IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.11.2019

DELIVERED ON : 06.11.2019

CORAM :

THE HON'BLE MR.JUSTICE M.DURAISWAMY

W.P.NO.9071 OF 2005

M.C.Vijayaraghavan ... Petitioner

v.

1. The Director (Personnel),
Bharat Heavy Electricals Limited,
Corporate Office, Asiad Office,
Siri Fort, New Delhi - 110049.

2. The General Manager,
Bharat Heavy Electricals Limited,
Boiler Auxiliaries Plant,
Ranipet, Vellore Dsitrict - 632 406. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, calling for the records of the respondents culminating in the issuance of letter No. BAP:HR:ET:VR:24, dated 18.01.2005 of the 2nd respondent and quash the same and further issue directions to the respondents to reckon the completed years of service for the purpose of computation of lump sum payment in the case of the petitioner by taking into account the initial period of service in BHEL on deputation and make the lump sum payment under VRS 2003 to the petitioner for unreckoned period of 6 months together with interest of 12% per annum.

For Petitioner : Mr.Sugumar R.Rajulu

For Respondents : Mr.Johan Zachariah
for M/s.Fox Mandal & Associates.

ORDER

The petitioner has filed the above Writ Petition to issue a Writ of Certiorarified Mandamus to call for the records of the respondents culminating in the issuance of letter dated 18.01.2005 of the 2nd respondent, to quash the same and further issue directions to the respondents to reckon the completed years of service for the purpose of computation of lump sum payment in the case of the petitioner by taking into account the initial period of service in BHEL on deputation and make the lump sum payment under VRS 2003 to the petitioner for unreckoned period of 6 months together with interest of 12% per annum.

2.1 It is the case of the petitioner that he joined the services of the Defence Accounts as Auditor in August 1968. In February 1975, he was promoted as Section Officer and continued to function in the said capacity upto April 1979. Then, on deputation, he joined the services of Bharat Heavy Electricals Limited (hereinafter referred to as "BHEL") at Trichy as Senior Accountant Grade-II. In April 1982, he was absorbed in BHEL. During his tenure in BHEL, he was promoted as Senior Accountant Grade-I in 1983, Accounts Officer in 1990, Senior Accounts Officer in 1993, Deputy Manager in 1997 and Manager in 2002.

2.2 The respondents-company introduced BHEL Voluntary Retirement Scheme 2003 on 06.05.2003 and the petitioner opted for voluntary retirement as per clause 7(1) of the Scheme in addition to other terminal benefits such as G.P.F., Gratuity, Leave Enacashment, etc., the employee seeking voluntary retirement will be entitled to a lump sum one time payment equivalent to 60 days salary for each completed year of service on the monthly salary at the time of voluntary retirement multiplied by the remaining number of months of service till the normal date of superannuation whichever is less, subject to maximum of 60 months salary. The request of the petitioner was accepted and he was allowed to retire voluntarily in October 2003. While calculating the completed years of service, the 2nd respondent has calculated the services of the petitioner from the date of absorption, i.e. April 1982 and thus, while reckoning the period of service completed, only 42 months were allowed. The petitioner claims that he is entitled to 48 months salary.

2.3 The petitioner contended that one R.Ranganathan, who was his batch mate in Defence Accounts Service, who also on deputation joined the services of BHEL in 1980 and subsequently absorbed in BHEL services opted to voluntarily retire under VRS 1999 and while computing the completed years of service for the purpose of working out lump sum payment, the respondent took the date of joining in BHEL on deputation as the starting point.

2.4 Further, the petitioner contended that REMCO and MPL were merged with BHEL and after merger, the employees of REMCO and MPL were absorbed into BHEL services. When such former employees of REMCO and MPL opted for voluntary retirement, in their case, the BHEL while computing the years of service for payment of lump sum amount, took into account the service rendered in erstwhile REMCO and MPL.

2.5 The petitioner's representation to the authorities to consider his grievance was rejected by the respondents. Aggrieved over the same, the petitioner has filed the Writ Petition.

3. Since the deputation period of the petitioner ended on 15.04.1982, he was absorbed in BHEL only from 16.04.1982 and his services in BHEL has to be taken into account for the purpose of calculation of amount payable under VRS 2003 only from the said date. Further, the VRS 2003 clearly provided that it would apply to all regular employees conforming with the eligibility criteria, except Government servants and other employed on deputation terms.

4. The Voluntary Retirement Scheme 2003 also provides that in case of a Government servant, who has opted for absorption in BHEL, the period of service will count from the date of absorption. Further, under VRS 2003, the benefits were to be calculated in respect of the completed years of service, which in the case of the petitioner was to be reckoned from the date of absorption in BHEL.

5. With regard to the voluntary retirement benefits given to one R.Ranganathan, claiming to be the petitioner's batch mate is concerned, the respondents in their counter have stated that the case of R.Ranganathan cannot be equated with that of the petitioner and it appears from the records that his retirement benefits were not correctly calculated as per the then prevalent policy. The petitioner having voluntarily opted for VRS Scheme 2003 based on the conditions stipulated therein, he cannot now seek for exemption from the condition specified in the scheme.

6. The respondents submitted that in respect of all the employees, who have opted for Voluntary Retirement Scheme under VRS 2003, the same procedure scheme was followed i.e. the date of absorption in BHEL was reckoned as the starting date. Therefore, the date of absorption of the petitioner in the respondents-company shall be reckoned as the starting date and the period of deputation in BHEL cannot be considered for calculating the VRS 2003 benefits.

7. Further, in the BHEL Voluntary Retirement Scheme while

answering the queries received from some of the Union, the BHEL replied to a query whether the services rendered by an employee in the Government /any other organisation prior to joining BHEL can be taken into account for reckoning the period of service, the BHEL replied that the services rendered prior to joining BHEL shall not be reckoned.

8. When the VRS 2003 scheme imposed some conditions for opting for voluntary retirement, the said condition cannot be given a go by. When the respondents have specifically stated that the retirement benefits of R.Ranganathan was not correctly calculated, the said case cannot be taken as a precedent for accepting the case of the petitioner. Further, the respondents have stated that the said Ranganathan had opted for Voluntary Retirement Scheme as per the rules and regulations culminated for the Voluntary Retirement Scheme for year 1999. Therefore his case, cannot be compared with the petitioner's case, which was under VRS 2003.

9. In these circumstances, the impugned order passed by the 2nd respondent dated 18.01.2005 is proper. I do not find any reason to interfere with the order passed by the 2nd respondent. The Writ Petition is devoid of merits and the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Rj

+1cc to M/s.Fox Mandal & Associates, Advocate, S.R.No.92129
+1cc to Mr.Sugumar R.Rajulu, Advocate, S.R.No.91898

W.P.No.9071 of 2005

BR(CO)
CS/11/12/2019