

(2009) 06 KAR CK 0001
In the Karnataka High Court
Case No : Writ Petition 6790 of 2008

Sri S.N. Basavarajappa and Others

APPELLANT

Vs

Management of Vignyan Industries Ltd. (subsidiary of Bharat Earth Movers Ltd.) and Managing Director Vignyan Industries Ltd. as well as Bharat Earth Movers Ltd.

RESPONDENT

Date of Decision : 18-06-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2010) ILR (Kar) 1142 : (2010) 3 KarLJ 188 : (2010) 5 SLR 720 : (2010) 5 SLR 274

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : Sheela Krishna, for the Appellant; Kasturi Associates, for the Respondent

Final Decision : Allowed

Judgement

Huluvadi G. Ramesh, J.—Petitioners in all about 19, have sought for setting aside that portion of the Settlement with regard to giving effect to the revision of salary and other benefits from 1.5.2007 and the Settlement dated 25.6.2007 - annexure E regarding the date of effect of pay revision and, to direct the respondents to consider the representation given by the petitioners and make payment of arrears of salary as has been extended to other employees as per annexure F and, to declare that petitioners are entitled to the arrears of pay by virtue of the revision and all consequential benefits including the payment of interest as on the date it was due and for such other orders.

2. The respondent management has introduced a scheme of voluntary retirement for the period from 5.4.2007 to 13.4.2007 as a package. Pursuant to the same, these petitioners opted for voluntary retirement under the Scheme offered by the respondent management. Petitioners were working as Grade II officers and on acceptance, they were relieved with effect from 30.4.2007. According to the

petitioners, the earlier settlement in respect of payment of wages came to an end on 31.12.2002. The Union had submitted a charter of demands on 25.4.2003 for the revision of pay scales, dearness allowance and other benefits for the employees. Since the settlement was under process, it appears the management offered to pay advance of Rs. 1,000/- to all the employees of the company and the same was deductible in the wage arrears to be paid. Further, the management entered into settlement after long negotiations on 25.6.2007 with regard to the revision of pay scales. The Settlement was to be effective from 1.1.2003 to 31.12.2012, for a period of ten years. However, the payment of the revised pay scale was to come into effect from 1.5.2007 as per annexure E. Accordingly, the respondent made a provision for lump sum payment towards employees who were on rolls with effect from 1.1.2003 to 30.4.2007. However, it is specific that there is no mention of extension of benefit to the petitioners since they opted for voluntary retirement on 30.4.2007. It appears a representation was submitted by the petitioners on 7.1.2008 requesting the management to pay the lump sum arrears as was paid to the workmen similarly situate. Since the respondent management did not heed to the representation, petitioners are before this Court seeking for the above prayer raising various grounds.

3. Statement of objections has been filed by the management stating that the respondent company is a subsidiary of the BEML Ltd., a public sector undertaking coming within the administrative control of the Ministry of Defence, New Delhi. It is submitted further, on acceptance of the voluntary retirement scheme by the petitioners, they were relieved with effect from 30.4.2007 as such, none of the petitioners were on rolls of the respondent company as on 1.5.2007. The voluntary retirement scheme was also announced by the company on 4.4.2007 as per annexure R2 and these petitioners have opted for removal from service. It is submitted that no such assurance was given by the respondent company that the wage revision would be effective from 1.1.2003 and that the difference amount would be paid to the petitioners as and when the Circular is issued in respect of revision of salary structure for all the employees and the acceptance of the voluntary retirement by the respondent company and that it would not in any way affect the employees who opted for voluntary retirement before the announcement of the wage revision. The advance amount paid has nothing to do with the voluntary retirement scheme. As per the settlement entered into between the Union and the respondent company, Clause 1.1 of the Settlement covered only the regular employees on rolls i.e., Wage Group A to S3 and for Supervisors who are governed by the provisions of the Standing Orders and who are on rolls as on 1.5.2007. Since the petitioners were not on rolls as on that date, they were not entitled for the benefit flowing due to the wage settlement. It is further stated, no such representation was received by the company. Consequent upon the acceptance of the voluntary retirement application, the petitioners were relieved from service. All the terminal benefits such as provident fund, gratuity, earned leave encashment including the voluntary retirement benefits have been settled to the petitioners. Even the ex-gratia payment

equivalent to 50 days of pay for every completed year of service was extended to the petitioners as per annexure R2. It is specifically stated that the arrears of wages and other allowances based on wage revisions were not extended to the petitioners since they were not on the rolls of the respondent company as on 1.5.2007. Accordingly, it is submitted that there is no such discrimination being practised. The benefit of the revision can only be paid to those persons who were on rolls as per the Settlement and there is no violation of Article 14 or 16 of the Constitution of India. It is also submitted, it is not a statutory liability undertaken by the government but, on the other hand, it is the liability of the respondent company and it was specifically made clear that the revised pay scales would be effective from 1.5.2007 and was only eligible for persons who on rolls and not to the petitioners who have retired as on 30.4.2007". Accordingly, they have sought for dismissal of the petition.

4. Heard the counsel representing the parties.

5. It is the argument of the petitioner's counsel that the Scheme offered by the management is a special scheme in order to reduce the staff on the rolls as such, the scheme was prepared. Otherwise, the petitioners would have faced the possibility of retrenchment as such, they opted for voluntary" retirement scheme. The say of the respondent that the Scheme came into effect only from 1.5.2007 cannot be accepted as the earlier revised scheme had ended as on 31.12.2002. The wage revision ought to have been brought into effect immediately from 1.1.2003. Even though there were negotiations, ultimately it was settled during June 2007 and was given effect from 1.5.2007. For the interregnum period i.e., for the period from 1.1.2003 to 30.4.2007, necessarily when the petitioners were on rolls and have rendered service and when certain amount of arrears was paid to persons who were on rolls, that benefit shall not be deprived to the petitioners only on the score that the revised pay scale came into effect from 1.5.2007. It is also submitted, the Settlement would not take away nor deprive the benefit accrued to the petitioners till 30.4.2007 as they worked from 1.1.2003 to 30.4.2007. As there was delay in settling the benefits pursuant to the settlement entered into between the Union and the management, the benefit that accrued to the petitioners could not be taken away by the new Settlement. Though the petitioners were not on rolls as on 1.5.2007, they cannot be discriminated stating that they were not on rolls. For the agreed upon benefits, they shall be entitled for and accordingly, in support of her contention, learned Counsel has relied upon me case of D.S. Nakara and Others Vs. Union of India (UOI), to contend that the classification to give benefit only to persons who are on rolls while discriminating persons who have taken voluntary retirement by fixing a cut off date is arbitrary and violative of Article 14 of the Constitution and the benefit till 30.4.2007 shall be made applicable to all persons who were on rolls.

6. Further, learned Counsel has also relied upon the decision in the case of R.L. Marwaha v. Union of India and Ors. 1987 SCC (L&S) 350 to contend (hat the

fixing of the date of grant of benefit must have nexus with the object sought to be achieved.

7. Per contra, learned Sr. Counsel Sri Kasturi arguing for the management submitted, as per the undertaking given by the petitioners at the time of acceptance of voluntary retirement as at annexure R3, the ex-gratia amount paid to them along with voluntary retirement benefits is full and final and not subject to review at a later date. In the event of any revision of the emoluments, they have also undertaken not to seek revision or reopening of the compensation paid to them before any authority. The said undertaking acts as estoppel and when the petitioners have ceased to be on the rolls as on 1.5.2007, they cannot once again come back and seek for reopening and extending the benefit which has already concluded by the parties by virtue of the settlement on accepting the Voluntary Retirement Scheme offered which was only a special package open from 5.4.2007 to 13.4.2007.

8. In this regard, learned Sr. Counsel has relied upon the Constitution Bench decision of the Apex Court in Krishena Kumar and Others Vs. Union of India and others, to contend that the decision relied upon by the petitioner's counsel in S Nakara's case has been reconsidered and distinguished in the later decision. Learned Counsel has also relied upon the case of Indian Ex-Services League and others Vs. Union of India, to contend that Nakara's case is one of limited application and its ambit cannot be enlarged to cover all claims made by the pension retirees or a demand for an identical amount of pension to every retiree from the same rank irrespective of the date of retirement, even though the reckonable emoluments for the purpose of computation of their pension be different. Learned Counsel has also relied upon the decision of the Apex Court in Vijay Kumar and Others Vs. Whirlpool of India Ltd. and Others, to contend that the employees who had applied for voluntary retirement scheme and had received the amount paid therein were not entitled to the benefit under the settlement. He has also placed reliance upon the case of HEC Voluntary Retd. Emps. Welfare Soc. and Another Vs. Heavy Engineering Corporation Ltd. and Others, wherein also it is held when an employee opts to retire voluntarily in terms of the contract, he cannot raise claim for a higher salary unless a statute or policy is formulated in that behalf by the employer provides otherwise.

9. Having heard the counsel for the respective parties, the point that arises for consideration is - by virtue of opting for voluntary retirement whether the petitioners are not entitled for the benefit of the revised settlement arrived during June 2007 to be made applicable with effect from 1.5.2007; whether taking voluntary retirement by executing an undertaking as per annexure R3 to give up their rights amounts to estoppel and waiver of their rights as such, the benefit cannot be extended to the petitioners who retired as on 30.4.2007 and they were not on rolls.

10. As per the terms of settlement at annexure E, it is noted Clause 1.1 covers all regular employees in wage group A to S3 and Supervisors who are governed

by the provisions of the Standing Orders and who are on the rolls of the company as on 1.5.2007. Clause 4.3 provides as and when any amendment in the pattern of DA calculation is made by the Government of India for Central Public Sector Industrial Undertakings, pursuant to the government directives from the Ministry, the same would be made effective for VIL employees also. Clause 17.1 provides for lump sum amount payable for the period from 1.2.2003 to 30.4.2007 will be as per the enclosed annexure C and Clause 17.2 provides that an amount of Rs. 1,000/- paid, as advance will be deducted from the said lump sum amount payable and the remaining balance amount will be paid in respect of all the employees. Also a special proviso has been made at Clause 16 of the terms of settlement regarding anomalies. Clause 18.3 provides the present Memorandum of Settlement is full and final settlement in respect of all demands submitted by Vignyan Industries Mazdoor Sangh in the Charter of Demands dated 25.4.2003 and all disputes/issues raised by the VIMS stands as settled and the VIMS shall not pursue the same with any other Authority/Forum.

11. The main contention of the petitioners in this case is, the ratio laid down in Nakara's case squarely applies to the case on hand and the benefit given to the employees on rolls for the period from 1.1.2003 to 30.4.2007 has to be extended to the petitioners. In para 46 of the said case, the Apex Court has held - "it is not a new scheme, it is only a new retiral benefit. It is an upward revision of an existing benefit It is an upward revision of an existing benefit If it was a wholly new concept, a new retiral benefit, one could have appreciated an argument that those who had already retired could not expect it. It could have been urged that it is an incentive to attract the fresh recruits. Pension is a reward for past service. It is undoubtedly a condition of service, but not an incentive to attract new entrants because if it was to be available to new entrants only, it would be prospective at such distance of thirty five years since its introduction. But it covers all those in service who entered thirty five years back. Pension is thus not an incentive but a reward for past service. And a revision of an existing benefit stands on a different footing than a new retiral benefit. And even in case of new retiral benefit of gratuity under the Payment of Gratuity Act, 1972, past service was taken into consideration.... Revised pay scales are introduced from a certain date. All existing employees are brought on to the revised scales by adopting a theory of fitments and increments for past service. In other words, benefit of revised scale is not limited to those who enter service subsequent to the date fixed for introducing revised scales but the benefit is extended to all those in service prior to that date. This is just and fair".

12. In the case of I.T.C. Ltd. Workers Welfare Association and Another Vs. The Management of I.T.C. Ltd. and Others, the Apex Court referring to various decisions held "Once it is found that the terms of the settlement operate in respect of the dispute raised before it, it is not open to the Industrial Tribunal to ignore the settlement or even belittle its effect by applying its mind independent of the settlement unless the settlement is found to be contrary to the mandatory provisions of the Act or unless it is found that there is non- conformance to the

norms by which the settlement could be subjected to limited judicial scrutiny. This is in fact the approach of the Tribunal in the instant case" Referring to the decision in *Herbertsons Limited Vs. The Workmen of Herbertsons Limited and Others*, extracting para 25 therein, it was noted "There may be several factors that may influence parties to come to a settlement as a phased endeavour in the course of collective bargaining. Once cordiality is established between the employer and labour in arriving at a settlement which operates well for the period that is in force, there is always a likelihood of further advances in the shape of improved emoluments by voluntary settlement avoiding friction and unhealthy litigation. This is the quintessence of settlement which courts and tribunals should endeavour to encourage. It is in that spirit the settlement has to be judged and not by the yardstick adopted in scrutinizing an award in adjudication" Further, it has also referred to para 21 of the decision in *KCP Ltd. v. Presiding Officer* (1996) 19 SCC 946 wherein it is held that "parties would be ordinarily bound by the Settlement entered into between the Union and the Company unless it is shown that such settlement was ex-facie unfair, unjust or malafide".

13. In *Krishna Kumar's* case cited supra, referring to *Nakara's* case, it is observed that "it was never held that both pension retirees and PF retirees formed a homogeneous class and that any further classification among them would be violative of Article 14. On the other hand, the court clearly observed that it was not dealing with the problem of a "fund".

14. In *HEC Voluntary Retd. Employees Welfare Society's* case noted above, the Apex Court has held in para 22 that financial considerations are thus a relevant factor both for floating a scheme of voluntary retirement as well as for revision of pay. Those employees who opted for voluntary retirement make a planning for the future. At the time of giving option, they know where they stand At that point of time they did not anticipate they would get the benefit of revision in the scales of pay. They prepared themselves to contract out of jural relationship by resorting to golden handshake and they are bound by their own act. The parties are bound by the terms of contract of voluntary retirement.... Unless a statute or statutory provision interdicts, the relationship between the parties to act pursuant to or in furtherance of the voluntary retirement scheme, is governed by contract and by such contract, they can opt out of such other terms and conditions as may be agreed upon.

15. In *Vijay Kumar's* case cited supra, the Apex has referred to the case of *A.K. Bindal and Another Vs. Union of India (UOI) and Others*, wherein in Para 34 it has held - This shows that a considerable amount is to be paid to an employee ex gratia besides the terminal benefits in case he opts for voluntary retirement under the Scheme and his option is accepted. The amount is paid not for doing any work or rendering any service. It is paid in lieu of the employee himself leaving the services of the company or the industrial establishment and foregoing all his claims or rights in the same. It is a package deal of give and take. That is

why in the business world it is known as golden handshake". The main purpose of paying this amount is to bring about a complete cessation of the jural relationship between the employer and the employee. After the amount is paid and the employee ceases to be under the employment of the company or the undertaking, he leaves with all his rights and there is no question of his again agitating for any kind of his past rights with his erstwhile employer including making any claim with regard to enhancement of pay scale for an earlier period. If the employee is still permitted to raise a grievance regarding enhancement of pay scale from a retrospective date, even after he has opted for Voluntary Retirement Scheme and has accepted the amount paid to him, the whole purpose of introducing the Scheme would be totally frustrated."

16. The ratio laid down in A.K. Bindal's case noted above at para 34 is a clear answer to the case on hand. It is argued by the petitioner's counsel that as per the Scheme i.e., the revised settlement at annexure E, provides for extending similar benefits to all those persons who were on the rolls of the company. What is to be noted in the context is a memorandum was submitted by way of charter of demands by the Union on 25.4.2003 for the period effective from 1.1.2003 for a period of ten years. Might be true that petitioners in this case have worked from 1.1.2003 for which old revised scale was not applicable and they worked so till 30.4.2007 and from 1.5.2007 onwards, the Scheme was made applicable i.e., the agreement so entered into was between the Union and the management and covering persons who were on roll. Of course, rightly whenever such an understanding was entered into between the management and the union, it would necessarily be in respect of persons who were on rolls. However, no express provision is provided nor any prohibition is laid down in the settlement regarding extension of benefit to some other classes including persons who have retired.

17. It is specific that the revised settlement came into effect from 1.1.2003 and the new scales have to be brought into effect from 1.5.2007 to all persons were on the rolls for the period which was already spent and settled till then. Of course, the lump sum arrears so paid depends upon their grade. In this regard, a provision was also made to avoid a dispute and to go with a smooth understanding, an advance of Rs. 1.000/- was paid that would be deductible at the time of paying the balance of settlement. What is noticed is, from 1.1.2003 to 30.4.2007, no such provision is provided for those persons who have retired. In this context, the agreement entered into between the Union and the management would step into the picture i.e., the undertaking given by the petitioners by way of contract to extend the benefit for voluntary retirement scheme.

18. In A.K. Bindal's case, referred above, the Apex Court regarding the operation of estoppel with reference to voluntary retirement scheme has held, if the employee is still permitted to raise grievance regarding enhancement of pay scale from a retrospective date even though he has opted for voluntary

retirement scheme and has accepted the amount paid to him, the whole purpose of introducing the scheme would be frustrated, which clearly points to the binding nature of the contract that is entered into between the petitioners and the management in accepting the scheme of voluntary retirement. As is noticed, even excluding the ex-gratia amount that was offered by the management to those persons who came forward to accept voluntary retirement scheme and once such the scheme was opted, necessarily they cannot ask for extension of their claim as put forward by them. However, the fact remains that even as per the Settlement at annexure E, if any difficulty or anomaly is found while implementing the fixation of wages, the variations that are inherent and recognised in the Settlement will be decided on case to case basis with mutual discussion between the management and the Union and the decision given by the management shall be final and binding.

19. But, in S. Nakara's case, in para 46 it is noted that the revised pay scales are introduced from a certain date. All existing employees are brought on to the revised pay scale by adopting a theory of fitment and increments for the past service i.e., benefit of revised scale is not limited to those who enter into service subsequent to the date fixed for introducing the revised scales. The benefit is extended to all those in service prior to that date. This is just and fair. Further, it is held that if [pension is some kind of retirement wages for past service, can it be denied to those who retire earlier, revised retirement benefits being available to future retirees only. It is expressed that the Court by its approach would be making the Scheme retrospective because it is implicit in the theory of wages. What has been emphasised by the Apex Court by the Constitution Bench i.e., theory of wages definitely would come to the help of the petitioners although they have opted for to give up all the claims. But, the question is, what about that accrued benefit viz., the work rendered by them from 1.1.2003 to 30.4.2007 for which the benefit was, by virtue of the settlement, extended to persons who were on the rolls. As per the contention of the management on the ground of estoppel, that cannot be extended to those persons who already were not on rolls. Might be some incentive was offered by the management to those who opted for voluntary retirement by making some ex-gratia payment apart from the usual benefit that was extended in the usual course as is extended for a person who retires on attaining superannuation. When specifically it is implicit in the theory of wages for the period for which they already worked, it is a matter of public policy and also law, there cannot be any estoppel against law so as to bind themselves for the earned wages and, asking them to give up such benefit would be contrary to the principles laid down in S. Nakara's case.

20. In the circumstances, when specific clause is provided at annexure ? settlement entered into between the Union and the management, that the scales would come into effect from 1.5.2007 for those persons who are on the rolls, as is submitted by the petitioners' counsel had the petitioners not opted for voluntary retirement scheme they would have been retrenched from service and might be that possibility would have made them to accept the voluntary

retirement scheme and, naturally they had to give an undertaking in the forced circumstances to overcome embarrassment of retrenchment. As such, the application of estoppel may not arise in the case on hand.

21. Having regard to the ratio laid down in S. Sahara's case, it is for the petitioners to submit a representation to the management since the management has contended that petitioners have not submitted any such representation, for the period from 1.1.2003 to 30.4.2007 to extend the benefit of arrears as per their entitlement, in accordance with law.

22. Accordingly, petition is allowed.