

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 05.11.2019
CORAM :
THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN
W.A.No.3690 of 2019

Kovai Mavatta Mill Thozhilalar Sangam (CITU),
Registration No.78,
Represented by its President,
381, Annupar Palayam,
Coimbatore 641 009.

... Appellant

Vs

1.Union of India,
Rep. by its Secretary,
Ministry of Textiles,
Udhyog Bhavan, New Delhi.

2.National Textiles Corporation Limited,
Rep. by its Chairman & Managing Director,
Core 4, Scope Complex,
7, Lodi Road, New Delhi - 3.

3.National Textiles Corporation (TN & P) Limited,
Rep. by its Chairman & Managing Director,
35-B, Somasundaram Mill Road,
Coimbatore - 641 009.

4.Somasundaram Mills,
Rep. by its General Manager,
35, Somasundaram Mill Road,
Coimbatore - 641 009.

5.Coimbatore Dist. Mill Worker's Union (AITUC),
Registration No.84,
Represented by its Secretary,
99, R.K.Street, Kattor,
Coimbatore - 9.

... Respondents

PRAYER : Writ Appeal filed under clause 15 of the Letters patent
against the order passed in W.P.No.18184 of 2002 dated
28.11.2018 on the file of this Court.

WP.No.18184 of 2002:Writ Petition under art 226 of the Constitution of India to issue a Writ of Declaration, declaring that clause 03.01.2006 of the modified voluntary Retirement Scheme (MVRS) introduced with effect from 01.01.2002 extended to the 4th respondent mills in so far as it reckons a month as 30 days for the purpose of calculating ex-gratis as illegal, arbitrary, contrary to section-9-A of the Industrial Disputes Act 1947, and consequently direct the respondents to settle the ex-gratis amount payable to the members of the petitioner union who are working in the 4th respondent mill and who are opting for voluntary Retirement under the modified voluntary Retirement Scheme (MVRS) by reckoning a month as 26 days wages as given in the earlier VRS Scheme.

For Appellant :Mr.K.M.Ramesh

For Respondents :Mr.R.Parthiban (for R2 to R4)

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The Appeal has been preferred against the order passed in W.P.No.18184 of 2002 dated 28.11.2018 on the file of this Court.

2.At the time of filing of Writ Petition some of the appellant's members were employees of Balaramavearma Textiles Mills, Sengottai and Somasundram Textile Mills, Coimbatore which have been declared as "sick textile undertaking" in terms of Section 2(j) of the Sick Textile Undertakings (Nationalisation) Act, 1974. The said companies have been shown as item Nos.13 and 93 of the first schedule of the Act. The National Textile Corporation which administered the aforesaid Mills under the Act had introduced a Modified Voluntary Retirement Scheme (MVRS) for the employees of those mills. The members of the Union opted for MVRS and all the benefits have been settled and thereafter, they have approached this Court contending that the number of days reckoned in a month is 30 days for the purpose of calculating ex-gratia payment instead of 26 days as per the practice followed in the industry and also as per MVRS. Therefore, the Writ Petitioner seeks to reckon 26 days for the purpose of calculating ex-gratia payment. The said Writ Petition has been dismissed holding that having chosen the benefits under the MVRS, the appellant cannot wriggle out of the same and seek more benefits under a different scheme, against which only the present Appeal has been filed.

3.Heard the parties.

4.Mr.K.M.Ramesh, learned counsel appearing on behalf of the appellant would submit that it is admitted that the appellant has sought for benefits under MVRS by which the number of days reckoned in a month is 30 days for the purpose of calculating ex-gratia payment. Now the contention is that the number of days reckoned in a month should be 26 days. If 26 days is taken into consideration, the appellant will get more benefits and therefore, they are seeking such benefits.

5.However, the learned single Judge relied upon the judgment of the Hon'ble Supreme Court in National Insurance Special Voluntary Retired/Retired Employees Association Vs. United India Insurance Co. Ltd., in Civil Appeal No.10775 of 2018 wherein it has been held that the statutory or contractual, voluntary retirement schemes such as SVRS-2004 Scheme have to be strictly adhered to and the very objective of having such schemes would be defeated, if parts of other schemes are sought to be imported into such voluntary retirement schemes. The said judgment is squarely applicable to the facts of this case. The appellant's members have already opted for MVRS and now they want to import reckoning of 26 days a month instead of 30 days. Therefore the contention made by the learned counsel appearing on behalf of the appellant cannot be accepted.

6.Another contention has been made stating that similarly placed companies viz., Kaleeswarar Mills and other Mills administered by National Textile Corporation introduced VRS and the number of days in a month has been reckoned as 26 days for ex-gratia payment. The employer has to frame the basis for calculating the ex-gratia payment amount taking into consideration the financial capacity of the concerned mill and there cannot be any uniformity in prescribing the same criteria for all such mills and therefore, there is no discrimination, the learned single Judge has rightly held.

7.Having opted or chosen to get benefits under a scheme, the appellant cannot wriggle out of the same and try to get benefits from some other scheme. Once the option has been exercised they cannot wriggle out of the same.

8. Accordingly, the Appeal fails and the same is dismissed.
No costs. Consequently, connected Miscellaneous Petition is
also closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/
Sub Asst. Registrar

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To

1.The Secretary
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2.The Chairman & Managing Director,
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