpose of downsizing the employees. It is beneficial both to the employees as well as to the employer. Such a scheme is issued for effective functioning of the industrial undertakings. ..."

21. In the case of Repakula Vidya sagar v. State Bank of Hyderabad Head Office, 2002 SCC OnLine AP 357, the Andhra Pradesh High Court succinctly summarized the general principles relating to voluntary retirement and the voluntary retirement Scheme. The relevant portion of the judgment is as under:

"7. In the field of public services, once a person joins any public service, he is required to serve such service till he attains the age of superannuation in normal course and he cannot claim that he is entitled to retire from service at any time according to his wish and will before he attains the age of superannuation. However, the rules governing such public service may provide for voluntary retirement of an employee before he attains the age of superannuation. If such rules exist, then, voluntary retirement becomes a condition of service. For example, rule 56(k) of the Fundamental Rules provides that any Government servant may, by giving notice of not less than 3 months in writing to the appropriate authority, retire from service after he has attained a particular age (ranging from 52 to 55 years depending upon the group to which he belongs) and subject to various other stipulations contained in the proviso to that rule.

The provision for voluntary retirement, being a condition of service, gives an option in absolute terms to a public servant to voluntarily retire after giving the requisite notice and after he has reached the qualifying age or rendered qualifying service, as the case may be. In such a case, when the employee makes a request for voluntary retirement, there is no question of acceptance of the request by the employer. In the absence of rules providing for voluntary retirement, however, no employee could insist, as a matter of course or as a matter of right, that the employer should permit him to retire voluntarily before

attaining the age of superannuation keeping the service benefits and conditions in tact. The rules providing for voluntary retirement may be of two kinds, namely:

(i) a rule providing an option in absolute terms to a public servant to voluntarily retire on attaining a particular age or after putting in a specified number of years of service and after giving notice; or

(ii) a rule merely prescribing eligibilities to seek voluntary retirement and not providing for voluntary retirement as such.

In the former case, an employee, on fulfilling the prescribed conditions, can claim voluntary retirement as a matter of right, whereas in the latter case he cannot, because, despite the fact that he fulfils the prescribed eligibilities to apply for voluntary retirement, the discretion to accept such offer of retirement is vested in the employer, and the employer may or may not accept such an offer of the employee having regard to the needs and exigencies of service and other relevant considerations. In addition to the aforementioned two kinds of rules that may exist in a public service organization providing for voluntary retirement, a particular service organization may also evolve and introduce a special scheme in its discretion de hors the rules providing for voluntary retirement. If an employee seeks voluntary retirement under such Special Scheme, he can seek voluntary retirement strictly in terms of such Special Scheme and not de hors the Special Scheme, because, as already pointed out supra, no employee, after joining a public service, can claim voluntary retirement as a matter of right or course unless the rules governing terms and conditions of his service provide for such retirement."

22. What can thus be summed up by reading of these judgments is that the VRS is an offer from the employee where he opts for VRS and once the offer is accepted by the employer, it becomes a concluded contract which is binding on both the parties. The relationship between the parties to this contract is then governed by the terms of the contract and it is not for a Court to either rewrite that contract or to direct any of the parties to the contract, to act otherwise than in accordance with the contractual terms. Once the VRS is accepted with open eyes and without any protest or demur, the employee is estopped from making any claim about his past rights. The jural relationship ceases and any claim will also be barred by the doctrine of waiver.

23. We, thus, cannot agree with the contention of the appellant that the terms of the VRS which they accepted with open eyes, be now changed and re-written. One of the conditions of the VRS being 100% commutation cannot be changed by us to read as commutation of 1/3rd of the pension with entitlement of restoration of the same after 15 years, and grant of monthly pension.

24. While there cannot be any quarrel with the settled law that statutory rules have to override any Administrative Schemes and Instructions, but it is equally true that if the parties by their free will entered into a contract and decided to be bound by certain terms and conditions, either of them cannot subsequently,

make a claim on the basis of a statutory rule, which may be in conflict with the Scheme under which they had entered into a mutual agreement. No doubt that Rule 10A of the CCS (Commutation of Pension) Rules, provides that only a certain percentage of the pension would be commuted and thereafter restored after 15 years from the date of retirement, but the same can be of no avail to the appellants who chose a different path of entering into a mode of settlement and choosing to leave after a golden handshake. The appellants cannot be permitted the restoration of commutation of pension under the CCS (Commutation of Pension) Rules or a monthly pension and would be bound by the terms of the VRS under which they have already taken 100% commutation of pension. VRS which is "Voluntary Retirement Scheme" by its very nomenclature and the nature of the scheme connotes that it is the voluntary act of an employee by which he accepts to go on retirement prior to his reaching the age of superannuation. Therefore, it is not open for anyone to contend that having voluntarily chosen to leave the service of an employer, the employee should be permitted to raise any claim subsequently on account of some statutory rules, that may be in favour of the employee.

25. We also agree with the contention of the respondents that the writ petition was barred by delay and laches. The VRS had been circulated in 1994. The appellants had admittedly opted for the same in the same year and having accepted 100% commutation ended the relationship with the employer with a package deal. The writ petition being filed in the year 2019 is highly belated. The only explanation given by the appellant for approaching the Court in 2019 is that some Cabinet decisions were received by the appellants under the RTI in 2014. In our view, the explanation given for delay does not constitute a "sufficient cause" for condoning the huge delay of nearly 25 years. The Apex Court has repeatedly held that stale claims should not be entertained, even though there may be merit in the case.

26. For this proposition we rely on the judgment of Apex Court in the case of K. V. Rajalakshmiag Setty v. State of Mysore, AIR 1967 SC 993, Jagdish Narain Maltiar v. State of Bihar, (1973) 1 SCC 811, CBSE v. B. R. Uppal (2006) 129 DLT 660 (DB), Savitri Sahni v. NCT of Delhi (2006) 130 DLT 287 (DB).

27. In fact, a Coordinate Bench of this Court in the case of Deepak Mohan Sethi & Ors. vs. BSES Rajdhani Power Limited & Anr. 2014 SCC OnLine Del 2886, has, after considering several judgments held that a stale claim for certain benefits under the VRS in a writ petition filed after 12 years is barred by gross delay and laches and cannot be entertained. No doubt that in the case of UOI vs. Tarsem Singh (2008) 8 SCC 648, the Apex Court had held that there are certain exceptions to the doctrine of delay and laches but the exception is only where it is a continuing wrong. The claim by the appellants herein to reopen the conditions of VRS after 25 years, in our view, does not fall in the exception as this is not a case of continuing wrong. At the cost of repetition, we may say that the voluntary retirement was taken with open eyes and at a time when the

appellants were apprehending even losing their jobs and had found this to be a more advantageous proposition. This is certainly not a case where the appellants can be permitted to go back on the option exercised by them and burden the respondents. The consequence of allowing the claim of the appellants would be that the respondent would be saddled with not only restoration of pension but would have to disburse monthly pension. This would be most unfair and unjust to the respondents. The Apex Court had deprecated the re-opening and allowing of such stale claim which have far reaching consequence on the other party, to its detriment.

28. There is another reason why the claims of the appellants cannot be entertained. Various courts including this Court have already taken a view on the same issue against the appellants and several petitions and appeals have been dismissed. In the case of Deepak Mohan Sethi (supra), this Court has held as under:

37.1 Voluntary Retirement Schemes - Voluntary Retirement Schemes (VR Scheme) are ordinarily floated with a purpose of downsizing the employees. A considerable voluntary retirement amount is offered to the employees for voluntary retirement, not for doing any work or rendering any service but in lieu of their leaving the service and foregoing all their claims or rights in the same. It is a package deal of give and take. It is beneficial both to the employees as well as the employers and, therefore, 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.

37.2 Voluntary Retirement Schemes are not negotiable - The VR Schemes are purely voluntary and not negotiable.

37.3 Voluntary Retirement Schemes are contractual in nature - The VR Scheme is an invitation to offer. If the employee opts for VRS, it amounts to an offer which when accepted by the employer, results in a concluded contract. Both the parties are bound by the terms of the VR Scheme. It is not for the Court to rewrite the terms of the VR Scheme. The relationship between the parties to the VR Scheme is governed by the Contract Act, 1872 and not by any statute.

37.4 Cessation of jural relationship - Acceptance of the VRS application results in complete cessation of jural relationship between the employer and the employee, and the employee cannot agitate for any kind of his past rights or enhancement of pay scale for an earlier period, unless by reason of a statute, he becomes entitled thereto.

37.5 Full and final settlement -The employees opting for voluntary retirement under the VR Scheme are paid compensation calculated in the manner specified in the Scheme in full and final settlement.

XXX XXX XXX

37.10 If the employee is permitted to raise a grievance regarding his past rights

or the enhancement of a pay scale from retrospective date even after opting for VRS and accepting the amount thereunder, the whole purpose of the VR Scheme would be frustrated.

29. The Calcutta High Court in the case of Sukriti Bhushan Roy v. Union of India in WP (C) No. 574 of 2008, while dealing with the employees of the same agency/ council decided a similar issue and held as under:

"Be that as it may, in the factual backdrop of the present case, it cannot be disputed that the scheme for voluntary retirement of the employees of Export Inspection Council and Export Inspection Agency was floated in the year 1994. One of the salient features was that the option once exercised was final and could not be withdrawn under any circumstance. No employee, who once opted for the same scheme, could, thus, be permitted to opt out of the same and seek benefit elsewhere. Grievances of the writ petitioner rather indicate that the petitioner sought to have butter on both sides of the bread".

30. In fact, this Court had dismissed a petition filed in this Court in 1999 bearing W.P.(C) 6482/1999 by an order dated 23.04.2001. The challenge in the said petition was to the same scheme issued on 21.05.1994. This Court held that the scheme was a onetime offer which was accepted by the petitioners therein and they retired voluntarily after receiving all the benefits under the scheme. The petitioners cannot be permitted to claim any benefit after an inordinate delay of five years and that too having availed of all benefits and the principles of waiver and estoppel would apply to them. This petition was filed by All India Export Inspection Agency/Council Ex-employees Welfare Association. An LPA against the said order was dismissed by a Division Bench on 17.05.2001.

31. Thereafter, another employee filed a similar writ petition being WP(C) 658/2001 which was also dismissed on the same ground, on 27.02.2001, and the appeal was also dismissed on 23.01.2003. It seems that the challenge to the same VRS scheme continued even thereafter and two other writ petitions being W.P.(C) 5332/2010 and 4740/2008 were dismissed by a single Judge of this Court on 09.08.2010. Another writ petition filed in the year 2015 in the case of Shiv Prakash Saxena and others being W.P.(C) 10212/2015, where again a challenge was laid to the same scheme was also dismissed on 2.11.2015. In fact, the learned Single Judge while dismissing the petition has also taken note of the fact that against the order of dismissal of the writ petition WPC 4740/2008, an SLP was also dismissed by the Apex Court. The judgment of the learned Single Judge dated 2.11.2015 was challenged by way of an LPA 5/2016 and the same was also dismissed on 5.1.2016. We thus find that several writ petitions laying a challenge to the same VRS scheme have been dismissed and we have no reason to take a different view.

32. Thus, for the reasons given by us above, and also relying on the judgments of the various courts including some by this Court, we find that the learned Single Judge has rightly dismissed the writ petition.

33. No grounds have been made out to entertain the present appeal. The appeal is accordingly dismissed.