(2000) 01 AP CK 0037

In the Andhra Pradesh High Court

Case No : Writ Petition No. 25877 of 1997

Rohatgi Yogendra Kumar APPELLANT

Vs

HMT Ltd., Hyd. and another RESPONDENT

Date of Decision : 22-01-2000

Acts Referred:
Constitution of India, 1950 — Article 12

Citation : (2000) 3 ALD 256 : (2000) 3 ALT 738

Hon'ble Judges : S. Ananda Reddy, J

Bench : Single Bench

Advocate : Mr. K. Subhakar Rao, for the Appellant; Mr. Krishna Murthy Amancharla, for the Respondent

Judgement

1. This writ petition is filed for declaring the action of the respondent-company in not releasing the arrears of salary to the petitioner on account of revised pay scales, as illegal, arbitrary and discriminatory and for a consequential direction to the respondents to pay the arrears of salary as well as the difference in the terminal benefits as a result of the revision of pay scales effected from 1-1-1992.

2. The petitioner ;5 an employee of the respondent-company-HMT Limited, which is a company completely owned by the Government of India. The petitioner joined the services of the respondent-company in the year 1979 as Deputy Manager in the lamps division. He was promoted as Manager in the year 1984 and further promoted as Assistant General Manager in the year 1991 and thereafter, in view of the Voluntary Retirement Scheme framed by the respondent-company, the petitioner had opted to the same and his option to retire under Voluntary Retirement Scheme was accepted by the respondent-company by proceedings dated 22-7-1995 with effect from 31-7-1995. Thereafter, there was a revision of scales in October, 1995 retrospectively with effect from 1-1-1992. It is stated that the respondent-company did not pay the difference in the salary and in the terminal benefits as a result of the revision of pay scales. The petitioner has also stated that though it was agreed as per the

memorandum of understanding between the management and the employees that the arrears for the period 1-1-1992 to 30-9-1995 will be examined after substantial improvement in the financial position of the company, the same were not paid to the petitioner. However, the arrears payable to the employees continuing in the company were paid in the form of recoverable advances, but without making any payment to the persons like the petitioner who had retired or look voluntary retirement, therefore, the petitioner has approached this Court by way of this writ petition,

3. A counter has been filed by the respondents stating that the present writ petition itself is not maintainable as the unit under which the petitioner had worked is not functioning and is only carrying on certain trading activity. Though the company is completely owned by the Government of India, still it cannot be treated as a State in terms of Article 12 of the Constitution of India. With reference to the petitioner''s claim it is stated that in view of the bad financial position of the company insofar as the arrears are concerned, the same are not paid to any of the employee, who had opted for retirement under Voluntary Retirement Scheme. The learned Counsel also staled that the petitioner''s case would be reviewed along with the other similarly placed persons when the financial position of the company is improved. It is also contended that a writ petition filed by a similarly situated person was dismissed by this Court which was even confirmed by a Division Bench of this Court. Therefore, it is submitted that the writ petition is liable to be dismissed.

4. From the above rival contentions, the issue for consideration is whether the petitioner is entitled for the relief claimed?

5. It is admitted fact that the petitioner opted for retirement under Voluntary Retirement Scheme which was accepted by the respondent-company with effect from 31-7-1995 by order dated 22-7-1995. The Voluntary Retirement Scheme was dated 17-5-1995 which was offered by the respondent-company to its employees in order to reduce the employees strength. Under clause 1.4 the employees who are opting for voluntary retirement scheme are entitled for the benefit of pay revision, to be specific it reads as under:

"The VRS ex-gratia for PS Cadre employees will be recalculated in case of pay revision, if any, only for those who apply against this Office Order".

6. Subsequently, by order dated 25-10-1995 the scales of pay were revised with effect from 1-1-1992. In the said order there is a specific clause No. 19 concerned with the payment of arrears which reads as follows:

"Payment of Arrears:

The liability towards arrears from 1-1-1992 to 30-9-1995, will be examined only after the substantial improvement in the financial performance of the Company which will be reviewed periodically."

7. In view of the said clause, the contention of the respondents is that the

petitioner is not entitled as of now for the arrears. But, however, the subsequent proceedings placed before this Court by the petitioner shows otherwise. The further proceedings shows that there was a meeting of the Employees Association with the respondent-Company and the minutes were recorded on 24-4-1997, where the payment of arrears is also one of the issues and the minutes recorded are as under:

"Full and final settlement of 1992 Pay Revision Arrears:

The Federation requested for the full and final settlement of the pay revision arrears immediately in view of the improved performance of the company during the last year.

Management explained that it is not possible to settle the entire pay revision arrears due to the difficult financial position.

After detailed discussions, it was agreed that the Officer''s Associations in the units will sign an MOU for the period from April to June, 1997 on or before 30-4-1997. On signing the MOU, an amount equivalent to 60% of the Table of the ad hoc recoverable advance will be made in the first week of May, 1997 and the balance amount, if any, will be paid based on the performance of achievements of the MOU targets in the 1st week of July, 1997 subject to availability of funds in the units. The MOU is not acceptable to the units where production activities are not taking place."

8. The above minutes recorded shows that the employees in service are entitled for payment of 60% of the table of the ad hoc in the form of recoverable advance. It clearly shows that the company was willing to pay to the continuing employees the arrears payable in the form of recoverable advances, may be the said stipulation is confined to the units which are in production. The papers filed before this Court also show that the ad hoc recoverable advance shall be adjusted against arrears to be decided in future or may be recovered. In view of the above, in fact in the present proceedings, an interim order was passed by a single Judge of this Court directing to respondents to pay 60% of the arrears. In fact, the said order was contested by the respondent-company by filing an appeal. Even the Division Bench of this Court refused to interfere with the order of the learned single Judge and in fact the Division Bench had recorded an observation that retired employees cannot be asked to wait till the improvement of the financial status of the company. Apart from that, the learned Counsel for the petitioner has also placed the material where there were communications from the executives of the Company to the Employees Association stating that there was improvement in the performance and the company made net profit of Rs.53 lakhs for the year 1997-98 and a profit of Rs.159 lakhs for the year 1998-99. Even the said communications show that there was improvement in the financial performance. Apart from that the learned Counsel also filed a copy of the judgment of the Karnataka High Court in HMT Ex-Employees Welfare Association v. K. Raghuram and others, (WP Nos.187 of 1996, 8559 to 8762 of

1998 and 22373 to 22376 of 1995) where the employees who had opted for voluntary retirement under different schemes offered by the very same respondent-company filed writ petition claiming arrears. The High Court of Karnataka after considering the rival contentions elaborately directed the respondents with reference to the present scheme to settle the claims of the petitioners within 4 months from the date of receipt of copy of the said order. The said order was passed as long back as on 24-3-1998. From the above it is clear that the claim of the respondents that no arrears were paid to any of the employees is not correct information. Further as rightly observed by the Division Bench of this Court, there is no justification for the respondent-company in asking the employees who had opted for retirement under Voluntary Retirement Scheme to wait for the payment of arrears till its financial position is improved. In fact the financial position of the petitioner-company had improved as referred to earlier as the company had already started making profits. Hence even in terms of their own Memorandum of Understanding, the respondent is under obligation to pay the arrears to the petitioner in view of the improvement in financial position. Further it is represented that 60% of the arrears was already paid to the petitioner and the balance to be paid is only 40%. Hence, the respondent is directed to pay the balance of 40% of the arrears within a period of two months from the date of receipt of a copy of this order.

9. The writ petition is accordingly allowed.

