

respondent has filed the present writ petition for directions to the respondent to revise his retiral benefits and pay him arrears in terms of order dated 11.07.2008. The petitioner has also prayed for directions to the respondent to issue identity card to him for which he is entitled after VRS.

4 In response to notice of this writ petition, the respondent has filed its counter affidavit and has opposed to the prayer for extending the benefits of office order dated 11.07.2008 to the petitioner on the ground that the said policy decision of the respondent contained in its order dated 11.07.2008 would not apply to those employees who had taken VRS prior to issuance of the said office order. The respondent has stated that it is a sick industrial company and is being presently revived under the revival scheme sanctioned and monitored by the Board for Industrial and Financial Reconstruction. The respondent company is stated to have accumulated losses of Rs.10,907.36 crores approximately and a negative net worth of Rs.7,618.60 crores as on 31.03.2009. As per the respondent, the sanctioned scheme for revival would be severely jeopardized if at this stage any additional liability in respect of those employees who had taken VRS prior to office order dated 11.07.2008 is foisted upon them. The respondent has prayed for the dismissal of this writ petition.

5 In rejoinder to the counter affidavit, the petitioner has reiterated his claim for monetary benefits in terms of office order dated 11.07.2008 at page 21 of the paper book.

6 I have heard the arguments of the learned counsel for both the parties and have also perused the entire record.

7 Mr. Sanjoy Ghose learned counsel appearing on behalf of the respondent has referred to and relied upon two judgments of the Hon'ble Supreme Court in ***A.K. Bindal & another Vs. Union of India and Others***

reported as AIR 2003 SC 2189 and **HEC Voluntary Retired Employees' Welfare Society and Another Vs. Heavy Engineering Corporation Ltd. & Others reported as AIR 2006 SC 1420**. On the strength of these two judgments, he has argued that since the policy of the respondent contained in its office order dated 11.07.2008 does not expressly grant the benefit of merger of Dearness Allowance in the basic pay to those employees who had taken VRS prior to the said office order, the petitioner having being taken VRS w.e.f. 30.04.2008 is not entitled to the benefits of the said office order.

8 Per contra, Ms. Harvinder Oberoi learned counsel appearing on behalf of the petitioner has argued that none of the above two judgments referred to and relied upon by the counsel for the respondent are applicable to the facts of the present case because according to her both these judgments deal with the revision of pay scale whereas in the present case, according to her, the petitioner is not asking any relief based upon revision of pay scale but he is asking benefits under the office order dated 11.07.2008 by which only Dearness Allowance has been merged along with basic pay w.e.f. 01.01.2007 in respect of those employees who were on the roll of the respondent as on 01.03.2008. Ms. Oberoi learned counsel appearing on behalf of the petitioner has submitted that since the petitioner was very much on the roll of the respondent on 01.03.2008, he is entitled to the benefits under the office order dated 11.07.2008 at page 21 of the paper book.

9 I have given my anxious consideration to the above rival arguments advanced by the counsel for the parties but I could not persuade myself to agree with the submissions made on behalf of the petitioner for reasons to follow hereinafter.

10 In A.K. Bindal's case (Supra), it was held by the Hon'ble Supreme

Court as under:-

“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 forgoing 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 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.”

11 In HEC Voluntary Retired Employees' Welfare Society's case (Supra), it was held by the Hon'ble Supreme Court as under:-

“Moreover, the expression "superannuation" connotes a distinct meaning. It ordinarily means, unless otherwise provided for in the statute, that not only he reaches the age of superannuation prescribed therefor, but also becomes entitled to the retiral benefits thereof including pension. "Voluntary retirement" could have fallen within the afore-mentioned expression, provided it was so stated expressly in the scheme. Financial considerations are, thus, a relevant factor both for floating a scheme of voluntary retirement as well as for revision of pay. Those employees who opted for voluntary retirement, make a planning for the future. At the time of giving option, they know where they stand. At that point of time they did not anticipate that they would get the benefit of revision in the scales of pay. They prepared themselves to contract out of the jural relationship by resorting to "golden handshake". They are bound by their own act. The parties are bound by the terms of contract of voluntary retirement. We have noticed hereinbefore

that unless a statute or statutory provision interdict, the relationship between the parties to act pursuant to or in furtherance of the voluntary retirement scheme, is governed by contract. By such contract, they can opt out for such other terms and conditions as may be agreed upon.”

12 In the present case, the respondent vide its office order dated 11.07.2008 has ordered for merging the Dearness Allowance to the extent of 50% with the basic pay for the purpose of grant of all other allowances in respect of those employees who were on its roll as on 01.03.2008. This office order was addressed by the respondent to its existing employees and not to those who have already superannuated from its service. The petitioner in the present case had taken a hefty amount of Rs.6,73,806/- as ex-gratia payment which otherwise was not admissible to him had he not taken the VRS. In view of the above two judgments of the Hon'ble Supreme Court, the petitioner is deemed to have settled all his claims in regard to his past service on receiving the terminal benefits at the time of his VRS. After receipt of the terminal benefits including ex-gratia payment by the petitioner at the time of his VRS, he ceased to be under the employment of the respondent company and there is no question of his agitating again for any kind of past rights against the respondent.

13 I do not find any merit in the argument of learned counsel appearing on behalf of the petitioner that the judgments in A.K. Bindal and HEC's case relied upon by the counsel for the respondent are not applicable to the facts of this case as they pertain to revision of pay. It may be noted that in both these judgments, the Supreme Court has categorically held that an employee who takes VRS and receives amount under the Voluntary Retirement Scheme is left with no past rights

including any claim for enhancement of his pay. The merger of Dearness Allowance in the basic pay vide office order dated 11.07.2008 was in fact enhancement of pay for the purpose of grant of all other allowances. The petitioner is therefore held not entitled to the benefit of office order dated 11.07.2008.

14 As far as the prayed made by the petitioner for issuance of his identity card is concerned, Mr. Sanjoy Ghose learned counsel appearing on behalf of the respondent says on instructions that his client shall issue the identity card meant for retired employees immediately on petitioner's completing the necessary formalities required for issuance of the identity card.

15 In view of the foregoing, I do not find any merit in the claim of the petitioner in so far as it relates to grant of benefits under the office order by the respondent dated 11.07.2008 is concerned and his writ petition to that extent is hereby dismissed. However, the respondent is directed to issue identity card to the petitioner on his completing the necessary formalities as per rules.

FEBRUARY 24, 2010
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S.N.AGGARWAL, J