(2005) 05 GAU CK 0017

In the Gauhati High Court

Sadananda Bharali APPELLANT

Vs

Assam State Transport Corporation and Others RESPONDENT

Date of Decision : 17-05-2005

Acts Referred:

Citation : (2005) 107 FLR 81 : (2006) GLT 834 Supp

Hon'ble Judges : H.N. Sharma, J

Bench : Single Bench

Judgement

H.N. Sarma, J.—In all these writ petitions the common grievance of the writ petitioners are inter alia is the non-payment of service benefits to which they are entitled under the Voluntary Retirement Scheme framed by the Assam State Road Transport Corporation. As per the order of the Corporation, under which all writ petitioners served, they have been granted voluntary retirement under the said scheme.

2. I have heard Mr. S. Medhi assisted by Mr. S. Borooah, for the petitioners and Ms. U. Barua, the learned Counsel for the respondent-Corporation. All the petitioners in this bunch of writ petitions, except petitioner in W.P. (C) Nos. 3856/2003, 5802/2003 and 2442/2005, have their common grievances. The necessary facts leading to the disposal of this batch of writ petitions may be summarised below. The petitioners were regular employees under the Assam State Road Transport Corporation (for short ASTC). Due to certain reasons, the Corporation suffered loss and the Corporation was facing a total closure due to acute financial hardship.

3. For revival of the Corporation, several remedial measures, including adoption of Voluntary Retirement Scheme (for short VRS) supported by the Central Government, were adopted. Accordingly, the Corporation proposed to allow voluntary retirement to 2000 employees under the said Scheme. The Corporation, after a threadbare discussion, framed a Scheme for voluntary retirement and the fund necessary for implementation of the said Scheme was entirely financed by the Central Government as additional Central assistance to

the Government of Assam. The Scheme which was initially framed was subsequently modified/verified in terms of the judgment and order passed in W.P. (C) (PIL) 24/99 dated 25.1.2002 passed by a Division Bench of this High Court. After negotiation as well as in terms of the aforesaid judgment in the PIL employees accepting the Voluntary Retirement Scheme are entitled to get the voluntary retirement benefits available to them accordingly.

4. Vide letter No. ASTC/MD/G/419/2001/3478 dated 4.2.2002 written by the Managing Director of the Corporation to all Divisional Engineers, Divisional Supdts., Station Supdts., Assistant Engineers, the Controller of Stores, ASTC, referring earlier instructions issued by letter No. ASTC/MD/G/419/2001/2568 dated 6.11.2001, further informed that the unutilized leave salary limit in case of such employees accepting VRS will be up to 240 days only and the Gratuity will be calculated as per the Payment of Gratuity Act, 1972, as amended. Other terms and conditions laid down in the letter under reference will remain the same which were as follows:

1. GPF dues both employees & employers contribution.

2. Arrear Salaries.

3. Unpaid leave salary, if any,

4. G.I.S.

5. Amount of LIC premium deducted but not deposited to the LIC or not yet refunded.

6 Unutilised leave salary to be subjected to the maximum of 240 clays.

7. Gratuity as per Payment of Gratuity Act, 1972 as amended upto date.

8. Unpaid sanctioned dues, such as medical reimbursement trip allowances etc.

5. The Corporation also proposed to provide necessary benefits available to an employee accepting Voluntary Retirement Scheme vide letter No. ASTC/HO/VRS/02/42 dated 7.2.2002 addressed to the General Secretary of State Transport Workers'' Association. The said letter dated 7.2.2.002 is quoted herein below:

To,

The General Secretary, State Transport Workers'' Association, Guwahati.

Sub : Negotiation for Voluntary Retirement Scheme Package.

Sir,

Kindly refer to our discussion held today in my office chamber regarding the negotiation for payment to the employees, who desire to obtain retirement under the Voluntary Retirement Scheme as proposed by the ASTC. In pursuance of the Hon''ble High Court''s order in W.P. (P1L) 24/1999 dated 25.1.2002. As discussed we have issued a circular calling for fresh option from the employees for VRS as per earlier direction of the Hon''ble High Court vide our Ref. No. ASTC/MD/G/419/2001/3478 dated 4.2.2002. We have called for the first applications as per the application form attached herewith. As per detailed negotiation held today in pursuance of the order of the High Court dated 25.1.2002 the following benefits will be paid to the employees:

1. GPP dues both employees and employers contribution.

2. Arrear Salaries.

3. Unpaid leave salary, if any.

4. G.I.S.

5. Amount of LIC premium deducted but not deposited to the LIC or not yet refunded.

6. Unutilised leave salary to be subjected to the maximum of 240 days.

7. Gratuity as per payment of Gratuity Act, 1972 as amended upto date.

8. Unpaid sanctioned dues, such as medical reimbursement trip allowances etc.

Arrear salary means regular salaries kept under credit slip. This does not include any dues out of revision of pay which are not paid to any employee of the Corporation. The unpaid sanctioned dues will relate to only unpaid leave salary and medical reimbursement, and trip allowance only.

As you know that the scheme is entirely financed by the Government of India as additional Central Assistance to the Government of Assam, the entire amount will be paid from that account as per the scheme sanctioned by the Government of India.

You are, therefore, requested to inform all employees who opted for VRS about this negotiation.

Yours faithfully, Sd/- Illegible (R.C. Jain) Managing Director, A.S.T. Corporation Guwahati.

6. The Corporation offered voluntary retirement under the aforesaid Scheme, in three phases. There is a little distinction between the offer made in the 2nd Phase and subsequent one. In the 2nd Phase of the Scheme contained a clause as follows:

The Scheme will be applicable to those employees who have completed 40 (forty) years of age or 10 (ten) years of service or has 2 (two) years of service remaining in the Corporation.

7. The Corporation did not gel; expected support from employees in this regard as per the aforesaid scheme in the 2nd Phase, and accordingly decided to go for the 3rd Phase of the offer. Vide letter No. ASTC/HC/VRS-II/02/90 dated 8.2.2003

maintaining the earlier benefits, the Managing Director intimated All Drawing and Disbursing Officers, AST Corporation regarding the eligibility criteria of the employees, who offer to retire as per the Voluntary Retirement Scheme. The said letter dated 8.2.2003 is quoted herein below:

To,

All Drawing & Disbursing Officers, A.S.T. Corporation.

Sub: VRS Phase-III

Sir,

Kindly refer earlier circulars regarding VRS wherein we called for options from employees for voluntary retirement. It has been decided that the employees, who are to retire on or after 30.9.2003 may also, apply for the VRS. Therefore, the employees, who have not yet given their options for voluntary retirement and who are retiring on or after 30.9.2003, may give option for VRS. Other terms and condition will be the same as communicated earlier. The new applications may be obtained within 20.2.2003 and all these applications should reach the undersigned with your specific recommendation before 28.2.2003.

Yours faithfully, Sd/-Illegible (R.C. Jain) Managing Director, A.S.T. Corporation Guwahati.

8. The petitioner in W.P, (C) Nos. 3856/2003, 5802/2003 and 2442/2005 applied for voluntary retirement under the said Scheme as per the 2nd Phase. These three petitioners not having two years of service left at the relevant time, alleged that the Corporation asked the petitioners to surrender their salary for certain months, so as to enable them for bringing under the said scheme and to fulfil the criteria of remaining two years of the service in the Corporation.

This way, to get the benefit of the Scheme and to go on voluntary retirement, the petitioner accepted the proposal and gave the arrear pay to the Corporation as intimated by way of fulfilment of the condition of two years remaining service so as to enable them to be covered under the Scheme. Accordingly, said three petitioners were allowed to go on voluntary retirement on such surrender of their salary.

9. The common demands of these two petitioners is that the Corporation later on waiving the aforesaid clause of having minimum of 2 years of service left before allowing VRS to the employees exercising such option in the 3rd Phase and in implementing the said clause in 2nd Phase unreasonably forced the petitioners to surrender their salaries for certain months and accordingly they surrendered their salaries. Apart from aforesaid, two demands, the common grievances of all the petitioners are that they have not been paid necessary G.P.F. dues, arrear salaries, Dearness Allowance balance in some cases and also Ex-gratia as well as LIC Premium deducted but not deposited in the name of LIC.

10. An affidavit in opposition has been filed by the Corporation in W.P. (C) Nos.

3856/2003 and 5802/2003 covering all the grievances and explaining the slate of affairs on behalf of the respondents. It has been submitted by Mr. Medhi, learned Counsel for the petitioner relating to the grievances on behalf of the petitioner in W.P. (C) Nos. 5802/2003 and 3856/2003 and 2442/2005 that (he pressure were mounted upon the petitioners to surrender some part of their earned salary so as to enable these to cover in the provision of Voluntary Retirement Scheme in Phase 2. but live Corporation having withdrawn the provision of balance 2 years of the service in the 3rd Phase of the Scheme thereby giving benefit of the same to other similarly situated persons, it is highly discriminatory and unreasonable and arbitrary attitude of the Corporation shown to the petitioners and accordingly the aforesaid amount of salary is required to be refunded to the petitioners.

11. Regarding the other claims of the petitioners, it has been submitted by Mr. Medhi that those benefits are entitled by the petitioners under the Scheme and in terms of the directives issued by the Central Government and the Corporation is not entitled to deny the same to any of the petitioners.

On the other hand, it has been submitted by Ms. Barua that the concerned petitioners have failed to get the benefit of VRS, surrendered their salary for two years so as to cover their cases under the scheme and accordingly they are not entitled to make a grievance against the same.

Ms. barua, the learned Counsel has also submitted that the petitioner, though were not entitled to be covered under the 2nd Phase, they were allowed to be so covered by recovering their salary so that they could be given the benefit of the scheme.

Mrs. Barua, however, has fairly submitted that the petitioners are entitled to get all the benefits in terms of the letter of the respondent dated 7.2.2002 and as per the Scheme.

12. I have considered the rival submissions. A Voluntary Retirement Scheme is adopted by sick industries with a view to revive and revitalise the industry and to save such industry from its premature death. Commonly, it is although a benevolent Scheme, the retrial benefit which is a part of the service condition is allowed to those employees. In the instant case such benefit is made available in the 2nd phase to the employees who had their 2 years of service left and such class of employees are only entitled to get the retrial benefits and other such benefits as per the Scheme. Such Scheme has a social impact of its own and is a socially benevolent one. It is commonly also known as giving good by to an employee with golden handshake.

The Corporation is facing acute financial crunch and finding no way out to revive, the Central Government has extended its financial supports and has agreed to provide necessary funds that may be necessary to pay such employees offering voluntary retirement. In the instant case the Government Authorities had already accepted by Voluntary Retirement Scheme formulated by the ASIC and provided necessary fund to the Corporation to implement the Scheme. The anxiety of the

Corporation is to embrace more employees under the scheme so that Corporation can function with limited numbers of efficient and young employees profitably.

13. I have perused the entire Scheme as well as the eligible criteria for entitlement of an employee to get the benefit of the Scheme. The scheme was sought to be incorporated in the 3rd (Three) Phases. In the 2nd phase, the Scheme contains a clause that an employee must have at least 2 years of service remaining in the Corporation. But then the Corporation allowed the above three petitioners to avail the benefit of the Scheme although they did not fulfil the said criteria stricto sense. With a view to allow retirement of such employees, the Corporation asked the employees to refund the salary for certain period also so that they can be said to have covered under the said scheme. Provision of the scheme shows that no such power has been provided to the Corporation but in spite of that the Corporation accepted the proposal of those employees in the aforesaid manner and allowed them to get the benefits of the Scheme. Accordingly it is intended by the Corporation that the said requirement has no mandatory import and it can only be interpreted as directory one with limited amount of flexibility to give affect to the intent and spirit of the scheme. In the 3rd phase, however the Corporation conveniently waived this clause.

14. The whole purpose of offering the Scheme was to get rid of such employees in the 2nd Phase itself but the Corporation did not found much encouragement from the employees and the desired number of employees did not come forward. In the 3rd Phase, however the aforesaid bar was abolished. That apart those employees who were facing such bar during the course of implementation of the 2nd phase of the scheme were directed to refund the salaries for certain period to make them cover under the Scheme. Under such circumstances, particularly in view of the total abolition of such bar in the 3rd phase, it is difficult to uphold .the contention of the Corporation that the direction to deposit salary for a particular period which were deducted/directed to be deposited fey/from the petitioners was validly, made for providing them the benefit of Voluntary Retirement Scheme.

It has been submitted that the petitioners are also entitled to get the benefit under letter No. ASTC/HO/VRS/02/42. Date 7.2.2002 Ms. Barua submitted the Scheme as fit was originally formulated in which it was stated that the arrears salary were proposed to be paid to such employees for the months of May, 2000 to April, 2001, the provision regarding the arrear salaries should be maintained. In view of the subsequent modification of the Scheme, modifying the condition for acceptance of voluntary retirement, particularly in view of the negotiated acceptance by the Corporation on 7.2.2002, it is difficult to accept the contention of the Corporation that the petitioners are not entitled to get their salaries for the period so far they are lying with the Corporation.

Accordingly, in view of the aforesaid discussion it is directed that the Corporation shall pay petitioners the amount, which were either paid by the petitioners for deducted from their salary so as to bring them under the scheme in the 2nd phase. There is also a reference relating to the payment of other items, in the letter dated 7.2.2002 and if the Corporation has not paid any of the amount mentioned there, the same shall be made available to the said petitioners so far the items covered therein.

So far, regarding the payment of compensation in terms of the letter No. ASTC/VRS/HS/2004/05/904 dated 4.12.2004 as claimed by the petitioners. It has been submitted by Ms. Barua that the letter was issued on 4.12.2004, and the same was not claimed by the petitioners.

15. From the perusal of the aforesaid letter issued by the Managing Director of the Corporation it is seen that there is a reference of the notification ASTC/VRS/69/90/E/108 dated 20.9.2004 entitling to certain benefit of Salary and D.A. This provision has not been incorporated in the Voluntary Retirement Scheme. It may be mentioned here in that in W.P. (C) (PIL) 24/1999 the Division Bench of this Court vide order dated 25.1.2002 granted certain benefit to the employees and the scheme was directed to be modified accordingly. The benefit of the aforesaid circular does not appear to have covered in the compensation item of the benefit mentioned in the Voluntary Retirement Scheme as it exist now. Accordingly, this matter is left to be decided mutually by the petitioner and the Corporation. The Corporation shall take such decision at the earliest in consultation with the petitioners. The directions referred to above regarding the refund/payment of the salary and benefit to the petitioners shall be implemented by the Corporation preferably within the period of 4 (four) months from the date of receipt of the certified copy of the order. With the aforesaid direction, the bunch of the petition? is disposed of. No costs.

