

(2005) 04 AHC CK 0227

Allahabad High Court

Case No: Civil Misc. Writ Petition No. 53350 of 2003

National Textile Corporation U.P.
(Ltd.)

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: April 15, 2005

Acts Referred:

- Payment of Wages Act, 1936 - Section 2, 23
- Uttar Pradesh Industrial Disputes Act, 1947 - Section 6H(1)

Citation: (2005) 6 AWC 5304

Hon'ble Judges: Arun Tandon, J

Bench: Single Bench

Advocate: J.N. Tewari and Gopal Mishra, for the Appellant; L.M. Singh, V.B. Singh, Satish Chaturvedi, B.N. Singh and Kritika Singh and S.C., for the Respondent

Final Decision: Dismissed

Judgement

Arun Tandon, J.

Heard Sri J.N. Tewari, Senior Advocate assisted by Sri Gopal Misrha, Advocate on behalf of the petitioner, Sri L.M. Singh, Advocate on behalf of the respondent Nos. 5, 6 and 7 and learned Standing Counsel on behalf of the respondent Nos. 1 to 4.

2. The petitioner, namely, National Textile Corporation U.P. Ltd., is a Government of India undertaking established for the purposes of running textile mills taken over by the said corporation under the Sick Textiles Undertakings (Nationalization) Act, 1974.

3. Respondent Nos. 5, 6 and 7, namely, Sri Raghunath Jha, Sri Prabhunath Singh and Sri Amrit Lal Sharma were working as clerks in the M/s Swadeshi Cotton Mills (a unit of National Textile Corporation (U.P.) Ltd.), Juhi, Kanpur prior to the same being nationalized under the Swadeshi Cotton Mills Company (Ltd.) (Acquisition) and Transfer of Undertakings) Act, 1986. Between Raghunath Jha (respondent No. 5) and

M/s Swadeshi Cotton Mills a dispute arose with regard to the grade admissible to the workmen. The said dispute was registered as Adjudication Case No. 48 of 1990 before the Labour Court Kanpur. The Labour Court (4), Kanpur by means of the award dated 6th April, 1979 held that Sri Raghunath Jha (respondent No. 5) was entitled to be designated as "teistant and paid salary in the Pay-scale of Rs. 1200-2040. The aforesaid award of the Labour Court was challenged by the employers before this Court by means of the Writ Petition No. 35500 of 1992. However, in the said writ petition, no interim order has been granted in favour of the petitioner. Similarly, there was a dispute between Prabhunath Singh and the employers, which was registered as Adjudication Case No. 177 of 19%. The Labour Court (4), Kanpur by means of the award dated 20th October, 1997 held that Sri Prabhunath Singh (respondent No. 6) was entitled to be designated as "Assistant" and paid salary in the pay-scale of Rs. 1400-2300. Against the said award of the Labour Court the employers had filed writ petition No. 37464 of 1998 before this Court. In the said writ petition the employers have not been granted any interim order. The dispute of grade and salary between Sri Amrit Lal Sharma (respondent No. 7) and the employers was registered as Adjudication Case No. 173 of 1993 before the Labour Court. The Labour Court (4), Kanpur by means of the award dated 8th April, 1996 held that Sri Amrit Lal Sharma was entitled to be designated as "Assistant" and paid salary in the pay-scale of Rs. 1200-2040. Against the said award of the Labour Court, the employers filed writ petition No. 29912 of 1996 before this Court. However, no interim order has been granted in the said writ petition. It is further admitted that the National Textile Corporation has yet not been impleaded as one of the petitioners in the aforesaid writ petition.

4. The Respondent Nos. 5,6 and 7 on the strength of the awards filed Applications u/s 6-H(1) of the U.P. Industrial Disputes Act, 1947 for the payment of difference and wages and increments for the following periods:

respondent No. 5 for the period of 1st January, 2001 to 22nd April, 2003

respondent No. 6 for the period of 1st August, 2002 to 31st March, 2003 and,

respondent No. 7 1st January, 2001 to 22nd April, 2003.

5. The Deputy Labour Commissioner vide order dated 2nd September, 2003 allowed the aforesaid applications and directed the employers to pay the amount of difference of wages so payable to the workmen concerned. The employers, however, on 3rd September, 2003 moved an application for recall of the ex parte order dated 2nd September, 2003 and requested that the case may be heard on merits again.

6. In pursuance of the order dated 2nd September, 2003 recovery certificates have been issued against the petitioner. The petitioners by means of the present writ petition have challenged recovery citation issued against the petitioners in pursuance of the proceedings u/s 6-H(1) of the Industrial Disputes Act, 1947 before

this Court. In the present writ petition there is no challenge to the order of the Deputy Labour Commissioner dated 2nd September, 2003 nor any relief in that regard has been prayed for on behalf of the employers-petitioner. Therefore, legality or otherwise of the order passed by the Deputy Labour Commissioner dated 2nd September, 2003 is not subject matter of consideration before this Court in the present writ proceedings.

7. It is contended that during this period on 23rd April, 2003, the Government of India introduced modified Voluntary Retirement Scheme (for short "V.R.S.") and all the respondents-workman, namely, Raghunath Jha, Prabhunath Singh and Amrit Lal Sharma opted for V.R.S. and submitted their resignation. It has further been stated that vide order dated 8th January, 2003 the State Government had taken a decision for closure of the Mill.

8. On behalf of the petitioner the only contention raised before this Court is confined to the assertion that in view of the fact that the workmen having opted for V.R.S. under the modified V.R.S. cannot be permitted to go back to the terms of the Y.R.S. and to claim anything over and above, the amounts, which have been paid to them as compensation under the V.R.S.

9. Learned counsel for the petitioner has contended that V.R.S. is a matter of contract between the employers and employee, and therefore, no money can either be recovered or released from the employers beyond the terms and condition of the modified V.R.S. and the undertaking given by the workmen at the time of opting for V.R.S. In support of the said contention the petitioner has placed reliance upon the judgment of Hon"ble Supreme Court reported in [A.K. Bindal and Another Vs. Union of India \(UOI\) and Others](#), . The petitioner has also placed reliance on the undertaking given by the workmen at the time of acceptance of V.R.S., which has been enclosed as Annexure No. 1 and 4 to the supplementary affidavit filed in writ petition No. 29912 of 1996.

10. On behalf of the respondents it is contended that the liability of the employers to pay wages along with other benefits, namely, gratuity etc. ceases only for the period subsequent to the date the V.R.S. is accepted. The recovery certificates, which are under challenged in pursuance of the award of the Labour Court, are not effected in any manner by the acceptance of the V.R.S. by the petitioner, inasmuch as the proceedings initiated under the U.P. Industrial Dispute Act for computation of money in terms of the award thereof have to be brought to their logical end. It is further contended that neither the acceptance of V.R.S. nor the undertaking given by the employees, which were relied upon by the petitioner in any way provides that the workmen would not be entitled to claim any benefits in respect of the award of the Labour Court which is not a subject matter of challenge in the present writ petition.

11. Lastly it is contended that in view of Section 2(vi) of the Payment of Wages Act, there cannot be a contract contrary to the wages legally due and any contract to the contrary will be null and void. It is therefore contended that by the acceptance of V.R.S. by the petitioner on 1st January, 2003, the rights, which had accrued on the basis of the award of the Labour Court and the consequent recovery certificate issued and the computation made thereof can not be affected in any manner.

12. I have heard learned counsel for the parties and have gone through the records.

13. The issue between the parties is as to whether on the date of acceptance of the V.R.S. by a workman his previous rights, which may have accrued under the award of the Labour Court and computation thereof u/s 6-H(1) of the Act can be enforced against the employers subsequent to the acceptance of the V.R.S or not. It would be relevant for the purpose of present writ petition to consider the relevant clauses of the V.R.S. and the undertaking given by the workmen at the time of acceptance of the said V.R.S (a copy whereof has been enclosed as Annexure No. 1 to the writ petition No. 41618 of 2003, "or ready reference relevant portion of the V.R.S. are being quoted hereinabove:

"3.0 BENEFITS UNDER THE SCHEME

An employee whose offer for Modified Voluntary Retirement is accepted, shall be entitled to the compensation, details of which are given in the succeeding paragraphs.

Modified Voluntary Retirement Scheme (MVRS)-

3.1.1 Ex-gratia payment equivalent to 35 days for every completed year of service and 25 days for the balance of service left until superannuation. The compensation will be subject to a minimum of Rs. 25,000/- or 250 days salary whichever is higher. However, this compensation shall not exceed the sum of the salary that the employee would draw at the prevailing level for the balance of the period left before superannuation.

3.1.2 The Additional Ex-gratia compensation payable to an employee shall be as under:-

(i) Where there was no wage revision after 1.1.87 additional compensation of 100% of the eligible Ex-gratia amount as per para 3.1.1.

(ii) Where there was no wage revision after 1.1.92 additional compensation of 50% of the eligible Ex-gratia amount as per para 3.1.1.

3.1.3 Salary for purpose of VRS will consist of Basic Pay +DA+HRA only. Any amount of ad-hoc/award will not be taken into account for this purpose.

3.1.4 Arrears of Salary/wages paid due to revision. etc. will be included in computing the eligible amount and difference would be paid.

3.1.5 Payment of Bonus as per provisions in the Act.

3.1.6 For the purpose of reckoning a month while calculating Ex-gratia amount, it shall be reckoned as 30 days in a month. Further, compensation for proportionate month is also to be taken into account for calculation for the Ex-gratia.

3.1.7 In the case of Badli workers compensation will be paid @ 35 days for every completed year and 25 days compensation for the remaining service irrespective of minimum requirement of 240 days service in a year (as in the case of permanent employees) once their names are borne on the muster roll of the mill.

4.0 OTHER TERMINAL BENEFITS UNDER THE SCHEME

4.1 Balance in the Provident Funds Accounts payable as per Employees Provident Fund Act and rules made thereunder

4.2 Cash equivalent of accumulated earned leave/privilege leave as per the rules of the mills/office concerned.

4.3 Gratuity as per Payment of Gratuity Act or the Gratuity Scheme, if any"

14. The relevant portion of the undertaking given by Sri Amrit Lal Sharma (workmen-respondent No. 7) (copies whereof have been enclosed as Annexure Nos.-1 S.A. to 4 S.A. of the Supplementary Affidavit filed in writ petition No. 29912 of 1996) are quoted herein below:

"1...

2. Maiyn yah vachan deta hoon ki maiyn avkash grahan karney ki ishthiti meyn upasthit kathit modified seva nivrit yozana key adhin praptsoovidhaon key atirikt any a kisi bhuktan ka dava prabandhtantra/mill/company sey nanin karunga.

3. Maiyn yah bhi Vacahn deta hoon ki apki seva meyn ish tyag patra deney ke baad apney pad tyag ka avedan vapas nahin lunga, Mainey sanlagan parishisht meyn sabhi mangi gayee jankariyan/vivaran puri-puri bhar di haiyn...

Ghoshana Patra

...Yah ki mera tyag patra sweekar karney ke phalswaroop anumodit sanshodhit svachhit seva-nivrit yozana {M.V.R.S.} ke antargat mainey apani seva kaal ki service {Gratuity} Rs. 75107/- {Sabdo meyn} Rupaya Sattar Hazar ek sau saat matra tatha anugrah rashi 32249.00+32249.00= 64493.00 rupaya sabdo meyn Chuashath Hazar char sau anthanabey matra tatha arjit avakash ka Rupaya 947.00 sabdo meyn rupaya Nau sau saintalish matra jo mainey agrim bhugtan {advance} ke roop meyn prapt kiya tha usey katvaney hetu prabnadhakon sey anurodh kiya tha ukt advance cutvaney key baad sesh anugrah avam gratuity kool Rupaya 1,36,422.00 {sabdo meyn} Rupya Ek Lakh, Chhatish Hazar Chaar Sau Baaish matra mainey apani gratuity avam anugrah dhanrashi ke hisab sey purn roop sey samajh liya hai jisasey main purn santust hokar purn avan antim roop meyn bhugtan prapat kiya hai. Ish

prakar sey uprokt dhan prapt karney ke paschat koi bhi dhan service gratuity rashi key mad meyn mera mill sey koi anya pavana shesh nahi rah Jata hai.

Mainey ishey sveschha se bina kisi dabav ke sweekar karta hoon. Yah ki ish sanshodhan svachhik sevanivrit key antargat mera uorokt pad samapt mana jayega. Ab mera mill sey koi bhi pa van a shesh nahi hai. Ish sambandh mevn mere dwara athava kisi bhi union key madhvam sev bhavishya meyn koi bhi vivad/claim kisi bhi nvalalaya/adhikari key samakchh nahi uthaya iavega...".

15. From the aforesaid provisions of the V.R.S. as well as from the undertaking given by the respondent No. 7, it is apparently clear that the employees are entitled to the compensation, which includes ex-gratia payment as per the clause 3 of the V.R.S. Clause 4 provides for the terminal benefits to which the employee shall be entitled after the acceptance of the V.R.S. cash equivalent or accumulated earned leave as per the rules of the mills/office concerned and gratuity as per the payment of Gratuity Act. It establishes thus clear V.R.S. in no way affects, the benefits computable in terms of money, which have accrued in respect of the period prior to the date of acceptance of V.R.S. The award of the Labour Court and the computation done in pursuance thereof u/s 6-H(1) of the Act is also a benefit computed in terms of the money for the period prior to the date of acceptance of V.R.S. The undertaking given by the workmen does not in any way establish that the workmen had agreed to forgo their rights in respect of the recovery of money as per the computation done u/s 6-H(1) of the Act in pursuance of the award of the Labour Court between the parties referred to above. The aforesaid undertaking only provides that the post on which the workman had worked, shall be deemed to have been surrendered and the workman would not be entitled to anything from the mill from the said date. Further the workmen shall not raise any dispute in future with regard to any claim in any court of law either through himself or through union.

16. This Court is of the definite opinion that neither the V.R.S. nor the undertaking given by the workmen in any way fore closes the rights of the workmen, which have accrued and became vested prior to the date of acceptance of V.R.S. in respect of the difference of wages for the period prior to the said date under the award of the Labour Court and the computation done in pursuance of the order of the Deputy Labour Commissioner u/s 6-H(1) of the Act. Even otherwise having regard to Section 23 of the Payment of Wages Act if there is any contracting out of the wages payable to the workmen it would be null and void. For ready reference Section 23 of the Payment of Wages Act, which is quoted herein below:

"23. Contracting Out

Any contract or agreement, whether made before or after the commencement of this Act, whereby an employed person relinquishes any right conferred by this Act shall be null and void in so far as it purports to deprive him of such right"

17. Thus in the light of the aforesaid facts as stated hereinabove it cannot be said that the workmen had for-gone their rights for recovery of the money in terms of the award of the Labour Court as per the computation done by the Deputy Labour Commissioner while obtaining the Voluntary Retirement under modified V.R.S. nor the employers have any right to object to the recovery certificate issued and money computed which reflects the wages for the period prior to the acceptance of the V.R.S. So far as the judgment relied upon by the petitioner in the case of A.K. Bindal and another (Supra) is concerned; it is worthwhile to reproduce paragraph 34 of the said judgment, which reads as follows:

"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."

18. Reference may also be had to the judgment of Hon^{ble} Supreme Court in the case of Vice-Chairman and Managing Director, APSIDC Ltd and Anr. v. R. Varaprasad and Ors. reported in 2003 (98) FLR 104, para 12 of which, reads as follows:

"12. This being the position both learned Single Judge and the Division Bench of the High Court were not right in taking a contrary view that the benefits available under the Scheme and terminal benefits should be reckoned and calculated as on the date of actual relieving the employees notwithstanding the cut off date mentioned by the Corporation and accepted by the employees. An employee even after accepting his application could not be relieved unless entire amount to which he was entitled under the Scheme was paid. Such payment deep deed on making funds available by the State Government All employees who accepted VCRs could be relieved at a time or batch by batch depending on availability of funds. Further funds may be made available earlier or date. If the argument of the respondents that relieving date should be taken as effective date for calculating terminal benefits and financial package under VRS, the dates may be fluctuating depending on availability of funds. Hence it is not possible to accept this argument. When the employees have opted

for VRS on their own without any compulsion knowing fully well about the Scheme, guidelines and circulars governing the same, it is not open to them to make any claim contrary to the terms accepted. It is matter of contract between the Corporation and the employees. It is not for the Courts to rewrite the terms of the contract, which were clear to the contracting parties, as indicated in the guidelines and circulars governing them under which Voluntary Retirement Scheme floated."

19. The Hon"ble Supreme Court refused relief to the employers of enhancement of the difference of pay-scale for an earlier period, which had, in fact, been effected under the pay revision order subsequent to the acceptance of the V.R.S. and in these circumstances, it has been held that once the jural relationship between the employer and the employee had ceased because of the acceptance of the Voluntary Retirement Scheme known as "golden handshake" any enhancement of the pay scale subsequent thereto cannot be subject matter of grievance by the employee in terms of the acceptance of the V.R.S. The Hon"ble Supreme Court has not declared that the rights of the workmen with regard to the payment of wages determined under the award of the Labour Court, which was passed prior to the date of acceptance of V.R.S. and for the period prior to it stood lost with the acceptance of the V.R.S.

20. Merely because of the issuance of recovery certificate in pursuance of the computation done, has taken some time the employers cannot be permitted to allege that the said proceedings have lost all efficacy because of the acceptance of the V.R.S. by the workmen.

21. In the opinion of the Court the vested rights, which have been accrued in favour of the workmen under the award of the labour court and have already been computed in terms of the money for the period prior to the acceptance of the V.R.S. are necessarily to be enforced in accordance with law and such rights are not lost in any manner by the acceptance of the V.R.S. by the workmen. This Court has no hesitation to hold that the vested rights of the workmen, which accrue for the period prior to the acceptance of the V.R.S., are not lost under the V.R.S.

22. In view of the aforesaid the writ petition is dismissed.