

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) No. 3044/2002

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19th May, 2015

K.S.AHLUWALIA & ORS.

..... Petitioners

Through: Mr. L.R.Khatana and Mr. Siddhartha
Khatana, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. V.N.Kaura and Ms. Paramjeet
Benipal, Advocates.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition filed under Article 226 of the Constitution of India is filed by 19 petitioners. These 19 petitioners exercised the option of voluntary retirement in terms of the VRS Scheme of the employer/respondent no.3 dated 1.3.2001. Petitioners claim that in terms of para 6 of the VRS Scheme when payment of VRS benefit has to be calculated either for the first option of 60 days per year of service or the second option of 35 days per year of service, as per para 6.01(B) (Option i)

(Option ii), the number of days in a month for arriving at one day's amount should be taken as 26 days and not 30 days. This stand is because when a day's salary is calculated taking only 26 days in a month, obviously, a day's salary will be higher than if a total salary for the month is divided by 30 days. Petitioners therefore claim that a day's salary should be taken with a month having 26 days and not 30 days. There is an additional relief claimed as regards petitioner no.11 that while calculating VRS benefit for petitioner no.11, his past services with the erstwhile employer/PSU in which petitioner no.11 worked should be counted for calculating of VRS benefit in terms of the VRS Scheme.

2. On the issue as to whether there should be 26 days in a month or 30 days in a month, it is noted that the VRS Scheme does not state as to how a day's salary is calculated for giving 60 days emoluments or 35 days emoluments in terms of two options of para 6.01(B). Respondent no.3 has therefore taken the month as comprising of 30 days and for which the respondent no.3 has given the following explanation in its counter affidavit for taking 30 days, and which explanation in the opinion of this Court is a valid explanation:-

“(iv). The contents of sub-para(iv) of para 4 of the Petition are not denied so far as the concerns Scheme Voluntary Retirement of the Respondent No.3 Company. The rest of the allegations therein are in their entirety denied. It is submitted that since the Respondent Company is a profit making Company, it has framed its own Voluntary Retirement Scheme. The Respondent Company is not bound by nor concerned with the Gujarat Pattern or any other ‘VRS’. Under the Scheme of the Respondent No.3 Company it was open to the Petitioners to choose one or the other option as was more suitable to them. Under the first option 60 days salary was payable for each completed year of service. Ordinarily, an average year has 365 days and a leap year has 366 days giving an average of 365.25 days a year or an average of 30.44 days a month. However, with a view to have conformity in the calculation of month month’s salary, the Respondent No.3 has assumed the monthly salary as covering only 30(thirty) days instead of 30.44 days, and has uniformly calculated the amounts payable under the Scheme accordingly. The action of the Company to calculate one day’s salary has subsequently been confirmed by the DPE vide its letter dated 5.11.2001. Moreover, the Petitioner No.1 was in charge of calculating all amounts payable under the Scheme and he was fully aware of various policies.”

3. Surely, once the respondent no.3 is not acting arbitrarily and is uniformly and consistently applying the principle of a day’s salary by dividing the month’s salary by 30 days, this Court cannot step in to substitute its views for that of the employer that a month should consist of 26 days and not 30 days as has been done by the respondent no.3.

4. Counsel for the petitioners sought to place reliance upon the Office Memorandums (OM's) dated 5.5.2000 and 8.12.2000 issued by the Department of Public Enterprises to argue that the schemes which were to be made by the PSU/PSE such as the respondent no.3 had to be strictly in accordance with the OM dated 5.5.2000 and that a month should be 26 days becomes clear from the enclosure given with the OM dated 8.12.2000.

5. The argument of the petitioners by placing reliance upon the OM dated 5.5.2000 of framing of VRS schemes strictly in terms of this OM is misconceived because this OM only talks of each individual PSU/PSE making its scheme which would/can be variants of what is stated in the OM dated 5.5.2000 or it is only that the VRS schemes are to be modelled of the ingredients comprised in the OM dated 5.5.2000. I cannot read para 13 of the OM dated 5.5.2000 that each PSU/PSE must necessarily frame VRS schemes which have to be identical word by word as contained in the OM dated 5.5.2000. This is so because as per paras 2 and 3 of the OM dated 5.5.2000 what each PSU/PSE has to do is make a variant as per the guidelines in the OM dated 5.5.2000 or make a VRS scheme which is modelled on the scheme given in terms of the OM dated 5.5.2000. Therefore, respondent no.3 was fully justified in taking out its scheme and

which could be a variant or based on the model of the OM dated 5.5.2000, but such VRS scheme need not have been identical to what is stated in the OM dated 5.5.2000.

6. The argument with respect to a month comprising of 26 days is also to be rejected for the selfsame reason because the VRS scheme of each PSU/PSE has only to be modelled or to be a variant in terms of the ingredients of the OM dated 5.5.2000 and not identical to the ingredients of the OM dated 5.5.2000, and which aspect has to be taken with the fact that once uniformly and consistently, and in fact logically, a month is taken as 30 days, no illegality or arbitrariness is found in such decision of the employer in taking a month to be 30 days and not 26 days as is being argued on behalf of the petitioners.

7. The second argument urged on behalf of the petitioner no.11 of the past services of petitioner no.11 being counted for calculating VRS benefit, is an argument which if I strictly go as per the substantiation of pleadings, would have to be rejected, inasmuch as, petitioner no.11 has not filed in this Court any proof that the cash equivalent of earned leave and provident fund of the erstwhile employer/PSU of the petitioner no.11 was transferred by the petitioner no.11 to the present employer/respondent no.3 when the

petitioner no.11's services were commenced with respondent no.3. However, in the interest of justice, if petitioner no.11 within a period of one month from today gives proof and substantiation of fact that petitioner no.11 had transferred the cash equivalent of earned leave and provident fund as per his service with the erstwhile employer/PSU to the respondent no.3 on joining of respondent no.3, then in such a case so far as the petitioner no.11 is concerned, respondent no.3 will re-calculate the VRS benefit by adding the past services of the petitioner no.11 with the erstwhile employer/PSU.

8. The writ petition is accordingly dismissed so far as the claim of relief of month being 26 days is concerned, however, relief so far as petitioner no.11's past services to be counted for calculating the VRS benefit is concerned, the same is disposed of in terms of the directions given in para 7 hereinabove.

MAY 19, 2015
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VALMIKI J. MEHTA, J