
(2018) 04 OHC CK 0002

In the Orissa High Court

Case No : W.P.(C) Nos.8880, 8881, 8882, 8883, 8884, 8885, 8886, 8887, 8888, 8889, 8890, 8891, 8892, 8893, 8894, 8895, 8896, 8897, 8898, 8899, 8900, 8901, 8902, 8903, 8904, 8905 and 8906 of 2016

RABINDRANATH SAHOO

APPELLANT

Vs

CHAIRMAN AND MANAGING DIRECTOR ITDC AND OTHERS

RESPONDENT

Date of Decision : 11-04-2018

Acts Referred:

Citation : (2018) 04 OHC CK 0002

Hon'ble Judges : Dr.D.P.CHOUDHURY

Bench : Single Bench

Advocate : Sujan Ku. Roy Choudhury, K.Roy Choudhury, N.K.Mishra, A.K.Roy, A.Mishra

Final Decision : Disposed of

Judgement

Dr. D.P.Choudhury, J.

1. Challenge has been made to the inaction of the opposite parties for non-payment of the Voluntarily Retirement Scheme (in short "VRS")

amount in accordance with Department of Public Enterprises Guidelines (hereinafter called as "the guidelines").

2. Since the above writ petitions have got common question of law, they are being taken up together for disposal by this common judgment.FACTS

3. The factual matrix leading to the writ petitions is that the petitioners are the employees of Hotel Nilachal Ashok, Puri having been appointed in

between 1989 to 1991. The Indian Tourism Development Corporation is primarily a Central Government Public Undertaking (hereafter called as

"the ITDC") and it entered into a joint venture agreement with the State Government of Odisha to establish the hotel Nilachal Ashok under the

joint venture company Utkal Ashok Hotel Corporation Limited in 1986. According to the petitioners, they were paid their salary whenever there is

revision of scale of pay of the State Government employees. The employees of Hotel Nilachal Ashok were being paid the salary as per the rules and

regulations of the State Government being a Public Sector Undertaking following the resolution passed in 21st Board Meeting of Utkal Ashok Hotel

Corporation. In 2011, there was an offer for voluntary retirement as Hotel Nilachal Ashok wanted to change the management with M/s.Paulmech

Infrastructure Private Limited by notice dated 22.01.2011. Accordingly, the petitioners submitted offer for their voluntary retirement as per the

guidelines. The proposals for voluntary retirement of the petitioners were accepted and they were relieved. But on the date of their relieve, the

petitioners were handed over cheque towards VRS amount.

The petitioners were not paid the 100% ex-gratia compensation @ 30 days per month although they were entitled to such payment. According to the

guideline issued on 5.5.2000, the payment of 100% ex-gratia under the Scheme, were purportedly not paid but 50% thereof has been paid. Moreover,

other benefits under the Scheme of 2002 vide Annexures-7 and 8 were not followed. So, the petitioners approached the head office where they were

assured that extra 50% dues along with one month pay for the notice period would be paid but the promise of the employer was not maintained. So,

the petitioners have filed these writ petitions.

4.SUBMISSIONS

Mrs.K. Roy Choudhury, learned counsel for the petitioners submitted that when the opposite parties floated the VRS Scheme for the employees, who

are not willing to serve under the new management, the petitioners applied for their voluntary retirement. Moreover, when the Scheme as per the

guidelines was offered and the petitioners applied to avail the benefit of the same, the opposite parties, in violation of their own commitment, did not

pay the VRS amount in accordance with the guidelines.

5. Ms.Roy Choudhury, learned counsel for the petitioner further submitted that the guideline dated 5.5.2000 was very specific to offer voluntary

retirement for the interest of the Public Sector Enterprise to down size the manpower. On 8.12.2000, another guideline was issued by the Department

where salary of one month/three months notice was allowed to be paid.

Moreover, the employees who have not drawn full salary of the notice period, the notice period pay would be admissible to them. These two conditions were not complied by the opposite parties.Â

6. It is further contended that the guidelines were again modified on 6.11.2001 where the ex-gratia payment in respect of the employees on pay scales

at 1.1.87 and 1.1.92 levels computed under existing pay scales in accordance with the extant scheme, shall be increased by 100% and 50%

respectively. Again another guidelines was issued on 28.2.2002 where it is clarified that the pay revision permitted by the Public Sector Enterprises for

a period prior to the date of effect from 1.1.92 would be treated as 87â?? level. Thus increasing on ex-gratia compensation of 100% should be

effected accordingly.

7. Mrs.K. Roy Choudhury, learned counsel for the petitioners further contended that the opposite parties relied on the guideline dated 26.10.2004

where the manner of payment of ex-gratia has been modified, but the said guideline is not applicable to the present petitioners as the earlier guidelines

have already remained in force being not superseded.

8. Mr.N.K.Mishra, learned Senior Advocate for the opposite parties 1 to 3 and 5, relying upon the counter affidavit dated 04.05.2017, submitted that

the writ petitions are not maintainable as there is suppression of material facts. It is further submitted that the petitioners wilfully opted for their

voluntary retirement in pursuance of the scheme floated by the management when the management was transferred to the new management. As

such on 08.06.2011 and other dates, the applications for voluntary retirement were accepted and the petitioners were relieved from their duties. As

per the terms of the guidelines enforced, they were disbursed with their entitlement under the scheme.

9. Mr.Mishra, learned Senior Advocate for the contesting opposite parties submitted that the claim for payment of VRS dues and other entitlement has

already been agitated before this Court by the union of the employees in W.P.(C) No.2174 of 2011 and in that writ petition, this Court being satisfied

with the acceptance of VRS and payment of dues of all employees on the roll of the hotel, has been pleased to dispose of the said writ petition on

17.08.2015. So, there is nothing left for adjudication in the present set of writ petitions. It is well settled in law that once the VRS is accepted and the

payment is made, the same cannot be reopened. In support of his submission, he relied on the decision reported in the case of ITI Limited & V- ITI

EX/VR Employees/Officers Welfare Association and others; (2011) 1 SCC (L & S) 215.

10. It is also submitted by Mr.Mishra, learned Senior Advocate for the contesting opposite parties that if the petitioners dispute the amount of VRS,

they are required to deposit 50% of VRS amount in Court before challenging the same because the VRS being a Golden Hand Shake, the same is not

open to judicial review. In support of his contention, he relied on the decision reported in Rajibhai Bhikhabhai Parmar and others & V- Reliance

Industries Limited and others; 2016 (5) SCALE 116. According to him, on 22.1.2011, a notice was issued by the hotel management seeking written

willingness/unwillingness of the employees to join new management and accordingly VRS was floated. According to the guidelines in vogue and with

the availability of funds, the due amounts including 50% exgratia, leave encashment and GSLI were released in favour of the petitioners.

11. Mr.Mishra, learned Senior Advocate for the opposite parties 1 to 3 and 5 has submitted that the petitioners have not at all placed the guidelines

issued on 26.10.2004 which speaks that payment of exgratia amount under VRS in respect of employees of CPSEs following central DA pattern of

pay scales at 1.1.86 level computed on their existing pay scale in accordance with the extant scheme of VRS shall be increased by 50%. Since the

payment has been made in accordance with the said latest guidelines of VRS, the writ petitions are defective for having suppressed such notification

and there is nothing left to claim further revision of the ex-gratia amount. So, the claim of the petitioners for VRS at the rate of 26 days a month,

increase of exgratia compensation and one month pay for the notice period on the basis of guidelines strictly under the annexures attached to the writ

petition is absolutely misconceived and miscomprehended. Although the guidelines of 2000 and 2001 speak about payment of ex-gratia in respect of

employees of pay scale of 1.1.1987 and 1.1.1992 levels computed on their existing pay scales in accordance with the extant scheme pay increased by

100% and 50% respectively but with the modified guidelines as on 26.10.2004, the computation of ex-gratia payment was modified as stated above by

50% but not 100% for petitioners. Since the earlier provision of 100% was modified to 50%, such modified guideline being in vogue at the time of

VRS floated by the hotel management both in 2011 as well as in 2015, there is no gain saying to calculate the ex-gratia at the rate of 50% to all petitioners.

12. Mr.Mishra, learned Senior Advocate for the opposite parties 1 to 3 and 5 submitted that the guidelines speak about each individual PSU/PSE

making its scheme and as such, the calculation of payment made for a month of thirty days and not 26 days is unjust and improper. So, the entire

payment being made under VRS by virtue of the latest guidelines dated 26.10.2004, the petitioners have no any further cause of action to claim any amount to receive.

13. Â POINT FOR CONSIDERATION

The main point for consideration is as to whether the exgratia payment and other benefits under the Scheme have already been paid to the petitioners.

14. Â DISCUSSIONS

It is admitted fact that the petitioners were employees of Hotel Nilachal Ashok. It is not in dispute that in 2011, the petitioners opted for their voluntary

retirement and they were relieved from their duties having been paid the ex-gratia at the rate of 50%. It is also admitted fact that the petitioners are

governed under the VRS guidelines issued by the Department of Public Enterprises.

15. It is fruitful to describe all successive schemes as raised by both parties. The relevant portions of the scheme issued on 5.5.2000 vide Annexure-5

are placed in the following manner:

â??The Government had announced a Voluntary Retirement Scheme (VRS) vide OM No.2(36)/86-BPE(WC) dated 5th October, 1988. Government

have revised the scheme to make it more efficacious having regard to both, the interests of the employees and the need to enable Public Sector

Enterprises (PSEs) to rationalize their surplus manpower.

2.Enterprises, which are financially sound and can sustain a scheme of VRS on their own surplus resources may devise and implement variants of the

existing VRS cited in para 1 above. However, in no case shall the compensation exceed 60 days salary for each completed year of service or the

salary for the number of months services left, whichever is less. Salary for the purpose of VRS shall consist of basic pay and DA only and no other

element.

3. Enterprises that make marginal profits or loss-making enterprises may adopt the revised scheme of VRS, which is modelled on the Scheme that

exists in the State of Gujarat. The details of the scheme are set out hereunder:

(i) The compensation will consist of salary 35 days for every completed year of service and 25 days for the balance of service left until

superannuation. The compensating will be subject to a minimum of Rs.25,000/- or 250 days salary whichever is higher. However, this compensation

shall not exceed the sum of the salary that the employee would draw at the prevailing level for the balance of the period left before superannuation.

(ii) Salary for purpose of VRS will consist of basic pay and DA only

(iii) Arrears of wages due to revision etc will not be included in computing the eligible amount.

(iv) Payment of bonus should conform to the provisions in the Bonus act; Casual Leave may be encashed in proportionate measure upto the date of

VRS.â??

16. After the aforesaid scheme was floated, an Office Memorandum was issued by the Public Enterprises Department on 8.12.2000 vide Annexure-6

and the relevant portions of such clarification are placed in the following manner:

â??1. Whether allowances like personal Pay, HRA, NPA, Family Planning increment are to be included for computation of exgratia?

Basic pay plus DA only is to be taken into account for computation of ex-gratia under VRS.

2. Whether the post of the employee who has taken VRS is to be abolished? There shall be no recruitment against vacancies arising out of VRS.

3. Whether any arrears of ex-gratia are to be paid in the event of pay revision being sanctioned subsequent to voluntary separation? Ex-gratia will be

re-calculated on the basis of revised pay scale and the difference be paid.

4. Can notice pay in lieu of notice and TA for settling in the Home Town or elsewhere be paid to the employees who are to opt or have opted for

VRS. One month/three months notice pay (as per service conditions applicable to the employees) may be paid. TA for the employees and family

would also be admissible to the place where he intends to settle down after taking VRS. For this purpose, the entitlement will include transportation

cost of personal effects and travelling cost or self and family members, as admissible under the entitled classes.

8. Whether PF, leave encashment, gratuity, notice pay, LTC are payable to employees in case of voluntary retirement?

These are to be paid to the employees opting for VRS as per the provisions of the relevant statutes and the service conditions. These are outside the computation of ex-gratia on voluntary retirement.

14. Whether the notice period pay is to be paid in addition to 60 months salary as compensation in case an employee has completed 30 years of

service and the remaining period of service is 75 months?

If the application of an employee for voluntary retirement is accepted instantaneously and payment is arranged by the management on the same day, the concerned individual would be entitled to payment of ex-gratia along with the notice period pay. It is, however, clarified that payment of ex-gratia for

service rendered or left over service before superannuation as well as the amount payable for the notice period should not exceed the basic pay plus

DA that would have been paid to the employee who has opted for voluntary retirement till the date of his superannuation. For example, if an employee

opts for voluntary retirement a few months before the date of superannuation, say at 57 years and 10 months, the payment should be restricted to 2

months basic pay plus Dearness Allowance. In the circumstances where the management takes time to take a decision about the acceptance of an

application submitted by the employee for voluntary retirement and allows the notice period to lapse or the individual concerned has drawn full salary

during the notice period served by him, in these cases notice period pay would not be admissible as the individual has already drawn the salary during

the notice period.

23. How would the computation of ex-gratia (VRS) under Gujarat pattern be done?

As per enclosure. All the administrative Ministries/Department of the Government of India are requested to bring the foregoing clarifications to the

notice of the Public Enterprises under the administrative control for their information and necessary action.â??

17. There is an enclosure to the aforesaid clarification, which is also placed in the following manner:

ENCLOSURE

VRS COMPENSATION UNDER GUJARAT PATTERN

COMPUTATION OF ONE DAY'S SALARY IN GUJARAT PATTERN

Basic+DA

Rs.7000+Rs.2500=9500

Rs.9500 26 days=Rs.365.38(one day's salary) Complete 32 years service.

32 Yrs.X35daysXRs.365.38=Rs.409225.60

Note: (i) for computation of one day's salary 26 days a month is taken.

i. similar is for the remaining period of service left. Remaining 3 years service:

3 yearsX25XRs.365.38=Rs.27403.50

Total amount payable:Rs.409225.60+Rs.27403.50=Rs.436629.10 Amount to be paid shall be restricted to:3X12=36 months

Total amount to be paid as VRS compensation:36XRs.9500=Rs.342000/-

Note:The payable amount would have to be restricted to Rs.3,42,000/-.

18. After the above Office Memorandum was issued, again another modification in the revised VRS was issued by the Department of Public

Enterprises on 6.11.2001 vide Annexure-7 and this modification has modified the earlier notification dated 5.5.2000 in the following manner: Â

The Government have decided further to modify, with immediate effect, the Revised Voluntary Retirement Scheme for Central PUSs introduced vide

this Department's O.M. of even number dated 5th May, 2000 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.

b) The option of the Gujarat or the DHI pattern shall be available to the employees of marginally profit/loss making, as well as sick and unviable units.

c) Under the Gujarat pattern, the salary for VRS/VSS shall be calculated on the basis of 30 days in a month and not 26 days. Consequently, the

method of calculation of ex-gratia for VRS and VSS shall be similar.

d) Once an employee avails himself of voluntary retirement from a PSU, he shall not be allowed to take up employment in another PSU. If he desires

to do so, he shall have to return the VRS compensation received by him to the PSU concerned. Where the compensation was paid out of a

Government grant, the PSU concerned shall remit the refunded amount to the Government. In case the PSU is already closed/merged, the VRS compensation shall be returned directly to the Government.

2. All other provisions given in the DPE's guidelines dated 5.5.2000 are to continue.

3 The clarification given in the DPE's O.M. of even number dated 8th December, 2000 stand modified in consequence of the foregoing.

4 The employees, who have already been released by the PSUs before the date of issue of this O.M., shall not be covered under the modified scheme.

19. The aforesaid modified notification clearly shows that exgratia 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. It is also clear from

the above notification that the salary for VRS shall be calculated on the basis of 30 days in a month and not 26 days. Further, it is clear that if the

employee would be further recruited in another company, the compensation he has received would be refunded. Except the aforesaid provisions, all

other provision of the guidelines dated 5.5.2000 was allowed to continue. Now, there is another guideline issued on 28.2.2002 vide Annexure-8 where

frequent asked questions were answered in shape of clarifications. Point Nos.2, 9 and 10 of Annexure-8 are relevant and the same are placed in the

following manner:

2.Whether compensation of VRS @ 26 days a month would be allowed even for VRS optees who have gone out before 5.5.2000?

Till 5.11.2001, calculation of VRS @ 26 days a month was allowed under the Gujarat pattern only. As there was no concept of Gujarat pattern VRS

before 5.5.2000, the employees who have already opted VR under the 5.10.88 guidelines would be covered under 30 days a month.

9.Whether the workman and staff wage revision effected from different date other than 1.1.87 and 1.1.92 are entitled for the benefit of 50% or 100%

increase? If so, at what basis?

Any wage revision permitted by the PSEs for a period prior to the date of effect from 1.1.92 would be treated at 1.1.87 level. Similarly, any wage

revision permitted by the PSEs for a period commencing before 1.1.97 would be

treated as 92 level. The increase in ex-gratia compensation of 100% or 50% would be effected accordingly. This would also be followed in the cases of workers/staff not covered by DPE guidelines.

10. Whether leave salary and gratuity payment would be made on the basis of increase in compensation as 50% or 100%?

Please see item 8 of DPE guidelines on VRS dated 8.12.2000

20. After the guideline vide Annexure-8 was issued, there is another guideline issued on 26.10.2004 under Annexure-B to the counter affidavit, which

are as follows:

Further modification in the revised Voluntary Retirement Scheme (VRS). Payment of ex-gratia amount under Voluntary Retirement Scheme in

respect of employees in CPSEs following Central Dearness Allowance (CDA) pattern of pay scales at 1.1.1986 level computed on their existing pay

scales in accordance with the extant scheme of VRS shall be increased by 50%.

2. All other provisions of the DPE guidelines dated 5.5.2000 and 6.11.2001 shall continue to be operative.

3. The employees who have already been released by the CPSEs before the date of issue of this OM shall not be covered under this modified scheme.

4. The administrative Ministers/Departments are requested to bring the aforesaid modification in the VRS/VSS to the notice of the CPSEs under their

administrative control and to ensure strict compliance with the provisions of the scheme.

21. Except the above modifications, the guidelines dated 5.5.2000 and 6.11.2001 were allowed to remain as such. The aforesaid notification is clear to

show that in 2001, the ex-gratia payment in respect of the employees on pay scales at 1.1.87 and 1.1.92 were paid on their existing pay scales with the

extant scheme increasing by 100% and 50% respectively but in 2004, the scheme made the employees of the CPSEs following central DA pattern of

pay scale as on 1.1.86 level on their existing pay scale having increased by 50%. Hence, it is imperative to note that after 2004, the ex-gratia payment

was made available to the petitioners-employees who were already in service in 2004 but allowed to go on VRS in 2011. After 2004, they are only

paid by increase of 50%. It is clear from the clarification made on 28.2.2002 as stated above that any wage revision permitted by PSEs prior to the

date of effect from 1.1.92 would be treated at 1987 level and similarly, any wage revision permitted by the PSEs for a period commencing before

1.1.97 would be treated as at 1992 level. Accordingly, the exgratia payment should be made available. But it appears from the further modification

in the revised VRS vide Annexure-B that payment of ex-gratia amount under VRS in respect of employees in CPSEs following Central Dearness

Allowance pattern of pay scales at 1.1.1986 level were computed by increasing 50%. So, the question of 100% or 50% as per wage revision in 1992

or 1997 now merged only kind of payment basing on the pay scales as on 1.1.1986 does not arise. It is reiterated that all the petitioners were only

granted VRS in 2011.

22. On further scanning of above guidelines, it is not forthcoming that guidelines of 2004 has been modified by substituting the guidelines of 2000 and

2001. Rather, on going through all the guidelines, it appears that the guidelines of 2004 is in addition to the criteria for availing ex-gratia VRS as

available in the guidelines of 2000 and 2001. Here, learned counsel for the petitioners submitted that the petitioners are not paid with the central DA

but are paid industrial DA. On the other hand, learned counsel for the opposite parties submitted that the petitioners are guided by payment of central

DA but not the industrial DA. In the writ petitions, it is admitted that the petitioners have claimed the State pattern pay and the additional DA whereas

the opposite parties admitted to have been paying the State Government pay but not awarding any DA thereto. When the opposite parties are saying

that the guideline of 2004 was applied, it has to prove that the petitioners are not only members of CPSEs but also they are drawing the central DA.

No document has been filed by the opposite parties to prove its case.

23. It is reported in *New Horizons Limited an another v- Union of India and others*; (1995) 1 SCC 478 where Their Lordships, at paragraph-24,

have observed in the following manner:

24. The expression "joint venture" is more frequently used in the United States. It connotes a legal entity in the nature of a partnership engaged in

the joint undertaking of a particular transaction for mutual profit or an association of persons or companies jointly undertaking some commercial

enterprise wherein all contribute assets and share risks. It requires a community of interest in the performance of the subjectmatter, a right to direct

and govern the policy in connection therewith, and duty, which may be altered by agreement, to share both in profit and losses. (Black's Law

Dictionary, 6th Edn., p. 839) According to Words and Phrases, Permanent Edn., a joint venture is an association of two or more persons to carry out a

single business enterprise for profit (p. 117, Vol. 23). A joint venture can take the form of a corporation wherein two or more persons or companies

may join together. A joint venture corporation has been defined as a corporation which has joined with other individuals or corporations within the

corporate framework in some specific undertaking commonly found in oil, chemicals, electronic, atomic fields. (Black's Law Dictionary, 6th Edn., p.

342) Joint venture companies are now being increasingly formed in relation to projects requiring inflow of foreign capital or technical expertise in the

fast developing countries in East Asia, viz., Japan, South Korea, Taiwan, China, etc. [See Jacques Buhart : Joint Ventures in East Asia - Legal Issues

(1991).] There has been similar growth of joint ventures in our country wherein foreign companies join with Indian counterparts and contribute

towards capital and technical know-how for the success of the venture. The High Court has taken note of this connotation of the expression "joint

venture". But the High Court has held that NHL is not a joint venture and that there is only a certain amount of equity participation by a foreign

company in it. We are unable to agree with the said view of the High Court.â??

24. With due respect to the aforesaid decision, it appears that Their Lordships have categorically observed that the joint venture company must have

agreement how to deal with all aspect including the human resources and financial aspect for success of the venture. In the instant case, there is no

agreement filed by either of the parties but admitted fact is that the employees are borne under joint venture company called Hotel Nilachal Ashok.

So, the advantage of both the companies will be available to the employees. The benefit accrued to the employees to the maximum extent should be

availed by the employees working under joint venture whether they are to get the pay of the State Government or would be getting the Central DA.

Even also, they would be guided by the guidelines as stated earlier.

25. Moreover, it is stated in the writ petitions that ITDC and State Government have got 60:40 share. In the counter affidavit of the contesting

opposite parties, while admitting about the joint venture, they have submitted

that the petitioners being CPSE employees are getting central DA.

Assuming for the sake of argument that the petitioners were receiving central DA, it is not clear from the calculation sheet that they are paid central

DA. The contesting opposite parties have not placed any document to show that the petitioners have been paid CPSE salary and it is for the employer

to show as to how the petitioners were being paid salary and how far the guideline of 2004 will apply, but it is reiterated that the onus of the opposite parties has not been discharged by them.

26. A bare perusal of the Memorandum dated 25.08.1987 vide Annexure-C shows that Hotel Nilachal Ashok, Puri is a joint venture project of ITDC

and State Tourism Development Corporation and they have adopted the State Government's pay pattern. This is a letter from the Senior Vice-

President(MS) to the Manager of Hotel Nilachal Ashok, Puri. The writ petitions also show that the petitioners have entered into service in a joint

venture, i.e, ITDC and the State Tourism Development Corporation. The petitioners were being treated with the scale of pay of the State Government employees.

27. No doubt, the aforesaid circulars of 2000, 2001 and 2004 are all related to ex-gratia payment under VRS. On close scrutiny of the same, it appears

that 2004 notification has been added to the guidelines of 2000 and 2001 but had not substituted the manner of exgratia payment as mentioned in the

guidelines of 2001. In the present cases, since the petitioners are governed by the State Government pattern although the employees of joint venture, it

cannot be said that they are receiving the central pay dearness allowance. It is also clear from the guidelines of 2004 that except addition of such

clause about payment of ex-gratia, rest of the provisions of the guidelines of 2000 and 2001 remained intact.

28. In terms of the above discussion, it is clear that the petitioners have received ex-gratia @ 50% but they are to get 100% ex-gratia being coming

under the guidelines of 2000 and 2001 with respective clarifications. It will not be out of place to mention here that the petitioners are recruited in

between 1989 to 1991 and thus, they are eligible to get ex-gratia of 100%.

29. So far as one month salary of the petitioners as per guidelines is concerned, the petitioners have not received the same in lieu of three months

notice period. So, they are entitled to one month salary while taking VRS.

30. It is claimed by the learned counsel for the petitioners that the VRS dues have been paid on the basis of 26 days a month but not 30 days a month.

On the other hand, the guideline of 2001 clearly shows that salary for the VRS shall be calculated on the basis of 26 days a month but not 30 days a month. Thus, the petitioners are entitled to VRS calculation on the basis of 26 days a month.

31. In terms of the above discussions, the Court is of the view that the petitioners are entitled to further 50% of ex-gratia and entire VRS dues of 100% would be calculated on the basis of 26 days a month. Besides, they are also entitled to one month salary while being superannuated from the job. The point is answered accordingly.

32. Â CONCLUSION

It is submitted by the leaned counsel for the contesting opposite parties that claiming of revision of wages and fitment thereto being questions of facts cannot be agitated in this writ petition. On the other hand, learned counsel for the petitioners submitted that in the writ petitions they have claimed the VRS payment according to DPE guidelines along with interest, but nothing else more.

33. Learned counsel for the opposite parties submitted if an employee has got the benefit under VRS Scheme whether right or wrong, it cannot be reopened and an employee cannot claim higher amount on account of subsequent revision in the wages retrospectively. He further submitted that the petitioners cannot claim further ex-gratia amount and other benefits because they have all received the payment. In support of this submission,

Mr.Mishra, learned Senior Advocate for the contesting opposite parties relied on the decision of the Honâ??ble Supreme Court in the case of ITI

Limited (Supra) where Their Lordships, at paragraph-11, have observed in the following manner:

â??11.We do not find substance in this submission. In our opinion, at the most it can be said that a wrong calculation was done when the benefits

were paid to an employee under the VRS Scheme. This will not be benefit the employees because Clause 23.1 of the circular, quoted above, does not

speak of only valid calculations but it refers to all calculations under the VRS Scheme, irrespective of whether they are valid or invalid calculations,

and they shall not be reopened. In other words, if an employee has got the

benefits under the VRS Scheme, whether right or wrong, it cannot be reopened and an employee cannot claim any higher amount on account of subsequent revision in the wages retrospectively.â??

34. With due regard to the aforesaid decision, it is clear that the petitioners, in these writ petitions, are claiming differential VRS exgratia basing on the guidelines already issued before their retirement. Their claim is not based on any guideline issued after the retirement. So, the facts and circumstances of the decision, cited above, differ from the facts and circumstances of the present cases in hand. The ratio of the aforesaid case law does not apply to the facts and circumstances of these cases.

35. Learned counsel for the contesting opposite parties further submitted that if the petitioners dispute the amount of VRS, they are required to deposit

50% of the VRS amount before challenging the same as the VRS being a Golden Hand Shake, the same is not open to judicial review. On the other

hand, learned counsel for the petitioners submitted that the DPE guidelines 2001 only make a provision that if the employee desires to take up

employment in another PSU, he has to return the VRS compensation received by him. But, there is no any DPE guidelines to return 50% VRS ex-

gratia if he challenges the same being not in accordance with the VRS Scheme. Of course, learned counsel for the opposite parties relied on the

decision in the case of Rajibhai Bhikhabhai Parmar and others (Supra) and the Honâ??ble Supreme Court in the said judgement, have observed in

the following manner:

2. The limited grievance of the appellants is on the direction to deposit the amounts already received by them at the time of the alleged cessation of

employment with the respondents as a pre-condition for the Labour Court to enter adjudication on the grievance raised by the employees.

3. Having heard Mr. R.P.Bhatt, learned senior counsel appearing for the appellants and Mr. C.U.Singh, learned senior Counsel appearing for the

respondents, in the peculiar facts and circumstances of the case, we are of the view that the interest of justice would be advanced if the direction of

the High Court to deposit the amounts already received by appellants at the time of cessation, is partly modified.

4. Accordingly, we dispose of the appeal permitting the appellants to deposit 50% of the gross VRS amount (which does not include P.F. Gratuity,

etc.) within a period of three months from today.

5. The Labour Court, Vadodara will decide the Reference within a period of three months from the date of deposit as above.

36. With due respect to the aforesaid decision, it appears that the judgment of the High Court has been modified with a direction to deposit 50% of the

VRS amount as pre-condition for the Labour Court to adjudicate on the grievance raised by the employees. Thus, the facts of that case are different

from the facts of the present cases in hand. Hence, with due regard, the aforesaid decision is not applicable to the present cases.

37. The contention of the learned counsel for the contesting opposite parties that the claim of the petitioners has been finally settled and the petitioners

have already received the compensation. But, the learned counsel for the petitioners, while countering to the submissions of the learned counsel for the

contesting opposite parties, submitted that the petitioners, after receipt of the ex-gratia, had lodged protest by filing of representation in 2013. When the

petitioners became out of job by taking VRS on the instruction of the opposite parties, there is no other way than to accept the VRS as paid by

opposite parties for maintaining their day to day lives. So, the acceptance of VRS cannot shut up their claim for ever, particularly when they got VRS

after necessary guidelines are already in force. Thus, the contention of the learned counsel for the contesting opposite parties to refuse the further

entitlement of the petitioners is quite infallible.

38. In terms of the above discussion, the Court hereby direct:

I. That the opposite parties to pay further 50% of ex-gratia to each of the petitioners as they have already got 50% ex-gratia amount. It is further

directed to calculate the entire VRS ex-gratia of 100% (paid and to be paid) by calculating the same on the basis of 26 days a month for their payment

to the petitioners;

II. It is also observed that the petitioners are entitled to one month salary as per the guidelines in addition to the above benefit and the Court direct so.

Thus, the opposite parties are hereby directed to pay the differential arrears, as stated above, to each of the petitioners; and

III. The entire exercise be completed by the opposite parties within four months from today. The writ petitions are disposed of accordingly.