
National Textile Corporation U.P. (Ltd.) Vs State of U.P. and Others

Civil Misc. Writ Petition No. 53350 of 2003

Court: Allahabad High Court

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 Misra, 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 ishtithi meyn upasthit kathit modified seva nivrit yozana key adhin

praptssoovidhaon 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

Baaisht 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 meyn mere dwara athava kisi bhi union key madhvam sev bhavishya

meyn koi bhi vivad/claim kisi bhi nvalaya/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 depends 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 later. 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 a 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 employees 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.