
(2005) 08 DEL CK 0114
In the Delhi High Court
Case No : WP (C) No. 7469 of 2004

Shri Satyavir Singh

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 22-08-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 300A

Citation : (2005) 84 DRJ 237

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Rasmeet Charya, for the Appellant; J.N. Agarwal, for the Respondent

Judgement

S. Ravindra Bhat, J.—The petitioner, a former employee of the Delhi Transport Corporation (DTC) opted for voluntary retirement in May 1995; his request was accepted. His claim in these proceedings, under Article 226 of the Constitution of India, is for a direction to the DTC to release pension.

2. The petitioner joined as a daily wage employee, of DTC, on 6-3-1984. He was admitted to regular/monthly wage employment in September, 1984. When he was working, the DTC sought to introduce a pension scheme for the first time, in the year, 1992, by an office order dated 27-11-1992 ("the scheme"). As per the scheme, the date of effect was to be 3-8-1991, and all employees working after that date had the option to join the pension scheme. Clause 9 of the scheme reads as follows:

"if any of the employees of DTC, who does not exercise any option within the prescribed period of 30 days or quit service or dies without exercising an option or whose option is incomplete or conditional or ambiguous, he shall be deemed to have opted to the Pension scheme benefits."

It is averred that the petitioner became entitled to the benefits of the pension scheme, since he did not exercise his option; the deeming provision Therefore, operated in his case.

3. The DTC introduced a voluntary retirement scheme (1993 VRS) on 3-3-1993. Clause 4 of the 1993-VRS outlined the benefits available to those opting under it. The benefits included balance of PF amounts; gratuity, leave encashment; three months' pay and ex-gratia payments equal to 1-1/2 months' basic pay for each completed year of service, plus DA limited to one months' salary, multiplied by the number of years left in service. Pension benefits as per the scheme were also admissible. The interpretation of this scheme, and eligibility of employees, to pension, was considered in the judgment reported as Jagpal Singh Vs. Delhi Transport Corporation, . The court had held, in that decision that the stand of DTC, that pension benefits under the 1992 scheme were optional/ an alternatives, could not be countenanced, and that it amounted to a fraud on the retiring employee who had applied for voluntary retirement. The 1992 pension scheme was also construed, and held to mean that all those in employment, in 1992, who did not opt, or whose options were defective, could not be denied pension, after luring them to accept VRS, which meant that they retired before their normal date of superannuation.

4. The petitioner opted for VRS benefits on 16th May, 1995; his application was accepted on 31st May, 2005, and he was permitted to retire. He received Rs. 61,033/- as dues, including an ex-gratia amount of slightly over Rs. 39,000/-. It has been averred that the petitioner repeatedly made representations for release of pension as per the scheme of 1992, but without any success; he has enclosed two letters issued by DTC, in 2001 and 5-12-2002, declining his requests.

5. The DTC, in its return, has taken a two fold defense. It firstly contends that the petitioner did not possess the requisite ten years qualifying service to be entitled to pension, under the 1992 scheme. It was secondly, and more importantly contended that the petitioner had opted for voluntary retirement under a VRS issued on 8th May, 1995, which was kept open for two days, viz 16 to 18th May, 1995. This VRS, it is contended, could be availed only by specified categories of employees, and all benefits under the 1993 VRS, except the stipulation as to pension benefit ,was applicable.

6. Learned counsel for the petitioner, Ms. Rasmeet Charya, relied upon the terms of the 1993 VRS circular, to say that the employees were entitled to pension benefit. She also submitted that the DTC nowhere spelt out, in the order accepting the petitioner's application for VRS that pension was not admissible. She further relied upon the communications received from DTC, denying pension, to say that those letters too did not cite that VRS was inapplicable to those who opted in 1995. It was contended that the petitioner had the necessary qualifying service of 10 years, as per the judgment of this court, in Jagpal Singh's case (supra).

7. Besides the decision in Jagpal Singh, the judgment of the Division Bench in DTC v. Baijnath Bhargava, LPA No. 33/98 and connected batch of cases, decided on 16-3-2000, as well as the judgment of the Supreme Court in D.T.C. Retired Employees Association and Others Vs. Delhi Transport and Others etc. etc., , was

relied upon.

8. Mr. J. N. Agarwal, counsel for DTC, stated that the petition ought to be dismissed on the ground of laches, since it was filed more than 8 years after the VRS option was exercised, and accepted by the petitioner. It was also submitted that the petitioner voluntarily accepted the scheme, and the amounts paid to him; later, in the year 2000-2001, he seems to have had second thoughts, which has impelled him to approach this court.

9. Learned counsel for the DTC also submitted that the petitioner was in any case ineligible for pension, since he did not possess the qualifying service of 10 years. Furthermore, it was submitted that the petitioner opted for the scheme in 1995; it contained a specific clause, which disentitled every optee to pension. Having been put to notice about this fact, it was not open to the petitioner to raise a dispute about entitlement. Learned counsel also sought to distinguish the decisions cited on behalf of the petitioner .

10. The facts narrated above show that the petitioner became an employee of DTC, on monthly salary, in September, 1984. It is not in dispute that thereafter his employment was uninterrupted, till May, 1995. Having regard to the observations made in Jagpal's case regarding applicability of the CCS Rules, in relation to qualifying service, it has to be concluded that the petitioner fulfilled the criteria of having served for at least 10 years, to be eligible for pension. The facts also show that the petitioner was an existing employee, in November 1992; it is not disputed that he fell in the category of persons described in clause 9 of the pension scheme, who were deemed to have exercised their option to pension.

11. The real controversy, then, is with regard to the terms under which the petitioner opted for voluntary retirement. The VRS of 1993 was open for a limited time, as is apparent from a reading of the scheme, as also from extracts of it, as found in the judgment of the Division Bench and the Supreme Court. Apparently the scheme was again made available in May, 1995. The crucial term used by the DTC to deny the petitioner's claim is contained in the following clause:

"It is also notified for information of all such employees who opt for VRS that they would not be entitled to join the pension scheme if they are allowed retirement under VRS. Other salient features of the proposed VRS will remain the same as announced earlier vide this office circular dated 3.3.1993."

The petitioner denies existence of the condition, whereas the respondents assert that it is an integral part of the scheme, without which the petitioner himself could not have sought VRS, since the terms of the 1993 scheme did not apply otherwise.

12. The benefits granted to the petitioner, on 31st May, 1995 talk of the 1993 VRS. The communications received from the DTC by the petitioner, do not spell out his disentitlement, on the basis of the above clause. Moreover, the copy of

the option, dated 16-5-1995, and the acceptance mentioned in the letter, disbursing amounts, dated 31-5-1995, only refer to the terms of the 1993 scheme.

13. It has been held in several judgments, that pension is not a bounty or matter of grace, but in fact a deferred portion of salary earned, or payment of compensation for service rendered (Ref D.S. Nakara and Others Vs. Union of India (UOI), and Indian Ex-Services League v. Union of India 1992 (1) LLJ 765

14. In Baijnath Bhargava's case, it was held by the Division Bench, that:

"This leaves us with the last question namely an employee having resigned from service whether he is entitled to pension?

Learned single judge placed reliance upon the decision in Sudarshan Kumar v. Delhi Transport Corporation and Anr. 1994 (7) SLR 163, wherein it was held that benefit of the Pension Scheme extends to all those who render qualifying service. It was held that there cannot be any distinction between a person who retires and a person who resigned. In both cases the employee goes out of service after rendering requisite qualifying service. Learned single Judge observed that para 3 of the Scheme should be understood in a liberal sense so as to extend benefit of the Pension Scheme to all those who rendered the qualifying service and there cannot be any artificial distinction between a person who retires and a person who resigns."

In another Division Bench judgment, reported as Ashwani Kumar Sharma v. Oriental Bank of Commerce 2003 (2) LLJ 575 a broad overview of the law relating to entitlement to pension, of employees superannuating in the normal course, those retiring under VRS and also those resigning from the services was considered. The court reiterated the position in law that pension is not a bounty, and has to be paid by the employer, upon fulfilment of the conditions required for its extension, such as rendering the qualifying service. In such case, the employer cannot, having regard to the nature of the benefit, which is an integral part of the conditions of service, curtail, or extinguish pension. The Court held as follows:

"Payment of pension depends upon completion of qualifying service. A person who completes the qualifying service is entitled to pension. Whether the relationship of employer and employee comes to an end by way of resignation or voluntary retirement in a given situation may not matter so as to enable the employer to deprive the employee from the benefit of a beneficent scheme. It may be one thing to say that a scheme for payment of pension having been introduced at a stage when the concerned employee has retired, would not be entitled to the benefit thereof but it is another thing to say that although he, at all relevant times, was in service, he would be deprived there from only because he has either resigned or retired voluntarily. Resignation and voluntary retirement stand on slightly different footing but the effect and substance thereof is not of much significance. It may be true that an offer of voluntary retirement

may be accepted or may not be accepted but such is a case of resignation also particularly when the concerned employee is faced with departmental proceedings. The employer, having accepted the resignation, even upon waiver of the notice period, cannot be permitted to turn round and contend that he was not entitled to the pensionary benefits."

15. Having regard to the above position, and keeping in mind the law laid down by the Supreme Court in DTC Retired Employees Association's case that as regards the deemed option for the pension scheme by employees who had not exercised any option within the prescribed time-limit, it was applicable to the employees who were in service on the cut-off date, I am of the considered view that the clause relied upon by the DTC in the 6th May 1995 circular cannot be construed as extinguishing the right to pension, otherwise available to every employee, who retires, or (as per the judgment in Sudarshan Kumar v. Delhi Transport Corporation and Anr. 1994 (7) SLR 163 even resigns from service). I am, Therefore, of the considered view that the petitioner cannot be deprived of the benefit of pension, merely because he opted for voluntary retirement. This condition could not have been insisted upon.

16. One of the settled modes of interpreting statutes and instruments is to ensure that it does not impinge on any provisions of the Constitution of India. If, in the course of interpretation, the court finds that one construction would lead to the condition or provision falling afoul of such provision of the Constitution, the choice to be exercised would be to prefer an interpretation that would avoid such a result. If the condition depriving pension is to be literally construed, it would, in my considered view, violate Article 14, due to its manifest arbitrariness; it would even amount to deprivation of property (as the right to pension would be, under Article 300-A). Hence, the proper course would be to ensure a construction which is in consonance with the law declared by the Supreme Court, in the two Constitution Bench judgments cited above, and the Division bench ruling in Ashwani Kumar Sharma's case.

17. The DTC cannot be entirely blamed for raising the issue of laches. The petitioner does appear to have woken up very late, and approached the court after a long and considerable delay. That delay is unexplained. Further, he did utilize the amount offered under the VRS, without demur. The question Therefore, is whether he is entitled to relief.

18. It has been held by the Supreme Court that in matters of payment of dues, such as salary, subsistence allowance, etc, the grievance would be recurring, and the complaint of unfairness, or illegality cannot be brushed aside on the ground that the litigant approached the court late. The proper approach would be to adjudicate upon the merits of the claim, and mould the relief having regard to the circumstances of the case (Ref P.L. Shah Vs. Union of India (UOI) and Another, and M.R. Gupta Vs. Union of India and others, . If these principles are kept in mind, the petitioner cannot legitimately claim arrears of pension benefits from the date of his voluntary retirement. The last representation of the

petitioner was rejected on 5th of January, 2002. He has approached this court, subsequently, in 2003. In view of these circumstances, the petitioner can, in my view legitimately claim arrears of pension from 1st January, 2003.

19. In view of the foregoing discussion, the petition is partly allowed. The DTC is directed to disburse pension benefits, as per the 1992 scheme, to the petitioner, and is further directed to pay all arrears of pension admissible to the petitioner, with effect from 1st January, 2003, within 8 weeks from today. No costs.