

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.27450 OF 2003

ORDER

This writ petition is filed for the following relief:

“...to issue a writ, order or direction more in the nature of Mandamus, declaring the action of the respondent in not paying the retirement benefits i.e., differential amount of VR Compensation, leave encashment etc. to the petitioners on application of the Revised Pay Scales issued in Office Order No.CORP/PERS/64/2001, dated 31-05-2001 including arrears of salary, as illegal, arbitrary, discriminatory and offending Articles 14, 16, 21 and 330-A of Constitution of India after declaring that the petitioners are entitled for the review or revision of the computation or quantification of VRS benefits in the light of the Office Order CORP/PERS/64/2001, dated 31-05-2001 including the arrears of pay and consequentially to direct the respondents to revise the computation of VR benefits of the petitioners and to pay the same including the arrears of salary with effect from 1.1.1997 till the date of their retirement under VRS and to pay the balance amount thus arrived at to be payable to each of the petitioners within a reasonable time with interest and to pass such other order or orders as this Hon'ble court may deem fit and proper in the circumstances of the case.”

Heard Smt Hemamalini, learned counsel appearing for the petitioner and Sri B.Siva Kumar, learned Standing Counsel appearing for respondents 1 and 2.

It is the case of the petitioners that in pursuance of the Voluntary Retirement Scheme announced by the respondent-

Company on 31.12.2000 and on 31-03-2001, they had opted the said Scheme and retired from service. Thereafter, the respondent-Company vide proceedings dated 31-05-2001 revised the pay scales with effect from 01.01.1997.

The grievance of the petitioners is that though they were in service as on 01.01.1997 and they are entitled to the revision of pay scales, the respondent-Company is not extending the said benefit to them.

Learned counsel appearing for the petitioners submits that similar issue fell for consideration before this Court in W.P.No.24197 of 2002. This Court *vide* order dated 11.11.2003 allowed the said writ petition and the relevant portion of the order reads as under:

“The language employed in Condition No.3 incorporated in the applications of the petitioners seeking voluntary retirement and the phraseology employed in Clause 8.3 of the office order dated 31.5.2001 has no ambiguity and admits of no alternative construction. Under Clause 8.3 of the office order dated 31.5.2001 all executives who were on rolls as on 1.6.1997 but have subsequently ceased to be in service, including on account of VRS, are eligible for the benefit of the revised scales pay for the period they were in the employment of the 1st respondent-company. That the petitioners were Executives of the 1st respondent-Company who were on rolls as on 1.1.1997 and have retired on VRS terms on 31.03.2001, is not in dispute. In view of the clear

and unequivocal language of Clause 8.3 of the office order dated 31.5.2001, the petitioners are thus eligible and entitled to the benefits of the revised scales of pay, upto 31.03.2001, the date upto which they were in the service of the 1st respondent-Company. In so far as the petitioner's entitlement to revise VRS compensation is concerned, the sequence of relevant events is that the petitioner's submitted as offer to opt for VRS benefits w.e.f 31.3.2001. The said offer contained a condition viz., as and when pay revision is implemented for serving officers, the benefits of such pay revision including differential amount of VRS compensation and payment of pay arrears along with the serving officers ought to be paid to each of them. This offer was accepted without demur or a contrary condition by the 1st respondent-Company. On this aspect too there is no dispute. Therefore, the acceptance by the 1st respondent of the offer of the employees including the petitioners to go on voluntary retirement must be construed as acceptance in terms of the offer. Consequently the petitioners are entitled to recalculation and payment of differential amounts of VRS compensation consequent on the implementation of the pay revision in the light of the office order dated 31.5.2001.

On the analysis above, the writ petition is allowed declaring that the petitioners are entitled to payment of arrears of salary and other allowances to which they are entitled in the light of the provisions of the office order dated 31.5.2001 upto the period they were in employment of the 1st respondent-Company i.e, 31.3.2001, notwithstanding that they ceased to be employees of the 1st respondent w.e.f 31.3.2001 on VRS terms.

It is further declared that the petitioners are entitled to the benefits of revision of VRS compensation and to payment of differential amount of such compensation after deduction of the amounts that they have already drawn consequent on leaving the service of the company on VRS terms; on the basis of revised pay scales and other benefits under the office order of the 1st respondent dated 31.1.2001.

The writ petition is allowed as above. No order as to costs.”

Learned counsel further submits that aggrieved by the said order, the respondent-Company had filed W.A.No.919 of 2004 before a Division Bench of this Court; that the Division Bench *vide* order dated 05.11.2009 dismissed the same; that challenging the same, the respondent-Company carried the matter to the Supreme Court by filing S.L.P.No.9146 of 2010 and the same was also dismissed on 29-03-2016. He also submits that this writ petition is also liable to be allowed in terms of the order dated 11.11.2003 passed by this Court in W.P.No.24197 of 2002. Learned counsel further submits that similar issue fell for consideration in W.P.No.8314 of 2004 and the same was allowed on 28.12.2016 and the respondent-Company had preferred W.A.No.813 of 2017 and the same was dismissed on 1.8.2017. Hence, this writ petition is liable to be allowed and the petitioners are entitled to the benefits of revision of VRS compensation.

Learned Standing Counsel appearing for the respondent-Company contends that the petitioners were released from the services of the company during the period from 31.12.2000 to 31.03.2001 and their terminal dues including VRS exgratia were also paid. He further contends that arrears from 1.1.1997 to 31.03.2001 would be paid only after the respondent-Company is able to generate sufficient resources and that all the statutory dues would be cleared first. He contends that the respondent-Company is a sick unit and it was referred to BIFR in the year 2002 and that the respondent-Company is not in a position to extend the revised benefits to the petitioners. Learned counsel further contends that the petitioners are not entitled to the relief as prayed for in view of the judgment of the Apex Court in *A.K.Bindal and Anr vs. Union of India (UOI) and Ors*¹; that once the employees have accepted the Voluntary Retirement Scheme, they cannot turn around and seek additional benefits; and that the respondent-Company had already filed a review petition before the Apex Court to review its earlier order.

Learned counsel appearing for the petitioners submits that the said review petition was also dismissed by the Apex Court on 20-07-2016.

¹ (2003) 5 SCC 163

Having considered the rival submissions made by the learned counsel on either side, this Court is of the considered view that as this Court had already adjudicated the same issue and the same was confirmed by the Apex Court, this Court has no other option except to dispose of the writ petition in terms of the order dated 28.12.2006 passed by this Court in W.P.No.8314 of 2004.

Accordingly, the Writ Petition is allowed. The petitioners are entitled for payment of arrears of salary and other allowances to which they are entitled to in the light of the provisions of the Office Order dated 31.5.2001 and the respondent-Company is directed to extend the said benefit to the petitioners within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

19th September, 2018
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