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Ashok Kumar Gupta and others Vs Union of India and others

Court: Calcutta High Court

Date of Decision: Aug. 4, 2008

Acts Referred: Constitution of India, 1950 â€" Article 12

Citation: (2009) 120 FLR 273

Hon'ble Judges: Tapen Sen, J; S.K. Gupta, J

Bench: Division Bench

Advocate: Chameli Majumdar and Sahtanu Das, for the Appellant;Arunava Ghosh and Soumya Majumdar and Ms. A. Malhotra, Somnath Bose and Subir Pal for the Union of India, for the Respondent

Final Decision: Dismissed

Judgement

Tapen Sen, J.
This appeal is directed against the judgment and Order dated 9.4.2002 passed by a learned Single Judge of this Court in

W.P. No. 11433 (W) of 2001 (Ashok Kr. Gupta and others v. Union of India and others whereby and whereunder he was pleased to dismiss the

writ petition.

Let it be recorded that earlier the preliminary objection have been raised in this case by the respondent-company regarding maintainability of the

appeal in view of cessation of the status of the respondent-company. That point was taken by reason of the fact that the respondent-company

(Jessop and Company) ceased to be a Government Company or an authority within the meaning of Article 12 of the Constitution of India in view

privatization thereof. It appears that this preliminary objection was heard by another Hon''ble Division Bench on a number of dates but finally on

11.5.2007, that point was decided and it was held that the appeal is maintainable as when the cause of action had arisen at the time of final hearing

of the writ petition, the Company was subject to Writ Jurisdiction. After rejecting the said preliminary objection, the said Division Bench directed

that the appeal be listed for final hearing. That is how the matter was listed before us.

2. It appears that these appellants filed the writ petition claiming the difference of ex gratia compensation and the difference of the terminal benefits

which was already paid to them under the Voluntary Retirement Scheme and this claim was based on the revision of pay which was recommended

by the 5th Pay Commission and which was implemented w.e.f. a date prior to the date of exercising option for voluntary retirement without

claiming any arrears.

3. The learned Single Judge, having noticed the aforementioned fact, observed as follows:-

It is now to be seen whether after the acceptance of V.R.S. and cessation of relationship, can the petitioner''s claim the benefit of revision

implemented after their acceptance of V.R.S., though with retrospective effect, without payment of arrears"".

4. The facts of the case duly were noticed by the learned Single Judge but for convenience, reference to the said brief facts are also necessary

here. One M/s. Jessop and Company Ltd. (respondent No. 2 herein) a subsidiary of Bharat Bhari Udyog Nigam Ltd. (BBUNL) of the

Government of India, became sick sometimes in 1995. Upon a reference made to the BIFR, the said company was declared to be a sick company

on 2.6.1995 and the State Bank of India was appointed as the operating agency. On 15th December, 1997, a Rehabilitation Scheme was framed

and a draft scheme pertaining thereto was also notified in May 1998. In pursuance of such a Scheme and by a Notice dated 3.3.1998, a Voluntary

Retirement Scheme was issued under which eligible employees of the Company given the liberty to exercise their options in the manner prescribed

therein. The appellants opted under the said Voluntary Retirement Scheme and as such, they all voluntarily retired between 31.3.1998 and

November 1998. They were also paid benefits under the said Scheme which included compensation which was computed keeping in mind the

remaining period of service which they had ""sacrificed"" and the said compensation was paid to them in accordance with the formula laid down

therein.

5. In the meantime, the Government of India decided to revise the pay scale of the executives holding below the Board level posts and of the non-

Unionized supervisory staff w.e.f. 1.1.1992 through a decision that was taken on 19.7.1995.

6. Admittedly, at that point of time, the appellants were in service and the earlier pay scale which had been introduced in 1997 was due for revision

on the expiry of 5 years w.e.f. 1.1.1992. On 30.5.1997, M/s. Bharat Pumps and Compressors Ltd. implemented the revision but Jessop took the

decision to implement the same on 29.1.1999 w.e.f. 1.1.1992 on a condition that no arrears on account thereof would be payable and that the

benefit of such implementation would be available w.e.f. 1.1.1999.

7. The said decision dated 29.1.1999 contained a further clause that arrears w e.f. 1.1.1992 would be payable after Jessop''s Operational and

Internal Research Generation reached a level to absorb the liability. The learned Single Judge noted that admittedly such level was not reached.

8. On 19.4.2000, M/s. Bum Standard also allowed the benefit of revised scale to all who were in service on 1.1.1992 and also provided for

payment to those who were in service on the said date (1.1.1992) but who had ceased to be in service subsequently on account of voluntary

retirement.

9. On 8.12.2000, in a Voluntary Retirement Scheme, the Government pointed out that the voluntary retirees would be entitled to subsequent

revision of pay w.e.f. a period prior to the acceptance of the voluntary retirement.

10. It was under the aforementioned background that the appellants claimed the benefit of the said revision w.e.f. 1.1.1992 for recalculating the

terminal/retiral benefits and also to release the amount of fitment benefits as well as arrears of pay including recalculation of the ex gratia payments.

11. After having heard the parties at length, the learned Single Judge framed the following 4 questions which, according to this Court, appear not

only to be relevant but absolutely crucial to the issue. Let it be recorded at this stage itself that the appellants had all opted under the Voluntary

Retirement Scheme which was floated on 3.3.1998. In other words, they accepted the package as was offered to them on that day and they acted

in terms of the said package.

12. The questions that the learned Single Judge framed are as follows:-

Whether the petitioners who opted for V.R.S. in 1998, could claim any benefit beyond what was allowed to them in terms of VRS opted by

them.

Whether the subsequent modification of V.R.S. and further benefit allowed to the employees, who opted for subsequent V.R.S., could be payable

and applicable to the petitioners as well.

Whether the making of the subsequent V.R.S. and its qualifications prospective in its application and exclusion of those who have been released

earlier is arbitrary and discriminatory.

Whether the petitioners could get the relief sought for in this petition in the same manner as was allowed to the existing employees, while

implementing the revised scale of pay, or are they entitled to the benefit of such revision to which they would have been entitled had they not opted

for V.R.S.?

13. At this stage, it would be relevant to also notice that the contention of the petitioners before the learned Trial Judge, inter alia was, that by an

Office Memorandum dated 8.12.2000 which was made Annexure-P6 to the writ petition, the Government of India, Ministry of Heavy Industries

and Public Enterprises clarified certain points on which clarifications had been sought for by the Public Sector Enterprises as well as by the

Administrative Ministries/ Departments. One of the questions that were taken into consideration was as to whether, any arrears of ex gratia are to

be paid in the event of pay revision being sanctioned after voluntary separation?

14. The answer/clarification to this question, as indicated in Annexure-P-6 was ""ex-gratia will be re-calculated on the basis of revised pay scale

and the difference be paid"",

15. It appears from reading Paragraph-11.1 of the judgment of the learned Trial Judge as well as Paragraph-3 thereof, that one of the most vital

points which was contended before the learned Single Judge was that the respondents having themselves issued such a Memorandum dated

8.12.2000 pertaining to ex gratia payment on the basis of any revision in pay scale, cannot be allowed to refuse the benefits of the difference of

revision to the appellants. It was argued that the State, having refused to grant such a benefit to these appellants had not acted fairly or reasonably

and therefore, their action, being arbitrary, must be struck down by the Court.

16. The learned Trial Judge, while referring to these arguments, noticed, and in our opinion correctly, that the said Office Memorandum dated

8.12.2000 was a clarification of another Office Memorandum dated 5.5.2000. The learned Trial Judge also correctly came to the conclusion that

the Office Memorandum of 8.12.2000 was different and easily distinguishable on two counts. Firstly, it only sought to clarify a Memorandum

dated 5.5.2000 and therefore, it could not be stretched to mean that it also clarified a Scheme that was floated earlier on 3.3.1998. Secondly, the

said clarification dated 8.12.2000 related to revision subsequent to voluntary separation but in the case of the appellants, the revision itself was

effected prior to their separation inasmuch as the said revision of pay scales was decided in 1995 although implemented in 1999 and their

separation was in 1998.

17. Moreover, the learned Single Judge also correctly noticed that no offer in the 1998 Scheme was ever made to the effect that if it was ever

decided to revise the pay scales or if, any revision was implemented at any future point of lime, its benefits would be available even to those who

voluntarily separated themselves under the 1998 Scheme. We are therefore of the view that the appellants, having themselves opted with their eyes

and ears open, to take a package benefit/accept a package deal under the 1998 Scheme, cannot be allowed to subsequently turn around and say

that they are entitled to more on the basis of a notion that even after cessation of service, a revision of pay would still enure to their benefit. In this

context, the following observations of the learned Trial Judge are therefore worthy of being taken note of and they are to be found in Paragraph-

11.2 of the impugned judgment which read, as follows:

It was accepted by the petitioners consciously with their eyes open. There is no allegation that the petitioners were compelled to opt for the

scheme. In fact, when the V.R.S. was floated, the company was not in a good shape. They had left the sinking organisation and opted for the

benefit then available. If, after then those who did not opt, seeks to revive and continued to involve themselves and attach their fate with the sinking

organisation endeavouring to revive the same, had put in some effect to create internal generation to absorb the liability, then if same benefit is paid

to them, the same cannot be available to those, who had saved their skin by leaving the organisation, allowing the organisation to its fate. Those,

who left, are not expected to get the benefit earned by the toil of those who were deserted by the former. Therefore, until and unless it is

specifically provided in the scheme, the petitioners cannot claim any benefit except what is available under the scheme, by reason of any

subsequent modification or of any subsequent scheme floated. That apart, the modified V.R.S. and its clarification specifically provide to be

prospective and exclude those who have already been released. When the OM specifically excludes its application to those, who had already

separated, such benefit cannot be made available to them. Therefore, the 8th December, 2000 clarification cannot be applied in case of the

petitioners.

(Quoted)

18. Thus, upon a perusal of the aforementioned observations of the learned Trial Judge, this Court is of the view that they are not only well

founded but they go to the very root of the dispute and they are also so meaningful, that they totally demolish the claims of the appellants which, in

the opinion of this Court also, apart from being vexatious, are not worthy of credence at all.

19. The further grievance of the appellants was that they were all allowed to retire, though voluntarily and under the said Scheme, between the

period 1.3.1998 to November 1998. Thereafter, the respondent authorities, in a mala fide and calculated manner, picked up a date to their

convenience which was, in effect, prejudicial to the interests of the appellants and therefore, arbitrary.

20. In Paragraph-12, the learned Trial Judge has correctly observed that this was not only a matter pertaining to policy but judicial intervention was

not possible unless it was shown that the policy itself was arbitrary or mala fide. We must also agree with another reasoning of the learned Trial

Judge to the effect that admittedly, and in the present case, the PSU was sick and was registered with the BIFR and subjected to a revival

package which did not include a condition which could be said that it justified the claim of the appellants.

21. We have carefully gone through the judgment of the learned Trial Judge and we feel that the aforementioned points were sufficient for

disallowing the claim of the appellants although the learned Trial Judge has gone much deeper into other aspects also. Since the aforementioned

points are sufficient to disallow the claims of the appellants, it is not necessary for this Court to deal or make references to all the other points dealt

with by the learned Trial Judge save and except to state that we agree with his views to the effect that since voluntary retirement was accepted

under a particular package scheme, the relationship of employer and employee came to an end and once there was cessation of such relationship,

any subsequent decision and/or policy taken by the employer and which subsists between the then existing employer and employee, cannot be

stretched and taken to mean that such subsequent decisions will bind the management and/or the employer in relation to all those employees who

had already said ""good-bye"" and had ceased to exist as employees long, long time ago. Consequently, we find no reason to interfere with the

judgment and order passed by the learned Trial Judge.

22. We accordingly dismiss this appeal but in the facts and circumstances of the case, there shall be no order as to costs.

Upon appropriate application(s) being made, urgent certified copy of this judgment, duly photocopied, may be given/issued expeditiously subject

to usual terms and conditions.

Later--Prayer for stay is considered and refused.