

(2001) 07 DEL CK 0186

In the Delhi High Court

Case No : C.W. No's. 743 and 4674 of 1994 and 2436 of 1993

R.K. Singhal

APPELLANT

Vs

Engineering Projects (India) Ltd. and others
 A.K.
Sinha Vs Engineering Projects (India) Ltd. and others

I.D. Mittal Vs Engineering Projects (India) Ltd. and others

RESPONDENT

Date of Decision : 18-07-2001

Acts Referred:

Citation : (2001) 07 DEL CK 0186

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Ms. Nitya Ramakrishnan, Mr. Anil Nauriya, Ms. Hemantika Wahi and Ms. Sumita Hazarika, for the Appellant; Ms. S. Janani, Ms. Anusuya Salwan, Mr. Jayant Bhushan and Ms. Jasleen K. Oberoi, for the Respondent

Final Decision : Dismissed

Judgement

Dr. Mukundakam Sharma, J.—Since the issues raised in the present three writ petitions are similar, I propose to dispose of all the three writ petitions by this common judgment and order.

2. The issue that falls for my consideration in these writ petitions is whether benefits of past service of the three petitioners with two other Public Sector Enterprises are to be given to them by the Engineering Projects (India) Ltd. (hereinafter referred to as EPIL) under its voluntary retirement scheme announced in January, 1993. According to the petitioners, under para 6.3.1. of the said voluntary retirement scheme, these benefits were to be given to the petitioners since they had moved and joined EPIL with consent of one public sector enterprise to another.

3. Since the issue raised requires interpretation of the provisions of para 6.3.1 of the voluntary retirement scheme, the said provisions are extracted hereinbelow:-

"6.3.1. Ex-gratia payment equivalent to 1-1/2 months pay for each completed

year of service, or the monthly pay at the time of retirement multiplied by the balance months of service left before normal date of retirement, whichever is less. For example, an employee who has put in 16 years of service and has got only one year of service for normal retirement will be entitled to an ex-gratia payment of only 13 months pay and not 24 months pay.

When an employee moves from one enterprise to another enterprise with the consent of the management of both the public sector enterprises and the lending organisation had liquidated its liability towards Contributory Provident Fund (C.P.F.) Gratuity, Earned Leave, Half Pay Leave by making lumpsum payment to the borrowing organisation in respect of employee for the service rendered in the lending organisation, then the same would be taken into account for the purpose of determining ex-gratia under VRS. If an individual does not satisfy any of these conditions or in that post has encashed any part of the retirement benefit, say gratuity or drawn cash equivalent of earned leave standing to his credit at the time of his movement from the public sector enterprise to EPIL, the service rendered in EPIL would be treated as de novo and the previous service in the other public sector enterprise would not be counted. Government service would not be taken into account for calculating ex-gratia".

4. In order to appreciate the contentions raised on behalf of the parties, it would also be relevant to state certain background facts of the three writ petitions.

CW-743/1994

5. The petitioner worked in the Indian Drugs and Pharmaceuticals Ltd. (in short I.D.P.L.) from 20.5.64 to 9.5.72 and thereafter worked in Bharat Aluminium Co. Ltd. (BALCO) from 15.5.72 to 1.1.74. The petitioner joined the respondent No. 1- EPIL some time thereafter. While working in EPIL as Deputy Construction Manager, the aforesaid voluntary retirement scheme was introduced by the EPIL. The petitioner applied for voluntary retirement on 28.1.93. The aforesaid request of the petitioner to go on voluntary retirement was accepted by EPIL on 4.2.93 and the petitioner was relieved from service on 1.2.93. The petitioner, however, on 24.3.93 wrote to EPIL pointing out that the previous public sector organisation had liquidated their liability by transferring provident fund and that he had not been paid gratuity by I.D.P.L. and BALCO as the same was not payable. Being aggrieved by the action of the respondent No. 1, on the alleged ground of non-payment of entire dues in terms of the scheme, the petitioner filed the present writ petitions seeking for a direction to the respondents to extend to the petitioner the full benefit of the voluntary retirement scheme and to grant him ex-gratia payment and gratuity computed after taking into account his service in previous public sector organisation in accordance with the circular dt. 18.8.71 with a further prayer that the order dt. 30.4.93 be quashed by which the respondent withheld the full amount of ex gratia payment allegedly due to the petitioner.

CW 4674/1996

6. The petitioner herein joined as Graduate Engineer in Heavy Engineering Corporation (H.E.C.) on 5.9.62 and the left the said Corporation on 6.6.1973 and on 7.6.1973 he joined Bokaro Steel Ltd. (B.S.L.) The petitioner left Bokaro Steel Ltd. by resigning w.e.f. 18.11.1976 and joined EPIL on 20.11.1976 as Purchase Manager. It is stated in the writ petition by the petitioner that he joined Bokaro Steel Ltd. with the consent of Heavy Engineering Corporation, which had earlier forwarded the application of the petitioner to EPIL. He also submitted his application to go on voluntary retirement in terms of the scheme propounded by the EPIL, which was accepted and he was released from service on 10.2.93 when he was paid a cheque of Rs. 2,99,578/- on account of ex gratia payment and Rs. 94,338/- on account of gratuity. According to the petitioner the aforesaid payment was not made in terms of the aforesaid scheme and, Therefore, the present writ petition.

7. The petitioner worked with I.D.P.L. from 2.2.1965 to 8.5.1972 and at the end of the said period he left to join BALCO, another public sector enterprise after allegedly applying through proper channel and with the consent of both managements. The petitioner worked with BALCO from 15.5.1972 to 4.2.1974 and at the end of the aforesaid period he joined the respondent No. 1-EPIL after allegedly applying through proper channel and with the consent of both managements. In terms of the aforesaid voluntary retirement scheme of respondent No. 1, the petitioner submitted his application on 29.1.1993. On 5.2.1993, the petitioner submitted another application contending, inter alia, that his application for voluntary retirement was submitted subject to the condition that his earlier services w.e.f. 13.2.1964 to 4.2.1974 to joining of EPIL was considered for payment of ex gratia and gratuity. It was further stated that in case the management was not able to accept the above condition for payment of above benefit, then his application for voluntary retirement be treated as withdrawn. On 18.2.1993, an office order was issued by the respondent No. 1 by which the petitioner was informed that his application for voluntary retirement had been accepted and that he would stand relieved from service w.e.f. 26.2.93 and on 26.2.93 the petitioner was released from duty and his terminal entitlement in terms of the aforesaid claim was paid to the petitioner. The petitioner, however, being aggrieved by alleged non-payment of all the dues in terms of the aforesaid scheme filed the present writ petition in this court.

8. I have heard the learned counsel appearing for the parties.

9. Counsel appearing for the petitioners submitted that the petitioners moved from one public sector organisation to the second public sector organisation and then to the respondent No. 1 organisation with the consent of the managements of all the public sector organisations and that the lending organisation had liquidated its liability by making lumpsum payment to the borrowing organisation. It was submitted that Contributory Provident Fund dues were transferred from one organisation to the other organisation whereas payment of gratuity was not admissible taking into consideration the length of service and

that earned leave and half pay leave were not encased and, Therefore, those liabilities could not have been transferred. It was submitted that since the previous public sector organisations and liquidated the liability of transferring the payment of Contributory Provident Fund and they had no liability to the gratuity and other dues as the same were no payable, the condition set out under the voluntary retirement scheme was satisfied and, Therefore, the petitioners were entitled to get the benefit of past service rendered with the previous two public sector organisations, which should have been considered and the entire benefits should have been given be the EPIL under its voluntary retirement scheme announced in January, 1993 and the same having not been done, the writ petitions are required to be allowed and that a direction should be issued to the respondent No. 1 to pay the entire terminal benefits in terms of the aforesaid scheme. It was submitted that under the memorandum dt. 18.8.71 shifting and mobility of employment by an employee was encouraged amongst public sector enterprises and, Therefore, any subsequent shift in the policy could not be binding on the petitioners, particularly when there was no retirement or transfer of cash equivalent of gratuity as no liability for gratuity was laid down. It was submitted that so far gratuity is concerned, it is applicable only where the Payment of Gratuity Act is applicable and since in the present cases the petitioners did not serve in the two previous organisations for the minimum period of five years prescribed by the Payment of Gratuity Act to enable to earn gratuity, there was no question of liability for payment of gratuity and, Therefore, the petitioners could not be denied the benefits of the aforesaid para 6.3.1 of the voluntary scheme on the ground that gratuity was not transferred.

10. Counsel appearing for respondent No. 1, however, submitted that for being entitled to the benefits enumerated in the scheme, an employee who had come from another public sector enterprise, need to mandatorily satisfy the following three conditions:-

1. The employee must from one enterprise to another enterprise with the consent of the managements of both the public sector enterprises.
2. The lending organisation should have liquidated its liability towards provident fund, Gratuity Earned Leave, Half Pay Leave, by making lumpsum payment of the borrowing organisation.
3. The scheme very specifically provides that if an individual does not satisfy any of these conditions or in that post has encased any part of the retirement benefit, say gratuity or drawn cash equivalent of earned leave standing to his credit at the time of his movement from the public sector enterprise to EPIL, the service rendered in EPIL would be treated as de novo and the previous service in the other public sector enterprise would not be counted."

11. It was submitted that the aforesaid scheme, in terms of which the petitioners applied for going on voluntary retirement, was also approved by the Ministry of Industry Department of Public Enterprise, Govt. of India. It was further stated

that consent of both the managements of the public sector enterprises would mean that the lending organisation has voluntarily relieved the employee on his selection by the borrowing organisation and insofar as the transfer/liquidation of liability by the lending organisation is concerned, it is absolutely mandatory that all the liabilities mentioned therein have to be liquidated by virtue of a lumpsum payment and that transfer/liquidation of any one liability would not be sufficient compliance of the requirement of the scheme.

12. Reliance was also sought to be placed on the Office Memorandum dt. 18.8.1971 wherein it was stated that where the transfer of an employee is effected with the consent of the management concerned, he should be allowed the benefit of transfer expenses, carry-forward of leave, gratuity etc. The aforesaid position was further clarified by another Office Memorandum dt. 14th December, 1982 wherein again it was stated that whenever such transfer of an employee is effected with the consent of the management concerned, the concerned employee should be allowed the benefit of leave gratuity, etc. and that non-compliance of the said procedure would deprive the employee concerned of the aforesaid benefits. Reliance was also sought to be placed on behalf of the respondents on Office Memorandum dt. 23.6.1988, which stated that when an employee moved from one public sector enterprise to another with the consent of the managements concerned public enterprise, the former would extinguish its liability towards gratuity payment in respect of the service rendered by the concerned employee by making a lumpsum payment equivalent to the gratuity earned by him to the latter as if the employee has retired from its service on the date of transfer under the rules applicable to him. It was further stated that the condition of minimum qualifying service of five years specified above would not be invoked when such transfer takes place with the consent of both the employees.

13. Counsel appearing for the petitioners, however, submitted that the aforesaid memorandums dt. 14.12.1982 and dt. 23.6.1988 cannot be made applicable to the facts and circumstances of the present cases as the petitioners had moved from one organisation to the other and to the third one prior to issuance of the aforesaid memorandums and, Therefore, the said memorandums could not be given retrospective effect. In support of the said contention reliance was placed on a Division Bench decision of this court in N.S. Krishna Vs. Bharat Heavy Electricals Limited, .

14. It was also submitted on behalf of the respondents that the Ministry of Industries had given a clarification under the letter dt. 15.2.93 pursuant to the queries of the respondent No. 1. Clarification given by the Ministry of Industry in their letter dt. 15.2.93 annexed as Annexure R-3 was to the following effect:-

"i) If applications of the employees joining EPI have not been routed through proper channel and their dues such as Gratuity, Earned Leave, Half Pay Leave, Contributory Provident Fund balance all taken together had not been transferred by the lending organisation to the borrowing organisation, the question of

treating their service in EPI in continuation of the service rendered in other public sector enterprises does not arise. Their service in Epi will be treated as de novo.

ii) The minimum period of service is not a pre-condition for transferring the cash equivalent of gratuity of an employee who moved from one enterprise to another enterprise as the lending organisation is required to extinguish its liability by making lumpsum payment of the amount due and earned by way of gratuity and the borrowing organisation undertakes to liquidate at the time of superannuation gratuity used to the employee including the service rendered in the previous organisation. If this condition is not fulfilled, then the service rendered in the previous organisation cannot be taken into account. The receipt of lumpsum payment by the EPI from the lending organisation is a pre-requisite for counting of the continuous services".

15. Placing reliance on the aforesaid communication, counsel for the respondent No. 1 submitted that the petitioners have been paid their due benefits in terms of the aforesaid scheme and the with petitions are misconceived.

16. The voluntary retirement scheme propounded by the respondent No. 1 itself has laid down the eligibility criteria for receiving ex gratia payment. The respondent No. 1 examined and appreciated the cases of the petitioners and categorically stated that since the lending organisation did not liquidate its liability towards provident fund, gratuity, earned leave, half pay leave etc. by making lumpsum payment to the respondent No. 1, the petitioners are not entitled to get the benefit of past services rendered by them in the earlier organisations. Although a dispute was raised as regards movement of the petitioners from one enterprise to another with the consent of managements of both the public sector enterprises, it transpires from the records placed before me that the applications filed by the petitioners for moving from one enterprise to another were routed through proper channel and were forwarded by the organisations in which the petitioners were working and, Therefore, it must be accepted that the petitioners moved from one enterprise to another with the consent of managements of both enterprises.

17. The dispute, Therefore, which is required to be resolved is whether the lending organisation had liquidated all its liability as required. It is an admitted position that payments towards gratuity, earned leave and half pay leave were not made by the lending organisation by making lumpsum payment to the borrowing organisation. No documents to the aforesaid extent have been placed on record by any of the petitioners in the present writ petitions. So far the payment towards provident fund is concerned in CW 743/1994 an averment has been made that payment towards provident fund amounting to Rs. 4561.96 was transferred to EPI and that there was no other liability that was to be transferred to EPIL. In CW-2436/93 the petitioners stated that contributory provident fund from I.D.P.L. to BALCO was transferred on 12.9.72 for Rs. 3138.40 and that Contributory Provident Fund standing to the petitioner's credit was transferred from BALCO to E.P.I.L. However, in CW 4674/96 no such statement is made that

any provident fund was transferred to the borrowing organisation. Respondent No. 1 has even denied that any transfer of provident fund amount was made to the E.P.I.L. Be that as it may, it is an admitted position that in none of the aforesaid writ petitions gratuity and leave benefits were transferred to E.P.I.L. Thus, a contention was raised on behalf of the respondent that the liability was not liquidated on pro-data basis by the erstwhile employer in the cases of all the petitioners when they came to the E.P.I.L.

18. So far the statement of account of provident fund of the petitioner in CW 743/94 is concerned, it is stated by the respondent No. 1 that the statement of account of his provident fund, annexed at page 57 of the writ petition, does not show any entry of transfer of his previous outstanding at BALCO as being credited to his account and thus in his case even the provident fund was not transferred. It was also stated that there is absolutely no evidence in the form of any contemporaneous letters or correspondence showing that these dues were liquidated by his past employer to E.P.I.L.

19. A reading of the provisions of the scheme particularly par 6.3.1 would indicate that in order to get the previous service in the other public sector undertaking counted, the lending organisation had to liquidate its liability towards Contributory Provident Fund, Gratuity, Earned Leave and Half Pay Leave by making lumpsum payment to the borrowing organisation in respect of employee for the service rendered in the lending organisation. Only in the aforesaid event, the same could be taken into account for the purpose of ex-gratia under voluntary retirement scheme. It was also categorically stated that if an individual does not satisfy any of these conditions or if he had encashed any part of the retirement benefit, say gratuity or drawn cash equivalent of earned leave standing to his credit at the time of his movement from the public sector enterprise to E.P.I.L., the service rendered in E.P.I.L. would be treated as de novo. The reason is not far to seek. If the aforesaid lumpsum payment is made to the borrowing organisation, the borrowing organisation could use the said payment by showing the same to the credit of the petitioner and use the money for running its business and in that view of the matter and consideration, it was decided to give benefit of the past service for the purpose of making payment under the scheme. Here are cases where no such lumpsum payment was made to the E.P.I.L. Even lumpsum payment towards Contributory Provident Fund is disputed. The aforesaid scheme specifically makes it very clear that if any of the aforesaid conditions is not satisfied the past service in the other public sector enterprises could not be counted. The petitioners sought to rely upon the provisions of the Payment of Gratuity Act, which according to them came into force only in 1972 and, Therefore, for the period prior to coming into force of the Act, there was no liability for making payment of the gratuity. When the aforesaid scheme was brought in and was pronounced the Office memorandums dt. 14.12.1982 and 23.6.1988 were in operation, which provides that the condition of minimum qualifying service of five years specified above would not be invoked when such transfer takes place with the consent of both the

employers. Even the clarification issued by the Ministry of Industry, Department of Public Enterprises has stated so that the minimum period of service is not a pre-condition for transferring the case equivalent of gratuity of an employee who moves from one enterprise to another enterprise as the lending organisation is required to extinguish its liability by making lumpsum payment of the amount due and earned by way of gratuity. It was also laid down that if any of the aforesaid conditions is not fulfilled then the service rendered in the previous organisation cannot be taken into account. Therefore, receipt of lumpsum payment by E.P.I.L. from the lending organisation is a pre-requisite for counting of the continuous services. No evidence has been placed on record by the petitioners that the lending organisation had liquidated its complete liability towards provident fund, gratuity, earned leave, half pay leave etc. by making lumpsum payment to the respondent No. 1 and, Therefore, the only conclusion that could be derived is that the pre-condition for counting of past services was not satisfied in the present cases. Consequently, the employment of the petitioners in the E.P.I.L. is to be considered as de novo employment and, Therefore, the petitioners would not be entitled to count the period of past services spent in the other public sector enterprises. They shall be entitled to count only the period spent by them in E.P.I.L. for the purpose of computation of ex gratia payable to them under the scheme. In the scheme itself it was made clear that the services in the previous organisations would be counted only if the liability of Provident Fund, Gratuity etc. had been liquidated by the lending organisation by the lumpsum payment of E.P.I. The petitioners opted under the scheme and sought for voluntary retirement. It was sought to be argued by the petitioner in CWP 2436/93 that his was a conditional exercise of option. The same would not change the position. The fact remains that he had exercised his options which were accepted. There was no clear withdrawal letter from the petitioner withdrawing his option exercised. Therefore, acceptance of the option was valid and effective.

20. The petitioners took voluntary retirement from service and accepted the ex gratia payment along with provident fund and gratuity for the period of their service rendered in the respondent No. 1 company without raising any objection and protest. Therefore, the principles of waiver and estoppel could also be made applicable to the petitioners. I, Therefore, find no merit in these writ petitions and the same stand dismissed but without any costs.