

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2018

CORAM

THE HON'BLE MRS. V. BHAVANI SUBBAROYAN

W.P.No.10442 of 2008

1. M. Venkatesan (Deceased)
 2. M.Banumathi
- Substituted as LR's in the place of deceased
petitioner as per order dated 25.04.2014
in M.P.No.1 of 2012 of this W.P.

... Petitioner

Vs.

1. Union of India,
Represented by its Secretary,
Ministry of Commerce and Industry,
Department of Commerce,
Udyog Bhawan,
New Delhi.
2. The Additional Director,
Export Inspection Council,
(Ministry of Commerce),
3rd floor, NDYMCA Cultural Centre Building,
1 Joy Singh Road,
New Delhi - 110 001.
3. The Additional Director,
Export Inspection Agency (Chennai),
(Ministry of Commerce)
No.213, Royapettah High Road,
Chennai - 600 014.
4. The Department of Personnel and Training,
Represented by its Secretary,
Ministry of Personnel,
Public Grievances and Pension,
North Block, New Delhi - 110 001
[R4 impleaded as per order in
M.P.No.1 of 2009, dated 03.02.2010]

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent's letter in VRS/121/2006/5958, dated 01.12.2006 and to quash the same and consequently to direct the respondents to pay the 1st petitioner the retirement benefits payable to him upon his deemed voluntary retirement under Rule 48A of the CCS (Pension) Rules, 1972.

For Petitioners : Mr. Karthik Mukundan
For RR 1 to 3 : Mr.K. Gunasekar
Senior Panel Counsel for
Central Government [SPCCG]

O R D E R

The petitioner (since deceased) has filed this writ petition to issue a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent's letter in VRS/121/2006/5958, dated 01.12.2006, and to quash the same and consequently to direct the respondents to pay him the retirement benefits payable to him on his deemed voluntary retirement under Rule 48A of the CCS (Pension) Rules, 1972.

2.The case of the deceased petitioner is that he was working as Technical Officer in Export Inspection Agency (Bombay), Ministry of Commerce, Government of India. In 1978, he was promoted as Assistant Director in the pre-revised scale of pay of Rs.700 - Rs.1,300/-, based on the recommendation of the IV Pay Commission w.e.f. 01.01.1986 and for the post of Assistant Director, the revised scale of pay was fixed at Rs.2,200/- to 4,000/-. As per the Export (Quality Control and Inspection) Act, 1963, Government of India is empowered to prescribe systems for quality control and inspection of commodities being exported from India, so as to prevent export of sub-standard goods and to satisfy the needs of the foreign buyers in terms of quality requirements demanded by them. In order to enforce the quality control and to ensure proper pre-shipment inspection of various commodities being exported from India, the Export Inspection Agencies have been established by the Government of India in Mumbai, Calcutta, Delhi, Cochin, and Chennai and these agencies are the arms of the Export Inspection Council (EIC), which play a vital role through quality assurance programs in boosting the Countries Capital exports. The various rules and regulations applicable to the Central Government service employees from time to time are also applicable to the employees of the Export Inspection Council/Export Inspection Agency. As

per the Export Inspection Council (Pension) and General Provident Fund Rules, 1981, the Central Civil Services (Pension Rules) and General Provident Fund (Central Services) Rules as amended from time to time, are applicable to the employees of the EIC. The deceased first petitioner had completed 21 years and four months of service. In the year 1984, he was working as Assistant Director in Export Inspection Agency, Chennai, in the revised scale of pay of Rs.2,200/- to Rs.4,000/-. The then Additional Director holding the charge of Director [I & QC] Export Inspection Council, [Ministry of Commerce, Government of India], vide communication No.EIC/D(Q/C)/VRS/121/94/548, dated 21.05.1994 addressed to the Additional Director, Export Inspection Agencies informed that the Government of India had approved Voluntary Retirement Scheme (VRS) applicable to the employees of (EIC)/Export Inspection Agencies (EIA's) as a special one-time offer on the following terms:-

"(i) Half a month's gratuity per year of service subject to a ceiling of Rs.1,00,000/- as admissible under the gratuity Rules of EIC/EIA;

(ii) Ex-gratia payment equivalent to 1 1/2 months emoluments (Pay+DA) for each completed year of service or the monthly emoluments at the time of retirement multiplied by the balance months of service left before normal date of retirement, whichever is less;

(iii) One or 3 month's pay in lieu of notice, where admissible, in terms of the conditions of service/appointment of the employees;

(iv) Encashment of earned leave at the credit of employees as per Ministry of Commerce O.M.No.15/05/93 - MDA, dated January 3, 1994 up to a maximum of 240 days.

(v) Full matching CPF contribution from the Export Inspection Council/Agency side irrespective of whether such employees have completed 5 years of service. (Applicable to such employees if any who have not opted for the pension Scheme)

(vi) Full commutation of pension.

(vii) Travel expense for the employee's and family for proceeding to home town or to the place where he/she intends to settle in India as per his/her entitlement under the TA Rules of Council/Agency;

(viii) This offer will remain valid for a period of 60 days only from the date of issue of this letter, and

(ix) The EIC would, however, have the right to refuse, the request for voluntary retirement in case of any employee without assigning any reason".

2. The payment under the scheme is subject to employees agreeing to adjust or, clearing the advances against him/her such as House Building Advance, Conveyance Advance, LTC Advance, Festival Advance, TA Advance, etc., and any other outstanding dues. The employee has to either pay the amount of advance first or agree for its adjustment in full, against payments that will be made under EIC/EIAs voluntary retirement scheme.

3. The employees desirous of availing of this scheme may fill up the enclosed option form and submit to their respective Heads of Offices.

4. The option once exercised is final and cannot be withdrawn under any circumstances.

5. The options as and when received from employees should be sent immediately along with the recommendations of the Additional Director/Joint Director In-Charge of the respective EIAs to this office for further necessary action.

3. When the petitioner had raised many queries with regard to the Scheme and the benefits flowing from it, instead of clarifying the queries raised, he was informed by a letter dated 31.05.1994 that in the absence of any option for voluntary retirement from service and its acceptance by the Competent Authority, it may not be possible to take any action as desired by him. The petitioner was also further informed to accept the Voluntary Retirement Scheme and only thereafter, his queries would be answered. Expecting and Hoping that the Scheme introduced by the respondents would be beneficial one, he had submitted his formal application in the prescribed proforma opting for voluntary retirement service under the aforesaid Scheme on 08.07.1994. Immediately, the petitioner along with other optees/employees, were relieved from service. While calculating the retirement benefits payable to the under the above scale, the Competent Authority decided on 16.07.1994 to grant weightage of five years of service to those optees, who had put in 20 years of Government service for determining the quantum of commutation pension, gratuity, dearness allowance and other retirement benefits, which was denied to the petitioner. Hence, the petitioner has filed W.P.No.16155 of 1997 seeking for

a direction to the respondents for disbursement of the retirement benefits by taking into account the five years weightage for the purpose of calculating retirement benefits, which was pending at the time of filing of the writ petition.

4. In the meanwhile, the petitioner came to know that the said scheme, dated 21.05.1994 had not been approved by the competent authority and it was in violation of the relevant Rules. In spite of repeated representations, the respondents have not given any appropriate reply. Hence, the petitioner sought for information [Right to Information Act, 2005], as to the status of the Scheme. The Public Information Officer [by a letter dated 06.12.2005] furnished a copy of the letter dated 21.05.1994 issued by the Ministry of Commerce, conveying the approval of the Government for V.R.S. 1994. A perusal of this letter would show that though the Government was not obliged to formulate for approval in such scheme, the same has been done as a special gesture to the EIC/EIA, since as per the Allocation of Business Rules, 1961 r/w Article 77(3) of the Constitution of India, the Ministry of Commerce is not empowered to frame schemes, but it is the duty of the Department of Personnel and Training to frame and that the Department had finally stated that they had approved the V.R.S. of 1994 extended to the EIC/EIA. The Department by a letter dated 17.08.2005 stated that they had not issued any special voluntary retirement scheme to Central Government employees, besides the special voluntary retirement scheme introduced for surplus Central Government Employees on 28.02.2002.

5. It is also pointed out that the statutory body is created under the Export (Quality Control and Inspection) Act, 1963, and its functions, powers, duties and responsibilities are laid down by the said Act. As per Rule 17 framed under the said Act, the Central Government is empowered by Notification in the Official Gazette to make Rules to carry out the purposes of the Act. As regards the conditions of the service, more specifically, pension and retirement benefits for employees of the Council, the Central Government had issued the Export Inspection Council (Pension and General Provident Fund) Rules, 1981. These Rules clearly adopt the Central Civil Services Pension Rules, 1972. As per the CCS Pension Rules, the retirement benefits of a person going on voluntary retirement has to be determined with respect to Rules 48, 48A and 54 of the said Pension Rules. Therefore, the petitioner has been permitted to avail the provision of Rule 48A of the above said Rule, which is applicable and the employees should not be forced to go under V.R.S. 1994 issued by the Ministry of Commerce, which is illegal and beyond jurisdiction. The petitioner has sent several representations on 06.05.2006, 16.05.2006 and 23.11.2006 to all the respondents calling upon them to grant him normal Voluntary Retirement Pension as admissible under the CCS pension Rules,

1972. He has also undertook to refund all the amounts received under the illegal V.R.S. 1994 dated 21.05.1994 with interest, provided his request for grant of retirement benefits as admissible under Rule 48A of the CCS pension Rules is accepted. The respondents have not replied to any of the representations made by the petitioner, instead, they forwarded a reply dated 01.12.2006 issued by the second respondent/The Additional Director, Export Inspection Council, Ministry of Commerce. Challenging the same, the petitioner has filed present writ petition, by contending that the SVRS scheme was introduced by the Ministry of Commerce which is not competent to do so and hence, the petitioner is entitled for the payment of his retirement benefits under Rule 48A of the CCS (Pension) Rules, 1972.

6.The second respondent has passed the impugned order dated 01.12.2006, wherein it is stated that with reference to the letter dated 23.11.2006 addressed to the Commerce Secretary, Ministry of Commerce & Industry, GOI, Udyog Bhavan, New Delhi, regarding final appeal for settlement, which has been sent to them for further examination, the same has been examined and it is informed that the position in this regard has already been explained very clearly, vide their letters in the past and as regards, the petitioner's request for accepting normal VRS benefits permissible under CCS Pension Rules, 1972, as against the surrender of benefits availed under SVRS scheme with interest received by the petitioner, it is informed that the same has not been found possible to accept the scheme of the petitioner herein.

7.Counter affidavit has been filed by the third respondent contending that it is incorrect to state that the various rules and regulations of service applicable to the employees of the Central Government from time to time, are also applicable to the employees of the EIC/EIA. It is further stated that the EIA is a Statutory body and it has its own rules and the Central Government Rules etc., are applicable only to such extent the same are adopted and specifically made applicable and not otherwise. It is submitted that the Special Voluntary Retirement Scheme [hereinafter referred to as the SVRS Scheme] is self-contained and self-explanatory and the benefits under the various heads could be calculated depending on the facts and circumstances of the case of the individual employees after his/her option was received and accepted by the Competent Authority. It is submitted that the petitioner, vide his letter dated 30.05.1994 addressed to the then Additional Director, EIA-Madras, had raised only one query, i.e., as to what was the exact amount due to him after adjusting all advances and for the same, he was promptly informed on 31.05.1994 that he might have to calculate as per the terms of the circular of SVRS mentioned

by him. It is pertinent to point out that the petitioner did not raise any question about the validity of the Scheme (SVRS) offered to the employees of EIC/EIAs. The reply of the respondents to the petitioner was very simple and clear and it did not contain any inducement for the petitioner to prompt him to opt for the voluntary retirement under the SVRS, which was purely voluntary and optional. It was a special one-time offer and alternatively, the petitioner was free to apply for voluntary retirement under Rule 48A of the Central Civil Service (Pension) Rules, 1972. The petitioner being a Senior Officer, was fully aware of the implications of the SVRS and opted for voluntary retirement under the said Special Scheme, which was much more beneficial to him and bestowed more than double the benefit on him as compared to the normal voluntary retirement, and that is the reason why the petitioner did not opt for the voluntary retirement under the CCS (Pension) Rules, 1972. With regard to the averments contained in the paragraph 8 of the affidavit are concerned, it is stated in the counter affidavit that the weightage of 5 years was granted to the petitioner and an amount of Rs.56,556/- was paid to him, vide Cheque No.023210, dated 13.10.1997, W.P.No.16155 of 1997 and other writ petitions were disposed of by an order dated 16.09.2008 holding that "we are not inclined to interfere with the orders impugned in these writ petitions. But, in view of the submission made by the learned counsel on either side, the respondents were directed to consider the case of the petitioner for adding dearness relief alone while calculating the retirement benefits in accordance with the provisions of the Rules and pass appropriate orders. Since the respondents would submit that there was no ambiguity therein which clearly stated that the Special Voluntary Retirement Scheme for the employees of the Export Inspection Council/Export Inspection Agencies is a special one-time offer, & it was approved by the Government of India, Ministry of Commerce vide their letter No.3/8/91-EI&EP dated 21.05.1994.

8. Heard Mr. Karthik Mukundan, learned counsel appearing for the petitioner and Mr.K. Gunasekar, learned Senior Panel Counsel for Central Government [SPCCG], appearing for the respondents and perused the materials available on record.

9. It is seen that the SVRS scheme was offered only to the employees of CCS (Pension) scheme and it was only a voluntary pension scheme and the petitioner, being a Senior Officer, should have been fully aware of the implications of both SVRS scheme and normal voluntary retirement scheme, and having opted for Retirement under SVRS Scheme and received the entire benefits under the SVRS Scheme, after 14 years, he may not come and seek and that he may be permitted to avail SVRS scheme after 14 long years. In the absence of any option for Voluntary Retirement from the service and its acceptance by the Competent

Authority, it may not be possible to take any action as desired by him, dated 31.05.1994 as exclusive and unconditional and having opted for retirement under SVRS Scheme dated 21.05.1994, which is self explanatory, self-contained, it is binding on the petitioner given. It could be seen from the records that the said scheme of SVRS, dated 21.05.1994 was issued by the Ministry of Commerce and not by the Government of India and there was no ambiguity in it. It is categorically stated that it is impossible for the employees of the Export Inspection Council/Export Agency as a special management offer, which was agreed by the Government of Ministry of Commerce, vide their letter No.3/8/91-E1-Eb, dated 21.05.1984. The scheme was for the employees, who opt for for Voluntary Retirement Scheme and it was only floated for a specific period and the petitioner and other employees had opted for Voluntary Retirement Schemes and availed the benefits thereof. Even at the time of, availing the benefits there was an alternative option for the petitioner to opt for Voluntary Retirement Scheme under Rule 48A of CCS (Pension) Rules 1972, but the petitioner chose to opt for the SVRS and hence, he cannot resile from his earlier stand stating that he has misconstrued that he has been under the statutory body. The petitioner estopped from claiming so, that too, after 14 long years having accepted and re-listed the benefits.

10.From the above facts narrated, it is clear that the SVRS Scheme was not addressed as any "One-Time Offer" and after availing the benefits under the same, after 14 years, it is not open to the petitioner to state that he is ready to surrender the money disbursed under the SVRS scheme with interest and he should be included in the other scheme, which claim is not sustainable. This Court is not inclined to interfere with the impugned order passed by the Authorities.

11.Accordingly, the Writ Petition fails and the same stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

सत्यमेव जयते

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

msm

To

1. The Secretary,
Union of India,
Ministry of Commerce and Industry,
Department of Commerce,
Udyog Bhawan, New Delhi.
2. The Additional Director,
Export Inspection Council,
(Ministry of Commerce),
3rd floor, NDYMCA Cultural Centre Building,
1 Joy Singh Road,
New Delhi - 110 001.
3. The Additional Director,
Export Inspection Agency (Chennai),
(Ministry of Commerce)
No.213, Royapettah High Road,
Chennai - 600 014.
4. The Secretary,
Department of Personnel and Training,
Ministry of Personnel,
Public Grievances and Pension,
North Block, New Delhi - 110 001
[R4 impleaded as per order in
M.P.No.1 of 2009, dated 03.02.2010]

W.P.No.10442 of 2008

nr 21/03/2019

सत्यमेव जयते

WEB COPY