Delhi High Court
Sanjay Behari & Ors. vs I.F.C.I. Limited on 20 February, 2017

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C)No.1552/2017% 20th February, 2017

SANJAY BEHARI & ORS. ..... Petitioners

Through: Mr. D.R. Nigam, Advocate.

versus

I.F.C.I. LIMITED ..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? YES

VALMIKI J. MEHTA, J (ORAL)

1. Petitioners by this writ petition under Article 226 of the Constitution of India, seek the relief of being granted pay revision with effect from 1.11.2007 and with further and consequential reliefs of payment of arrears, revised pension, etc. Petitioners are those employees who took voluntary retirement from the respondent/IFCI Limited/employer under the VRS Scheme of 2008. Voluntary retirement was granted to the petitioners with effect from 25.2.2008 and the petitioners have received their complete monetary packages under the relevant VRS Scheme.

2. Petitioners claim that the existing employees of the respondent/employer have been granted revision of pay scales as per the memorandum of the respondent/employer with respect to the meeting on 16.7.2013 and by which memorandum the higher pay scales have been made applicable with effect from 1.11.2007 to the existing employees of the respondent/employer. Petitioners plead that since petitioners were granted voluntary retirement only on 25.2.2008, hence, petitioners must now be granted enhanced pay scales, instead of pay scales on the basis of which VRS was given to the petitioners, and petitioners accordingly must be granted higher pension as also arrears and other consequential reliefs. The relief clause of the writ petition reads as under:-

"(a) to issue a writ of mandamus or any other writ, order or directing directing the respondent IFCI to give the benefits of pay revision to the petitioners w.e.f. 01.11.2007 in respect of revised pension alongwith interest on IFCI Prime Lending Rate including arrears, revised pension and all consequential benefits."

3. On behalf of the petitioners reliance is placed upon the judgment of the Supreme Court in the case of D.S. Nakara and Others Vs. Union of India (1983) 1 SCC 305 to argue that once pay scales are changed then earlier retired pensioners are entitled to increased pension and earlier pensioners to not get pension at the earlier pay scales on which pension was being granted to pensioners and therefore petitioners who are VRS optees must also get higher pension calculated at later implemented higher pay scale granted subsequently to then serving employees of the respondent/employer. Para 46 of the judgment in the case of D.S. Nakara (supra) is relied upon, and which para reads as under:-

"46. By our approach, are we making the scheme retroactive? The answer is emphatically in the negative. Take a government servant who retired on April 1, 1979. He would be governed by the liberalised pension scheme. By that time he had put in qualifying service of 35 years. His length of service is a, relevant factor for computation of pension. Has the Government made it retroactive, 35 years backward compared to the case of a Government servant who retired on 30th March, 1979? Concept of qualifying service takes note of length of service, and pension quantum is correlated to qualifying service. Is it retroactive for 35 years for one and not retroactive for a person who retired two days earlier. It must be remembered that pension is relatable to qualifying service. It has correlation to the average emoluments and the length of service.

Any liberalisation would pro tanto be retroactive in the narrow sense of the term. Otherwise it is always prospective. A statute is not properly called a retroactive statute because a part of the requisites for its action is drawn from a time antecedent to its passing. Assuming the Government had not prescribed the specified date and thereby provided that those retiring pre and post the specified date would all be governed by the liberalised pension scheme, undoubtedly, it would be both prospective and retroactive. Only the pension will have to be recomputed in the light of the formula enacted in the liberalised pension scheme and effective from the date the revised scheme comes into force. And beware that it is not a new scheme, it is only a revision of existing scheme. It is not a new retiral benefit. It is an upward revision of an existing benefit. If it was a wholly new concept, a new retiral benefit, one could have appreciated an argument that those who had already retired could not expect it. It could have been urged that it is an incentive to attract the fresh recruits. Pension is a reward for past service. It is undoubtedly a condition of service but not an incentive to attract new entrants because if it was to be available to new entrants only, it would be prospective at such distance of thirty-five years since its introduction. But it covers all those in service who entered thirty-five years back. Pension is thus not an incentive but a reward for past service. And a revision of an existing benefit stands on a different footing than a new retiral benefit. And even in case of new retiral benefit of gratuity under the Payment of Gratuity Act, 1972 past service was taken into consideration. Recall at this stage the method adopted when payscales are revised. Revised payscales are introduced from a certain date. All existing employees are brought on to the revised scales by adopting a theory of fitments and increments for past service. In other words, benefit of revised scale is not limited to those who enter service subsequent to the date fixed for introducing revised scales but the benefit is extended to all those in service prior to that date. This is just and fair. Now if pension as we view it, is some kind of retirement wages for past service, can it be denied to those who retired earlier, revised retirement benefits being available to future retirees only. Therefore, there is no substance in the contention that the court by its app roach would be making the scheme retroactive, because it is implicit in theory of wages."

4. Petitioners also place reliance upon the judgment of the Supreme Court in the case of All India Reserve Bank Retired Officers Association and Others Vs. Union of India and Another 1992 Supp (1) SCC 664 to argue that pensioners have to be treated as a different class and that all pensioners whether ordinarily retired employees or other employees getting VRS benefits, in view of the judgment in the case of D.S. Nakara (supra) are entitled to higher pension and pension on uniform basis on higher scale of pay as granted to employees who continued in services even after the petitioners got VRS on 25.2.2008. It is also argued on behalf of the petitioners by placing reliance on this judgment that pensioners cannot be treated as equal with those employees who get monetary benefits under the CPF Scheme inasmuch as only those employees who get benefits of CPF Scheme cannot get pension. Para 10 of this judgment is relied upon and the same reads as under:-

"10. Nakara judgment has itself drawn a distinction between an existing scheme and a new scheme. Where an existing scheme is revised or liberalised all those who are governed by the said scheme must ordinarily receive the benefit of such revision or liberalisation and if the State desires to deny it to a group thereof, it must justify its action on the touchstone of Article 14 and must show that a certain group is denied the benefit of revision/liberalisation on sound reason and not entirely on the whim and caprice of the State. The underlying principle is that when the State decides to revise and liberalise an existing pension scheme with a view to augmenting the social security cover granted to pensioners, it cannot ordinarily grant the benefit to a section of the pensioners and deny the same to others by drawing an artificial cut-off line which cannot be justified on rational grounds and is wholly unconnected with the object intended to be achieved. But when an employer introduces an entirely new scheme which has no connection with the existing scheme, different considerations enter the decision making process. One such consideration may be the financial implications of the scheme and the extent of capacity of the employer to bear the burden. Keeping in view its capacity to absorb the financial burden that the scheme would throw, the employer

would have to decide upon the extent of applicability of the scheme. That is why in Nakara case this Court drew a distinction between continuance of an existing scheme in its liberalised form and introduction of a wholly new scheme; in the case of the former all the pensioners had a right to pension on uniform basis and any division which classified them into two groups by introducing a cutoff date would ordinarily violate the principle of equality in treatment unless there is strong rationale discernible for so doing and the same can be supported on the ground that it will subserve the object sought to be achieved. But in the case of a new scheme, in respect whereof the retired employees have no vested right, the employer can restrict the same to certain class of retirees, having regard to the fact-situation in which it came to be introduced, the extent of additional financial burden that it will throw, the capacity of the employer to bear the same, the feasibility of extending the scheme to all retirees regardless of the dates of their retirement, the availability of records of every retiree, etc. It must be realised that in the case of an employee governed by the CPF scheme his relations with the employer come to an end on his retirement and receipt of the CPF amount but in the case of an employee governed under the pension scheme his relations with the employer merely undergo a change but do not snap altogether. That is the reason why this Court in Nakara case drew a distinction between liberalisation of an existing benefit and introduction of a totally new scheme. In the case of pensioners it is necessary to revise the pension periodically as the continuous fall in the rupee value and the rise in prices of essential commodities necessitates an adjustment of the pension amount but that is not the case of employees governed under the CPF scheme, since they had received the lump sum payment which they were at liberty to invest in a manner that would yield optimum return which would take care of the inflationary trends. This distinction between those belonging to the pension scheme and those belonging to the CPF scheme has been rightly emphasised by this Court in Krishena case."

5. In my opinion, the writ petition is not maintainable and is liable to be dismissed in view of the direct ratio of the judgment of the Supreme Court in the case of A.K. Bindal and Another Vs. Union of India and Others (2003) 5 SCC 163 and the relevant para of which judgment reads as under:

"34. 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 business world it is known as "Golden Handshake". The main purpose of paying this amount is to bring about a compete 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." (emphasis added)

6. The above para of the judgment of the Supreme Court in the case of A.K. Bindal (supra) leaves no manner of doubt that once an employee takes VRS and receives a golden handshake, such an employee afterwards cannot claim additional service benefits from the employer on account of his services rendered in the past to the employer. Supreme Court has observed that the effect of golden handshake is that a person besides getting his normal terminal dues also gets a lumpsum package and that is why the scheme is called a golden handshake. In ordinary case of retirement on the age of superannuation, a retired employee does not get any lumpsum package on account of severance. The last line of the aforesaid para 34 makes it clear that an employee who has taken VRS is not permitted to raise a grievance, including enhancement of pay scale for the earlier period of service with the employer i.e after the employee had opted for VRS Scheme and accepted the golden handshake amount paid to him under the VRS Scheme, the claim of such employee for additional service benefits who has taken such VRS benefit cannot be accepted as the same would result in frustration of introduction of the VRS Scheme.

7. In view of the categorical ratio of the judgment in the case of A.K. Bindal (supra) and the facts of the present case which show that petitioners have taken unconditional voluntary retirement with effect from 25.2.2008 and taken a golden handshake amount plus other benefits in „full and final settlement", hence, the petitioners now cannot claim any monetary benefits of a higher pay scale, and which relief if allowed would frustrate the VRS Scheme as held in

the case of A.K. Bindal (supra). The writ petition is accordingly not maintainable and would be liable to be dismissed in view of the aforesaid categorical ratio of the judgment in the case of A.K. Bindal (supra).

8. Reliance placed by the petitioners upon the judgment in the case of D.S. Nakara (supra) will not help the petitioners because the issue in the case of D.S. Nakara (supra) was not an issue of claim of higher pension of those employees who had got voluntary retirement under the VRS Scheme as Supreme Court in the case of D.S. Nakara (supra) only dealt with those employees who had ordinarily retired on their dates of superannuation without any lumpsum package received as golden handshake under the VRS Scheme. The ratio in the case of D.S. Nakara (supra) will therefore not help the petitioners who have received a golden handshake amount under the VRS Scheme. Similarly, the judgment in the case of All India Reserve Bank Retired Officers Association (supra) also will not help the petitioners because even in that case there was no issue of entitlement of employees who had received VRS benefits and a golden handshake for getting higher pension.

9. Learned counsel for the petitioners argues that petitioners are invoking the principles of law in D.S. Nakara (supra) and All India Reserve Bank Retired Officers Association (supra) of pensioners being entitled to higher pension by the increased pay scales, but such an argument is flawed for the reason that ratio of a case depends on the facts of the case and ratios of the judgments relied upon by the petitioners in the two cases are with respect not to employees who took VRS and lumpsum package under the golden handshake principle, and the Supreme Court in the two cases relied upon by the petitioners was dealing with cases of ordinary pensioners who retired from their services on their ordinary dates of superannuation. Therefore, there is no principle of law laid down in the two cases relied upon by the petitioners that the ratio of those cases will apply even to those pensioners who get pension under the VRS Scheme after receiving a lumpsum package under the VRS Scheme.

10. Learned counsel for the petitioners finally argued that respondent/employer has wrongly issued its letter dated 28.7.2014 denying revision of pension at higher pay scales stating that in view of Clause 9.4 of the VRS Scheme 2008 there was a clause of full and final settlement and which clause was not there in the earlier schemes, and that the respondent/employer was unjustified in giving such reasons as given in its letter dated 9.6.2015 addressed to certain employees of the respondent/employer denying revision of pension. Let me at this stage reproduce the letter dated 28.7.2014 and the relevant question and response in the letter dated 9.6.2015 addressed to some employees of the respondent/employer and which reads as under:-

1. Letter dated 28.7.2014 "IFCI/PF/B-114/2014-280708-140728025 July 28, 2014 Shri Sanjay Behari 8257, Sector - C-8, Vasant Kunj, New Delhi - 110070 Dear Sir, Re: Revision in Pay Scales of IFCI Officers as per RBI pattern w.e.f 1st November, 2007.

Please refer to your letter dated 17th July, 2014 on the subject. In this connection we advise that there was no pay revision as on 1.11.2007. Revision of pay scales of 2002 was implemented in IFCI from 1st April, 2006 (for employees who were on the rolls of IFCI as on 19.10.2006). Further, it is also pertinent to mention the relevant clauses of VRS 2008 under which you availed Voluntary Retirement.

In terms of clause 9.4 of the Voluntary Retirement Scheme - 2008, which reads as under:

"The benefit payable under the Scheme shall be in full and final settlement of all claims whatsoever, whether arising under the Scheme, or otherwise to the employee (or to his nominee in case of death). An employee, who is voluntarily retired under the Scheme, will not have any claim against the IFCI whatsoever and no demand or dispute will be raised by him or on his behalf, whether for re-employment or compensation or back wages." In terms of clause 9.12 of the VRS 2008 which reads as under: "There will be no revision in the Voluntary Retirement Amount on account of pay revision or any other account in future."

Also please note that no VRS optee of VRS 2008 has been given revision of pay.

In view of the above your request cannot be acceded to.

Yours faithfully, Sd/-

A.D. Kharbanda Dy. General Manger"

2. Relevant question and response in the letter dated 9.6.2015.

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3. We appreciate IFCI"s The benefits of pay revision effect in confirmation that benefits of 1997 were extended to the VRS retrospective pay revision optees during the said period, as it formed part of VRs. The formed part of the Voluntary wording of the operational and Retirement Scheme VRS-2000 for substantive clauses in VRS 2008 Class III & IV (HR Cr.No.8/2000 were exactly the same as dated 22.2.2000 extended upto wording of the similar clauses in 31.3.2000) was having no provision VRs 2000. It is in the same for benefits of pay revision. In VRS context that we are seeking 2003 and 2004 and VRS-2008, this payment of benefits arising from cause was included for the first time retrospective revision of pay that "The benefits payable under the scale w.e.f. 1.11.2002 and scheme shall be in full and final 1.11.2007. The arrears of RBI settlement of all claims whatsoever, revision 2002 as being sought for whether arising under the scheme or the period 1.11.2002 till otherwise to the employee. He will 31.3.2006 pertain to the period not have any claim against IFCI while the VRS optee 2008 were whatsoever and no demand or still in service and the argument dispute will be raised by him or on that "they ceased to be his behalf whether re-employment or employees from February, 2008 compensation or back wages. This is irrelevant. further clarified that in case of VRS 2008, the benefit of wage revision was given to VRS optees when they were on the roll of the IFCI and VRS was taken by them after receipt of pay revision arrears. Hence they were not paid any arrear or back wages after opting the VRS 2008 as they ceased to be employees of IFCI from February, 2008 and as per HR Circular No. 089/2006 dated 22.11.2006, the pay revision was effective form 01.04.2006 and not from 1.11.2002 and has been claimed. Hence, arrears were paid to VRS 2008 option optees w.e.f 01.04.2006.

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11. No doubt, the respondent/employer seems to have wrongly relied upon a difference of lack of full and final settlement clause in the earlier VRS Scheme of the years 2003 and 2004 as compared to the subject VRS Scheme of the year 2008 in which petitioners took VRS, and which difference was not there, however, that would not mean that the ratio of the judgment in the case of A.K. Bindal (supra) will not apply. Taking for the sake of arguments that respondent/employer in the past had wrongly granted higher pay scales and higher pension even to employees who took VRS, yet, if now the employer corrects the mistake and applies the correct position universally and uniformly to all employees who have taken VRS under the 2008 Scheme or a later scheme that a full and final settlement clause prohibits claim of service benefits after receiving VRS package, in such a situation, it cannot be argued on behalf of the petitioners that petitioners should get pension at revised scales because there is no question of arbitrariness and violation of Article 14 of the Constitution of India once the respondent/employer universally and uniformly applies the principle without discrimination of not granting higher pay scales which are subsequently granted to the existing employees who continue in employment after some of the employees earlier take voluntary retirement under the extant VRS Scheme.

12. In view of the above discussion, I do not find any merit in the petition, and the same is therefore dismissed, leaving the parties to bear their own costs.

FEBRUARY 20, 2017 VALMIKI J. MEHTA, J

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