

(2004) 02 DEL CK 0019

In the Delhi High Court

Case No : CMs 10186 and 10187 of 2003 in WP (C) 743 of 1994

R.K. Singhal

APPELLANT

Vs

The Engineering Projects (India) Ltd. and Others

RESPONDENT

Date of Decision : 24-02-2004

Acts Referred:

Citation : (2004) 02 DEL CK 0019

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

Bench : Single Bench

Advocate : Anil Kumar and Udyan Jain, for the Appellant; S. Janani and Reenu Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, J.—The writ petition filed by the petitioner in this Court was registered as WP(C) No.743/1994. The issue that arose for consideration in the said writ petition was whether or not the benefits of past service of the petitioner with two other Public Sector Enterprises were to be given to him by the respondent No.1, the Engineering Projects (India) Ltd. under its voluntary retirement scheme announced in January, 1993. Two other similar writ petitions were filed one by Shri A.K. Sinha, which was registered as CW No.4674/1994 and the other by Shri I.D. Mittal, which was registered as CW No.2436/1993. As all the three writ petitions involved similar issues, all the three writ petitions were taken up together and they were disposed of by a common judgment an order passed by this Court on 18.7.2001. By the said judgment and order it was held that 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 company No.1 without raising any objection and protest. It was also held that the employment of the petitioners in the respondent company is to be considered as de novo employment and, Therefore, the petitioners would not be entitled to count the period of service spent in the other Public Sector Enterprises and that they would be entitled to count the

service rendered only in EPIL for the purposes of computation of ex gratia payable to them under the scheme. The writ petitions were accordingly dismissed.

2. It transpires from the records that being aggrieved by the aforesaid decision, all the three petitioners preferred Letters Patent Appeals before the Division Bench of this Court. The petitioner herein, however, withdrew the aforesaid LPA, which was registered as LPA No.169/2002, which was dismissed as withdrawn. The Letters Patent Appeal, which was filed by Shri A.K. Sinha was registered as LPA No.507/2001, which was heard at length and was disposed of by the Division Bench by its judgment and order Dated 25.9.2001 dismissing the said appeal by recording detailed reasons for its decision. It further transpires from the records that being aggrieved by the said judgment and order passed by the Division Bench of this Court, the petitioner Shri A.K.Sinh preferred a Special Leave Application before the Supreme Court of India, which was registered as Special Leave to Appeal (Civil) No.1378/2002. The said appeal was listed for consideration on 4.2.2002 when the counsel for the petitioner sought permission to withdraw the said petition and the SLP was accordingly dismissed as withdrawn. Therefore, for all practical purposes the judgment and order passed by the Division Bench in LPA No.507/2001 dismissing the appeal and affirming the judgment and order passed by this Court on 18.7.2001 became final and binding. The third petitioner, namely, Shri I.D. Mittal also filed an appeal limited to the contention that he had withdrawn the application for voluntary retirement before acceptance. Am informed at the Bar that the said LPA is also dismissed by the Division Bench of this Court.

3. After withdrawing the appeal filed by him before the Division Bench, the petitioner preferred a review application in this Court, which was filed on 9.5.2002 along with an application u/s 5 of the Limitation Act wherein a prayer was made by the petitioner praying for condensation of delay in filing the said review application. Both the aforesaid applications were listed for consideration before this Court on 12.7.2002 when none appeared on behalf of the petitioner. However, in the interest of justice, the matter was adjourned for 19.7.2002 when again none appeared for the petitioner to press the said applications upon which this Court again ordered to reformatify the applications on 26.7.2002. On that date also none appeared for the petitioner to press the applications and accordingly both the applications were dismissed in default. The petitioner thereafter filed an application u/s 151 CPC, which was also dismissed for non-prosecution on 30.4.2003 as none appeared for the petitioner. Thereafter two applications one being CM No.10186/2003 praying for restoration of the review application and other other being CM No. 10187/2003 praying for condensation of delay in filing the restoration application were filed. On the aforesaid applications notices were issued upon which the respondents have entered appearance through their counsel.

4. I have heard the counsel appearing for the parties and have also perused the records including those records to which specific reference was made by the

counsel appearing for the parties during the course of arguments. It has to be made clear at this stage that I have heard the counsel appearing for the parties not only on the application for restoration but also on the application seeking for review and in terms thereof I propose to deal with the various contentions raised by the counsel appearing for the parties. The review application was filed in this Court after withdrawing the appeal filed by the petitioner before the Division Bench as against the judgment and order dated 18.7.2001 passed in WP(C) No.743/1994. The appeal was withdrawn on 10.4. 002 and the review application were filed on 9.5.2002. In the application u/s 5 of the Limitation Act, the reason for the delay in filing the review application is stated to be that the Division Bench was of the view that the petitioner should move the High Court for review of the order and, Therefore, the petitioner had no option except to withdraw the appeal with the liberty to file the review application. It cannot be disputed that one of the effective remedies as against the judgment and order passed on 18.7.2001 was by filing an appeal. There is no doubt that another remedy also existed of filing a review application in this Court provided the pre-conditions for filing such review application are made out in the facts and circumstances of the case. It is further clear and apparent on the face of the records that the Division Bench dismissed the appeal on 25.9.2001 which was registered as LPA No.507/2001 titled A.K.Sinha v. The Engineering Projects (I) Ltd. and ors. and by the said judgment and order passed by the Division Bench, the said judgment and order dated 18.7.2001 was upheld when it was held that the said judgment does not suffer from any flaw. The said judgment and order passed by the Division Bench has also become final and binding in view of the fact that the SLP which was filed as against the judgment and order of the Division Bench was withdrawn by the petitioner, which was dismissed as withdrawn. The review application is filed subsequent to the said order passed by the Division Bench of this Court affirming and upholding the judgment dated 18.7.2001. In this connection reference may also be made to the decision of the Supreme Court in *Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh*, . In the said decision, the Supreme Court held that the crucial date for determining whether or not the terms of Order XLVII Rule 1(1) of CPC are satisfied is the date when the application for review is filed and that if on that date no appeal has been filed it is competent for the Court hearing the petition for review to dispose of the application on the merits notwithstanding the pendency of the appeal, subject only to this, that if before the application for review is finally decided the appeal itself has been disposed of, the jurisdiction of the court hearing the review petition would come to an end. Therefore, if by the time the appeal in a connected writ petition where the said writ petition was also disposed of on merit by a common judgment and order, in that event the jurisdiction of the review Court to hear the review petition would also come to an end. Reference may also be made to the decision of the Supreme Court in *Kunhayammed and Others Vs. State of Kerala and Another*, . In the said decision it was held by the Supreme Court that once the superior court has disposed of the list before it either way - whether the decree or order under appeal is set aside or modified or simply

confirmed, it is the decree or order of the superior Court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree order passed by the Court, tribunal or the authority below. It was held that the doctrine of merger could, Therefore, be applied to such a case.

5. I am of the considered opinion that the ratios of the aforesaid two decisions of the Supreme Court are squarely applicable to the facts and circumstances of the present case as the Division Bench has already disposed of the appeal whereby the impugned Judgment and order has been upheld and confirmed and, Therefore, the judgment and order passed by this Court now stands confirmed by the superior Court and there is no scope for this Court to review the judgment and order passed by this Court. Therefore, it has to be held that both the applications are misconceived.

6. Even otherwise, I have looked into the plea that is raised by the petitioner in the application for review. The ground that is raised in the review application is that the petitioner contributed towards provident fund with the previous employer, which stood transferred to the respondent No.1 company and, Therefore, according to the petitioner, the case of the petitioner stands on a different footing. The aforesaid contention is again misconceived because of the fact that it is an admitted position that none of his other benefits such as gratuity, earned leave, half pay leave were not transferred by the lending organization to the respondent No.1 company, which is considered absolutely essential, if continuity of service is to be reckoned with. It was, however, submitted by the counsel appearing for the petitioner during the course of his submissions that the petitioner is not entitled for the gratuity benefits because of his previous service as the lending organization has not discharged its liability for transferring the funds, namely, gratuity and also because the petitioner remained with BALCO only for less than two years, which is the minimum service required for earning gratuity under the provisions of the Gratuity Act and, Therefore, the petitioner was not entitled to any such gratuity. The aforesaid aspect was dealt with in the judgment dated 18.7.2001 wherein it was held that even if the provident fund of the employee was transferred by the lending organization to the corporation even that could not entitle the petitioner to get the benefit of the past service rendered by him in the other organization for calculating the ex gratia payment particularly in view of the fact that rest of the conditions of para 6.3.1 were not fulfilled. It was also held that since the writ petitioner did not fulfill all the conditions for seeking the benefits of the past service like the conditions of deposit of the gratuity, earned leave, half pay leave of the employee in that event also the benefits of the past service cannot be given due to non-compliance of the conditions of para 6.3.1. The aforesaid observations of this Court in the judgment and order dated 18.7.2001 were also reiterated by the Division Bench when it held that if the employee seeking voluntary retirement does not satisfy all the conditions, he cannot be given the benefits of his past service rendered in the lending organization for determining the ex gratia payment. It was also held by the Division Bench that the provident fund of

the appellant was transferred by the lending organization to the respondent corporation but merely the transfer of the provident fund would not entitle the appellant for the benefits of the past service rendered by him in the other organization for calculating the ex gratia payment.

7. In view of the aforesaid position, the writ petitioner would not be entitled for the benefits. Therefore, there is neither any scope nor any ground is made out for reviewing the order dated 18.7.2001.

8. All the applications stand dismissed in terms of this order.