
(2011) 01 MAD CK 0155

In the Madras High Court

Case No : Writ Petition No. 8530 of 2008

The Management, HTL Limited

APPELLANT

Vs

The Presiding Officer, Second Additional Labour Court and
Others

RESPONDENT

Date of Decision : 11-01-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 33

Citation : (2011) 01 MAD CK 0155

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : Sanjay Mohan, for the Appellant; R.N. Amarnath, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J.—Being aggrieved by the common order dated 8.8.2007 made in C.P. Nos. 53 to 60 of 2004 on the file of II Additional Labour

Court, Chennai directing payment of difference in exgratia amount, the Management has filed this writ petition.

2. The writ Petitioner Management of H.T.L. Limited once was a Government of India Enterprise, a Public Sector Undertaking dealing in the business of

manufacturing Telecommunication Equipments. The Government of India had disinvested its shareholding in the Petitioner company on 16.10.2001 to the

extent of 74% and retained 26% of the share capital. As the Government of India sold 74% of its shares to a public limited company ever since

16.10.2001, the Petitioner Company became a Public Limited Company in Private Sector. The Respondents 2 to 9 worked in the Petitioner company.

3. In 1988, the Bureau of Public Enterprises had framed a voluntary retirement scheme (in short, "V.R.S.") dated 5.10.1988 to reduce the manpower

cost and improve the productivity in all Public Sector Undertakings. Based on the 1988 V.R.S. Scheme, the Petitioner had issued circulars from time to time and willing employees opted for V.R.S. and left the service. Based on two such circulars dated 4.3.1999 and 24.12.1999, applications for V.R.S were sought for. For the employees, who opted for V.R.S., Management announced to give additional benefit to the retirees under Clause (ii) of the voluntary retirement scheme ""an employee in receipt of the interim relief announced vide circulars notified under ref.WR/97/1 dated 28.8.98 & WR/97/3 dated 1.10.98 & opting for voluntary retirement will be eligible for recalculation of the exgratia amount on the revised basis pay payable consequent to the revision of scales of pay"", By memorandum of settlement dated 1.3.2001, the revision of pay was effected and the Respondents 2 to 9 sent letters to the Management to pay exgratia pension amount as per the V.R.S. Scheme. Since the Management did not take any action, after issuing notice through authorised representative, Respondents 2 to 9 filed claim petitions claiming the difference in exgratia amount. The service particulars of Respondents No.

2 to 9 are as under:

Name	C.P.No.	Date of Entry	Year of Service	Ex-gratia paid	Due Difference	months Difference
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C.Maria John	53/2004	18.1.1965	35	7776	1818	34 61812
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S.Joseph	54/2004	20.5.1965	34	7858	1662	42 69804
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K.Pandurangan	55/2004	8464	36	7858	1736	50 86800
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O.V.Tarakumar	56/2004	11163	37	7858	1736	54 93744
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V.Srinivasan	57/2004	2963	36	8475	1244	50 62200
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R.Subramanian	58/2004	27.10.1965	35	7572	1639	51 83130
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S.Sampath	59/2004	24.09.1969	30	7302	1208	45 54360
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V.Rangan	60/2004	31.03.1966	33	7665	1308	36 47091
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4. The Management resisted the petitions contending that there is no existing right by way of award or settlement or preceding adjudication by a Court or Tribunal or recognition by the Company entitling the Respondents 2 to 9 to claim the amount claimed. According to the Management, when the very entitlement or right of the Respondents 2 to 9 to the amount is disputed, they have to seek adjudication of such question of entitlement and as such the question is beyond the ambit, purview and scope of Section 33C(2) of the

Industrial Disputes Act. Further, according to the Management after receiving all the benefits under V.R.S. Scheme, the Respondents 2 to 9 cannot claim any further amount for exgratia payment, which the Government of India has also clarified vide O.M dated 22.5.2002.

5. Upon consideration of the rival contentions, the Labour Court held that as per Clause (ii) of V.R.S. Scheme, the differential exgratia amount is payable to the Respondents and that there is no need for separate adjudication to claim exgratia amount on the revised basic pay and dearness allowance, which was announced by the Government. The Labour Court further held that the O.M. issued by the Government of India is not applicable to the Respondents.

6. Challenging the impugned order, the learned Counsel for the Petitioner contended that power u/s 33C(2) of the Industrial Disputes Act is limited in nature and analogous to executing Court and the power can be exercised only when there is an existing right and when there is no pre-existing right by way of award or settlement or preceding adjudication by a Court or Tribunal, the claim u/s 33C(2) has no legal basis. The learned Counsel would further contend that in the claim petition u/s 33C(2) of the Industrial Disputes Act, the Respondents/ workmen cannot seek adjudication on such a disputed question of entitlement and as such the question is beyond the purview and scope of Section 33C(2). Pursuant to the circulars dated 4.3.1999 and 24.12.1999 the Respondents 2 to 9 opted for V.R.S. Pursuant to the settlement dated 1.3.2001, another revision had come into force in 2000-2001.

Contention of Management is that settlement would bind only those in employment and workmen in service. According to the Management, the Respondents 2 to 9 were not in the service of the company and therefore based on the said settlement they cannot make any claim for exgratia based on the settlement.

7. Laying emphasis upon Clause 15.06 of the settlement, learned Counsel for the Petitioner contended that Respondents 2 to 6 have already gone on V.R.S., and the exgratia amount due and payable to them was already paid and other than the amount indicated in Clause 15.06, other payments cannot be reopened. Clause 15.06 of the settlement reads as under:

15.06. PAYMENT OF ARREARS

The payment of arrears, after adjustment of the Lumpsum Recoverable Advances, Interim Relief already paid, and FDA paid w.e.f. 01.01.1997

applicable to Basic pay slab of 1992 scales, will now only comprise of pay fixation benefit, difference in Increment, HRA, CCA, O.T. and PL/CL

Encashment as per terms of settlement, PF, Gratuity and Incentive wherever applicable will be recalculated.

Calculation in respect of other payments/recoveries will not be re-opened.

8. There is no force in the contention that in view of Clause 15.06 of the settlement, the calculation in respect of other payments will not be reopened. The expression ""other payments"" indicated in the above Clause 15.06 indicates only allied payments stated in the said clause. Difference in the exgratia

amount payable as per the V.R.S. Scheme will not fall under the category of other payments in view of the definite clause in V.R.S.scheme. As rightly

pointed out by the learned Counsel for Respondents 2 to 9, as per Clause (ii) of the V.R.S. Scheme, the Respondents opting for V.R.S. will be eligible

for re-calculation of the exgratia amount on the revised basic and Dearness Allowance payable consequent on the revision of scales of pay. Clause (ii) of

the circular dated 4.3.1999 of the V.R.S. Scheme reads as under:

An employee in receipt of the interim relief announced vide Circulars notifying under ref. WR/97/2 dated 28.08.1998 & WR/97/3 dated 01.10.1998, &

opting for Voluntary Retirement will be eligible for re-calculation of the ex-gratia amount on the REVISED BASIC & DA payable consequent to the

revision of scales of pay.

9. By the circular dated 4.3.1999, applications were invited from the employees who were opting for V.R.S. assuring the benefits indicated in the circular

in addition to the existing benefits as per the Government guidelines. The Respondents 2 to 9 opted for V.R.S. on the above specific additional benefit

assured to be extended to them that they will be eligible for re-calculation of the exgratia amount on the revised basic and dearness allowance payable

consequent to the revision of scales of pay. In the circular, having categorically stated that the employees opting V.R.S. will be eligible for additional

benefits, the Respondent Management cannot contend that there is a dispute regarding payment on the basis of re-calculation of exgratia amount on the

revised basic and dearness allowance. The Petitioner - Management is not right in contending that there is no pre-existing right to maintain the petition u/s

33C(2) in view of the definite clause incorporated in the V.R.S. Scheme, the Labour Court rightly entertained the petition.

10. The learned Counsel for the Petitioner nextly contended that till October 2001, the Petitioner was a Company of Government of India and

consequently the parties are governed by the guidelines/circulars issued by the Government from time to time and with regard to the claims made by the

Respondents 2 to 9 in the computation petitions, the Department of public enterprise, Government of India in its O.M dated 22.5.2002 has specifically

clarified that the workmen are not entitled for the re-calculation of exgratia. The learned Counsel would further contend that in such circumstances if at all

Respondents 2 to 9 had any grievance, they should have only challenged the said order/communication of the order dated 22.5.2002 and the

Respondents 2 to 9 are not right in filing claim petitions u/s 33C(2) of the Industrial Disputes Act. The said O.M dated 22.5.2002 cannot prevail upon the

specific clause contained in the V.R.S. Scheme. As pointed out earlier, Respondents 2 to 9 opted for V.R.S.scheme on the specific statement that they

would be given the additional benefit of re-calculation of exgratia amount on the revised basic and dearness allowance payable consequent on the revision

of scales of pay.

11. The settlement dated 1.3.2001 revising scale of pay having come into course immediately after the Respondents 2 to 9 availing V.R.S., they are

entitled for the difference in the exgratia amount.

12. On behalf of the Petitioner-Management, it was nextly contended that the Labour Court has committed a factual mistake in calculating the amount

and the difference in the amount ordered to be paid is factually incorrect. However, it is seen from the records that amount awarded by the Labour Court

is correct. Interest awarded by the Labour Court at 6 percent is maintained. No substantial grounds are made out calling for interference.

13. In the result, the writ petition is dismissed. However, there is no order as to costs.