

Calcutta High Court
Calcutta High Court
Sri Sukriti Bhushan Roy vs The Union Of India & Ors on 31 July, 2009
Author: S. P. Talukdar
IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

ORIGINAL SIDE

Present:

The Hon'ble Justice S.P. Talukdar

W.P. No. 574 of 2008

Sri Sukriti Bhushan Roy

Vs.

The Union of India & Ors.

For the Petitioner: Mr. Subhojit Ghosh.

For the Respondents: Mr. Shyamal Chakraborty.

Judgment on : 31.07.2009.

S.P. Talukdar, J.: Alleging inaction and indifference on the part of the respondent authority by way of denying the writ petitioner the benefit under the Central Civil Service Pension Rules and Central Civil Service Commutation of Pension Rules, the petitioner approached this Court with an application under Article 226 of the Constitution. Grievances of the petitioner may briefly be stated as follows:- The petitioner was an employee of the Export Inspection Agency, Calcutta. Prior to his retirement, he was in the post of Laboratory Assistant (LA), GR-I(Spl), in Export Inspection Agency (EIA), Calcutta. During the tenure of his service, he appropriately opted for being guided under the Family Pension Scheme/GPF and Family Pension under the Central Civil Service Pension Rules and Central Civil Service Commutation of Pension Rules, hereinafter referred to as the 'Pension Rules'. During his service tenure, appropriate deduction used to be made from his monthly salary, which was added to the appropriate accounts particularly on account of retirement benefit of the petitioner. The scheme for voluntary retirement of the employee of Export Inspection Council and Export Inspection Agency was floated in the year 1994. As would appear on perusal of the said scheme, it had the approval of the Government of India. The salient features of the said VRS were : i) Half a month's Gratuity per year of service subject to a ceiling of Rs. 1 Lakh as admissible under the Gratuity Rules of EIC/EIAs.

ii) Full matching CPF contribution from the Export Inspection Council/Agency side irrespective of whether such employees have completed five years service. (Applicable to such employees, if any, who have not opted for the pension scheme).

iii) Full commutation of pension.

iv) This offer will remain valid for a period of 60 days only from the date of issued of the letter.

v) The payment under the scheme is subject to employees agreeing to adjust or clearing the advances against him or her such as House Building Advance, Conveyance Advance, LTC Advance, Festival Advance etc., and any other outstanding dues. The employees are to either pay the amount of advance first or agree for its adjustment in full against payments that will be made under EIC/EIAs Voluntary Retirement Scheme.

vi) The option once exercised is final and cannot be withdrawn under any circumstances.

There was terrible uncertainty regarding continuation of the establishment of the respondent authority and consequent apprehension of loss of employment at the relevant time. Immediately after floating of the VRS Scheme, full payment of monthly salary to the employees of EIA was stopped and it used to be paid by instalments. This gave rise to further apprehension about the future of the employment. The petitioner like many other were literally under the threat of retrenchment. The VRS on the face of the record did not speak of taking away the accrued right of the petitioner under the Pension Rules. Such being the position, faced with the imminent danger of winding up of the entire EIA, Calcutta, the petitioner opted for VRS. He voluntarily retired w.e.f. 19th July, 1994. He was given retirement benefit vide communication bearing No. EIA/CAL/VRS/2/94/3919 dated 4/6th October, 1994 issued by Smt. Sunanda Dutta, the then Joint Director of Export Inspection Agency, Government of India. The petitioner opted for VRS with an understanding that the full commutation of pension means 1/3rd of the total pension that would be paid as per CCS Pension Rules. The petitioner was surprised to receive the entire pension amount as commuted value of pension. Under the said Pension Rules, there was no scope for making payment of the entire pension amount as commuted value of pensions. On enquiry, the petitioner could learn that the payment of 100% commuted value of pension denotes the payment of entire Pensionary Benefit and no monthly pension would be paid to the petitioner as per the said Pension Rules. The petitioner intended to revert to the old scheme and was informed that VRS is a Government approved scheme and there is no scope for opting out of the same. The petitioner was, thus, subjected to discrimination since he had been deprived of better benefits and was compelled to take inferior benefits. The petitioner claimed that his accrued rights and benefits under the Pension Rules cannot be jeopardized on the basis of a mere scheme of the Government, which is in the nature of the administrative action. It cannot be permitted to supersede the Pension Rules having the legislative sanction.

Under the VRS, 100% commutation of the pension was given. According to the Pension Rules, only 1/3rd of the entire pension of a person can be commuted. The said Pension Rules provide commutation of only 1/3rd of the pension. It, thus, appears that VRS is in direct conflict so far as the commutation of pension is concerned. The VRS Scheme could not suppress and supersede the said Pension Rules and any attempt in that regard would amount to gross illegality. The petitioner along with many others similarly circumstanced or identically placed took up the matter with the concerned authority. The said authority despite being repeatedly approached did not choose to respond. Such inaction on the part of the respondent authority is in violation of the principle of legitimate expectation and promissory estoppel. The VRS Scheme was never published in the official gazette and it cannot have any legal effect and that too, in supersession of the Pension Rules.

One Mr. Saxena took up the issue and in response to the same, he was informed that the Ministry of Commerce, New Delhi by letter dated 21st May, 1994 had conveyed the approval of the Government of such scheme. Thus, such purported approval was merely conveyed by the communication as has been referred to in the reply to the notice under the Right to Information Act. An appeal under Section 6(3) of the Right to Information Act, 2005 was preferred by said Mr. Saxena before the Appellate Authority seeking disclosure of material on record to show formal approval of the VRS by the Government of India. There had been no change in complexion whatsoever. The matter was, thereafter, taken up before the Central Information Commission but the order passed by the Information Authority as well as First Appellate Authority were confirmed. The petitioner claimed that VRS Scheme could never have a superseding effect over and above the appropriately sanctioned Pension Rules, which is having an appropriate legislative sanction. The petitioner claimed that he cannot be denied his legitimate dues under the said Pension Rules, which provide for commutation of maximum 1/3rd of pension available to an employee. It was a matter of great surprise and shock to the petitioner that the entire pension available to the petitioner was commuted. He was given to

understand that it was done as an additional benefit to the employees like the petitioner who opted for VRS and premature retirement at the relevant point of time. The stand that 100% commutation was a special measure in supersession of the provisions of the Pension Rules, is illegal, nugatory, non-est in the eye of law.

The petitioner claimed that opting for VRS can never be equated to give away his right accrued under the Central Civil Service Pension Rules (CCSPR). Since the grievance of the writ petitioner despite being ventilated before the respondent authority time and again, did not receive the care and attention, the same deserved, the petitioner, in such circumstances, being left with no choice approached this Court with the said application under Article 226 of the Constitution. Under the Pension Rules, the petitioner is entitled to restoration of commuted value of pension after a gap of 15 years. Near about 15 years have passed since the payment of commuted value of pension under the said scheme and the least the petitioner is entitled to is restoration of pension that was commuted. The petitioner also stated that he was ready and willing to return 2/3rd of the commuted value of pension for availing the benefit of monthly pension along with all the accrued benefits and increments with retrospective effect, which he is entitled to from the date of his retirement in the year 1994 or as an alternative measure, the authorities may pay all the D.A. with necessary revision as has been allowed from time to time on the Basic Scale of Pay with effect from the date of retirement of the petitioner. After expiry of 15 years from the date of voluntary retirement, the petitioner has an accrued right of restoration of commuted value of pension.

Hence, by filing the present application the petitioner sought for benefit under the Central Civil Service Pension Rules and the Central Civil Service Commutation of Pension Rules.

The crux of the controversy, thus, seems to be whether the VRS Scheme can be said to have a superseding effect over the Pension Rules.

On behalf of the respondent attention of the Court was invited to the Voluntary Retirement Scheme for the employees of the Export Inspection Council/Export Inspection Agencies dated 21st May, 1994. It was specifically mentioned therein that such scheme provided for 'full commutation of pension'. It was also laid down that "Government is not obliged to formulate or approve any such Scheme but it has been done so only as a special gesture to the EIC/EIAs. The Scheme is a one-time offer and is not to be treated as a precedent."

In course of submission, reference was made to the decision of the Apex Court in the case between Chief Settlement Commissioner, Punjab & Ors. Vs. Ajit Singh Kalha, as reported in AIR 1969 SC 33. This was in support of the contention that the statutory provisions must prevail over executive instructions.

In the aforesaid context, reference was further made to the decision in the case between Union of India Vs. Naveen Jindal & Anr., as reported in (2004) 2 SCC 510. In the said judgment, the Apex Court sought to derive inspiration from an earlier decision in the case between the Supreme Court Advocates-on-Record Association Vs. Union of India, 1993 4 SCC 441, wherein it was held :

"Constitution is the 'will' of the people whereas the statutory laws are the creation of the legislators who are the elected representatives of the people. Where the will of the legislature - declared in the statutes - stands in opposition to that of the people - declared in the Constitution - the will of the people must prevail."

On behalf of the petitioner, it was categorically mentioned that an executive instruction can any time be replaced by another set of executive instructions. But when it is in conflict with a statutory provision, it must give in.

In DDA & Ors. Vs. Joginder S. Monga & Ors., as reported in (2004) 2 SCC 297, the Apex court clearly laid down that in case of any conflict with statutory provisions, the latter will prevail. But in absence of any conflict both will prevail. Inviting attention of the Court to the decision in the case between State of Kerala & Anr. Vs. Chandra Mohanan, as reported in (2004) 3 SCC 429, it was submitted by learned Counsel for the

petitioner that the Apex Court in the factual backdrop of the case before it held that circulars being not law within the meaning of Article 13 of the Constitution would be of no assistance.

Deriving support and strength from all the aforesaid decisions, it was emphatically submitted on behalf of the petitioner that the petitioner's right to pension was essentially governed under the Pension Rules. The Voluntary Retirement Scheme, which did not take the shape of any statutory provision could not substitute the Pension Rules. The authority can not deny the benefit of the Pension Rules on the ground that the petitioner opted for V.R.S. On the other hand, it was submitted on behalf of the respondent authority that nobody compelled the petitioner to accept the Voluntary Retirement Scheme. Reference was made to the decision of the Apex Court in the case between A. K. Bindal & Anr. Vs. Union of India & Ors., as reported in (2003) 5 SCC 163 in support of the contention that the petitioner in his wisdom must have thought that in the fact situation VRS was a better option available and he chose the same. After having applied for VRS and taken the money, it is not open to contend that he exercised the option under any kind of compulsion.

The Apex Court in the said case held that the Voluntary Retirement Scheme (VRS) which is sometimes called Voluntary Separation Scheme (VSS) is introduced by companies and industrial establishments in order to reduce the surplus staff and to bring in financial efficiency. Analyzing the different aspects of the said scheme which was for consideration before the Hon'ble Court, it was held 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. It was held that "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." In the case between HEC Voluntary Retd. Employees Welfare Society & Anr. Vs. Heavy Engineering Corpn. Ltd. & Ors., as reported in (2006) 3 SCC 708, the Apex Court categorically held that the effect of a VRS is cessation of the jural relationship between employer and employee.

It is well settled that a Voluntary Retirement Scheme is a special scheme as contrasted with the general scheme of employment governing the terms and conditions of service or which is a part of the statutory rules governing the service of the employees. A voluntary retirement scheme is only an invitation of offer floated. When pursuant to or in furtherance of such a voluntary retirement scheme an employee opts therefor, he makes an offer which upon acceptance by the employer gives rise to a concluded contract between the employer and the employee. In terms of voluntary retirement scheme, an employee has an option either to accept or not to opt therefor. Such a scheme is ordinarily floated with a purpose of downsizing the employees. It is beneficial both to the employees as well as to the employer. Such a scheme is issued for effective functioning of the industrial undertakings.

It cannot be disputed that different formulas are laid down for computation of pension having correlation with the classes of pension. (Ref: UCO Bank & Ors. Vs. Sanwar Mal, (2004) 4 SCC 412).

In response to the argument advanced on behalf of the petitioner regarding the impact of executive instruction, learned Counsel for the respondent, referring to the decision in the case between Sisir Kumar Mitra Vs. Commissioner, Presidency Division & Ors., as reported in 1980 CWN 697, submitted that executive instruction can be issued to supplement the rule of service.

Be that as it may, in the factual backdrop of the present case, it cannot be disputed that the scheme for voluntary retirement of the employees of Export Inspection Council and Export Inspection Agency was floated in the year 1994. One of the salient features was that the option once exercised was final and could not

be withdrawn under any circumstance. No employee, who once opted for the same scheme, could, thus, be permitted to opt out of the same and seek benefit elsewhere. Grievances of the writ petitioner rather indicate that the petitioner sought to have butter on both sides of the bread. I find it difficult to appreciate the grievances, as ventilated on behalf of the petitioner.

The instant case being W.P. No. 574 of 2008 accordingly fails and be dismissed. There is no order as to costs.

Xerox certified copy of the judgment and order be supplied to the parties, if applied for, as expeditiously as possible.

(S.P. Talukdar, J.)