(2007) 02 DEL CK 0207

In the Delhi High Court

Case No : Writ Petition (C) No''s. 13211 and 15215 of 2004

Sham Lal Goel and Subey Singh APPELLANT

Vs

D.T.C. RESPONDENT

Date of Decision : 28-02-2007

Acts Referred:

Citation : (2007) 02 DEL CK 0207

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Anil Mittal, for the Appellant; J.N. Aggarwal and B. Shukla, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.—With the consent of counsels for the parties, both these writ petitions are taken up for final hearing and disposal by passing a common order, as the issues involved are common.

2. By way of the present writ petitions, the petitioners have sought directions to the respondent to extend the benefit of the pension policy dated 27th November, 1992 to the petitioners on the terms and conditions contained therein and further directions for payment of arrears of pension and family pension with interest thereon, to the petitioners.

3. The brief facts material for deciding the present writ petitions are as follows. The petitioner in WP (C) No. 13211/2004 was appointed as a conductor on regular basis on 15th July, 1963 and was later on promoted as a clerk.

4. The petitioner in WP(C) No. 15215/2004 was appointed as a conductor on 10th January, 1969 with the respondent corporation. After having worked for 20 years, the said petitioner reached the age of superannuation and retired on 31st October 1988. At the relevant time, the employees of the DTC were not governed by the pension scheme.

5. The respondent vide Office Order dated 27th November, 1992, introduced a pension scheme for its employees retiring on or after 3rd August, 1981 on the same pattern as the scheme for the Central Government employees. As per the said scheme, option for payment was to be exercised within 30 days from the date of issue of the said Office Order. Public notice to this effect was published by the respondent in the newspapers. The petitioner in WP(C) No. 13211 of 2004 was interested in the said scheme and opted for the same but the petitioner in WP (C) N0. 15215 of 2004 states that since he had settled down in his village after his retirement, he could not come to know about the said scheme.

6. On 3rd March 1993, the respondent announced a scheme of Voluntary Retirement under which employees who had put in more than 10 years of service, could seek voluntary retirement. The petitioner in WP(C) No. 13211 of 2004 sought voluntary retirement under the said scheme having put in 30 years of service, and got retired on 31st May, 1993, was paid all dues as payable to him under the scheme, but was however not paid the Employer''s share of Provident Fund as the petitioner was covered under the pension scheme.

7. However, for various reasons, the respondent failed to implement the pension scheme. As a result, litigation ensued and finally, pursuant to a contempt petition that came to be filed in the Supreme Court against the failure on the part of the respondent to implement the said scheme, the respondent gave an assurance to the Supreme Court in the year 1995, that payment of pension would begin very soon. As a result, the respondent started paying pension to its employees with effect from 1st November, 1995.

8. Meanwhile, on account of the respondent having been unable to implement the pension scheme, the petitioner in WP(C) No. 13211 of 2004 after having made several representations to the respondent for release of his pension amount, vide his letter dated 3rd March, 1994, requested the respondent that he be paid the Management''s Share of Provident Fund and his gratuity. Accordingly, the respondent vide its letter dated 10th June 1994, ordered that the said petitioner be paid the Employer''s Share of Provident Fund and that he be deemed to have opted out of the pension scheme. Pursuant to the directions passed by the Supreme Court in the year 1995 and the respondent implementing its pension scheme, the petitioner in WP(C) No. 13211 of 2004 once again approached the respondent and requested that he be again enrolled to the pension scheme. This request, was however declined by the respondent vide its letter dated 27th February, 2001.

9. On the other hand, petitioner in WP (C) N0. 15215 of 2004 requested the respondent vide his letter dated 18th April, 2000, that he be paid pension and that he was willing to refund the management''s share of Provident Fund as per the rules.

10. Thereafter, keeping in view the various demands made by the Employees'' Unions and several retired employees, the respondent published a general notice

in the newspaper on 23rd September, 2003 addressed to ''Surviving DTC retired employees between 3rd August, 1981 and 27th October, 2002 only''. The said general notice read as under:

DELHI TRANSPORT CORPORATION

For Surviving DTC Retired employees between 3-8-81 and 27-10-2002 only On the basis of various representations made by unions of retired employees of DTC, an information is being solicited without commitment at this stage of indicating whether the Retired Employee is willing for DTC Pension Scheme on the prescribed format (TO BE COLLECTED FROM PENSION CELL DTC [HQ]) on the conditions given in the prescribed format from the surviving employees retired between 3-8- 1981 and 27-10-2002.

The Surviving retired employees may give their information of intent within 10 days from the date of publication to the Unit Officers/Depot Manager from where they retired.

It may be noted that this is only in the form of an intimation of intent to DTC and does not involve commitment in any manner, which would be subject to various parameters to be examined by the DTC later on.

Sd/-

(M.P.Bhatnagar)

Addl.Chief Accounts Officer

11. Pursuant to the said notice, the petitioners in WP(C) No. 13211 of 2004 and WP(C) No. 15215 of 2004 submitted their option forms on 26th September, 1993 and 3rd October, 2003 respectively and expressed their intention for being covered under the aforesaid scheme. As the respondent failed to take any action pursuant to the aforementioned general notice, the petitioner in WP(C) No. 13211 of 2004 filed a writ petition in this Court, being WP(C) No. 9548 of 2003, which was allowed to be withdrawn with the liberty to file a fresh petition after giving some time to the respondent to arrive at a decision. However, no steps having been taken by the respondent even thereafter, the petitioners have filed these writ petitions in this Court seeking directions to the respondent to extend the benefit of the pension scheme dated 27th November, 1992 to them.

12. Learned Counsel for the petitioners submitted that once the respondent had issued the aforementioned general notice in the newspapers on 23rd September, 2003, it was under an obligation to act upon the same and extend the benefit of the pension scheme to similarly situated persons. It was submitted that the respondent is estopped from going back on its promise of extending the said benefits to the petitioners. It was argued that it is well established that the pension is not given as a bounty and it is a very valuable right of the employees which cannot be denied to them as pension is nothing but a form of deferred payment, and that the scheme is being implemented on the money of the

petitioners itself. It was further submitted that the advertisement issued by the respondent amounted to extending the period stipulated in the earlier scheme of 27th November, 1992 for exercising the option for pension and failure on the part of the respondent to act on the aforesaid general notice was not only unconstitutional and discriminatory but was also arbitrary in nature.

13. On the other hand, counsel for the respondent submitted that the pleas of the petitioners as raised in the writ petition are misconceived. It was submitted that the respondent had decided not to follow up on the aforesaid general notice, as the financial health of the respondent did not permit it to pursue the said notice.

14. On merits, it was submitted by the counsel for the respondent that in the case of WP (C) No. 15215 of 2004, the petitioner retired from service on 31st October, 1988 on attaining the age of superannuation, that all of his dues as payable to him were paid at the relevant time, and that the pensionary benefits as claimed by him, were not in force at the relevant time and thus the same could not be availed of. It was further submitted that in the case of WP(C) No 13211 of 2004, while the petitioner had initially opted for the pension scheme, he himself withdrew from the same and his said request was acceded to by the respondent vide letter dated 10th June, 1994.

15. It was also stated that a bare perusal of the general notice reflects that the same was only in the form of ''intimation of intent'' and did not involve a commitment in any manner, and further, that the same was in any case, subject to various parameters to be examined by the DTC later on. When the said parameters were examined by the respondent it decided not to pursue the said notice. It was Therefore argued that no vested rights had accrued in favor of the petitioners and against the respondent so as to entitle the petitioners to seek enforcement thereof by way of the present writ petition.

16. Counsel for the respondent relied on the judgment of the Supreme Court referred to above and the judgment of this Court in the case of DTC Retired Employees Association and Ors. v. Delhi Transport Corporation reported as 2002 LAB. I.C.1654, wherein following the judgment of the Supreme Court, it was held that once the pension scheme was opted for by an employee and subsequently the employee withdrew there from, which withdrawal was accepted by the employer and benefits pursuant thereto were availed by the employees, the employees thereafter cannot be permitted to resile from the same and contend that the scheme should be made applicable to them.

17. I have heard the learned Counsels for the parties. The limited issue involved in the present writ petitions is as to whether the petitioners can claim the extension of the benefit of the pension scheme floated in November, 1992, on the strength of the general notice issued by the respondent in the year 2003.

18. Mere issuance of a notice by the respondent calling upon a certain category of applicants to furnish relevant information as to whether or not the retired

employees were willing to avail of the DTC pension scheme cannot be termed to be in the nature of an offer, acceptance of which would bind the respondent in any manner.

19. The terminology used in the general notice is itself a clear indicator in this direction. The notice stated in no uncertain terms that only information was being solicited from the surviving retired employees who retired between 3rd August, 1981 and 27th October, 2002, without any commitment, and further, that the said information received from the applicant was only an intimation of intent to the DTC which did not involve any commitment in any manner. Thus it is not a case where pursuant to an offer and an acceptance, a solemn promise was made by the respondent to the petitioners committing itself to extend the benefits of the pension scheme to the petitioners or for that matter, to any other retired employees of the respondent in terms of the general notice. In this case, the principles of promissory estoppel cannot be invoked. The advertisement issued was only exploratory in nature and not a firm offer which could be termed as final and binding on the respondent. Nor can the advertisement be held to be extending the period stipulated in the earlier scheme of 27th November, 1992 floated by the respondent. Any such interpretation given, shall amount to rendering nugatory, the judgment of the Supreme Court in DTC Retired Employees'' case (supra).

20. Thus it is misconceived on the part of the petitioners to claim that any vested legal right had accrued in their favor and against the respondent in terms of the general notice published in the newspapers, for the petitioners to seek implementation thereof in the present writ petitions. The writ petitions are, Therefore, dismissed as being devoid of merits, leaving the parties to bear their own costs.