
(2002) 01 OHC CK 0025
In the Orissa High Court
Case No : O.J.C. No. 3346 of 2001

Rana Ranjit Singh

APPELLANT

Vs

Hindustan Steelworks Construction Limited and Another

RESPONDENT

Date of Decision : 28-01-2002

Acts Referred:

Citation : (2002) 93 CLT 314 : (2002) OLR 799 Supp

Hon'ble Judges : B.P. Das, J

Bench : Single Bench

Advocate : Bijan Ray, C. Choudhury, D.R. Das and B. Maharana, for the Appellant; Debasis Das and Rashmi Ranjan Das, for the Respondent

Final Decision : Allowed

Judgement

B.P. Das, J.—The petitioner in this writ petition under Articles 226 and 227 of the Constitution of India prays for issuance of writ in the nature of mandamus directing the opposite parties - Hindustan Steelworks Construction Ltd., a Govt. of India Undertaking (hereinafter called "the Company") and its Group General Manager at Duburi - to allow the petitioner to go on voluntary retirement under the voluntary Retirement Scheme introduced by the company, as per the petitioner's application dated 25.8.2000 (Annexure-2) and to grant the consequential benefits under the said Scheme.

2. The petitioner's case, in brief, is that he is an employee of the Company and is at present posted as the Senior Manager in its Unit at Duburi in the district of Jajpur. The opposite party -company came up with a circular dated 10.8.2000 (Annexure-1) by which it extended the Voluntary Retirement Scheme for a further period upto 30.9.2000 and invited applications from its employees opting for the benefits under the Scheme. Pursuant to the aforesaid circular in Annexure-1, the petitioner made an application on 25.8.2000 requesting the Company to allow him to go on voluntary retirement in terms of the Scheme and to release him with effect from 31.10.2000. According to the petitioner, though his application was received by the Company on 28.8.2000, the Company did not

take any decision on the said application. On or about 14.12.2000 the Company issued another circular to all its Zonal/Unit Heads wherein it was indicated that the applications seeking release beyond 30.11.2000 would be rejected. The relevant portion of the aforesaid circular in Annexure-3 reads as follows ;

"*** ** To avoid administrative complexities, it is to intimate that all the V. R. applications in which the release from the services of the Company under V. R. Scheme is sought after 30th November, 2000 shall stand rejected.

The same will also apply for all earlier V. R. applications seeking release beyond 30th November, 2000.

*** **"

According to the petitioner, though the petitioner vide Annexure-2 made an application to get himself released by 31.10.2000, due to the inaction on the part of the opposite parties on the application of the petitioner, the petitioner could not be released from his service for which he made two representations on 14.12.2000 and 23.12.2000, vide Annexures 4 and 4/1, but the opposite parties did not pay any heed to his grievances. Although the opposite parties allowed similarly situated employees of the Company to retire under the V.R. Scheme, the said benefit was denied to the petitioner arbitrarily and without any reason.

3. The opposite parties have filed a counter affidavit justifying their stand in not accepting the petitioner's application for voluntary retirement under the Scheme in Annexure-1. As the counter affidavit discloses, the Company introduced the V.R.Scheme (Annexure-A) as per the guidelines and direction of the Department of Public Enterprises contained in the circular dated 10.11.1988 in order to weed out the surplus strength and the scheme was extended from time to time keeping in view the organisational requirement or any other administrative reasons and the decision of the management in accepting or rejecting voluntary retirement of an employee is the sole discretion of the management. Clause 4.2 of the Scheme (Annexure-A) stipulates that the competent authority will have the right not to grant voluntary retirement to any employee, for the reasons to be recorded in writing. It is not disputed by the opposite parties that the petitioner applied for voluntary retirement under the Scheme vide his application dated 25.8.2000 seeking release from the service of the Company with effect from 31.10.2000. In the counter affidavit the opposite parties have disclosed that the unit management, i.e., the Group General Manager of the Company at Duburi, after considering the petitioner's application recommended his case for acceptance of voluntary retirement from 31.12.2000 in view of the urgency of some work assigned to the petitioner and for his requirement at the unit. Thereafter due to intervening administrative reasons arising out of the roll back in the age of the employees from 60 years to 58 years, petitioner's application for voluntary retirement stood rejected along with many other employees of the Company seeking voluntary retirement beyond 30.11.2000 pursuant to the circular dated 14.12.2000, vide Annexure-3. It is reiterated by the learned

counsel of the opposite parties that the acceptance of voluntary retirement of an employee under the Scheme being the discretion of the management of the Company, the petitioner has no right to challenge the action of the opposite parties in rejecting his application for voluntary retirement.

4. Be that as it may, it is not disputed by the opposite parties that the petitioner had applied for voluntary retirement pursuant to the Company's circular dated 10.8.2000 (Annexure-1) within the stipulated period and requested for its acceptance with effect from 31.10.2000, but due to assignment of some urgent work to him by the management and in the interest of the Company, the Company delayed the date of acceptance till 31.12.2000. Therefore, there was no fault on the part of the petitioner in applying for the same. It is also not disputed that similarly situated employees were allowed to avail the benefits under the aforesaid V.R. Scheme. In this regard learned counsel for the petitioner referring to a decision of the Apex Court in *Manjushree Pathak Vs. The Assam Industrial Development Corporation Ltd. and Others*, submitted that though the management of the Company has the discretion to accept or reject the request of an employee for voluntary retirement, but that cannot be exercised in an arbitrary manner as has been done in the case of the present petitioner. In the case referred to above, it was held :

"... No doubt, as per Clause 8.1 of the Scheme extracted above, the Management had discretion to accept or reject the request from any employee for voluntary retirement viewing the organizational requirement and any other relevant facts but that does not mean that the respondent corporation being an authority coming within the purview of Article 12 of the Constitution can abdicate its duty to act reasonably and fairly in exercise of discretion. It is strange as to why the Managing Director of the respondent-Corporation, the competent authority to accept the application made for the voluntary retirement, did not act on it at all till 17.2.1996. He ought to have exercised his discretion as per Clause 8.1 if not immediately atleast within a reasonable time...."

5. The ratio of the aforesaid decision is squarely applicable to the facts of the present case.

6. Considering the facts and circumstances of the case and keeping in view the decision referred to above, I am of the view that the management of the opposite party-Company has not acted fairly in rejecting the application of the petitioner. Accordingly, the rejection of the case of the petitioner for voluntary retirement is illegal and accordingly opposite parties are directed to allow the petitioner to go on voluntary retirement in terms of the Voluntary Retirement Scheme floated vide circular dated 10.8.2000 (Annexure-1).

7. The writ petition is accordingly allowed. There shall be no order as to cost.