IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 16.10.2019

1. CWP-15530-2012 (O&M)

JAGJIT SINGH AND ORS. .... PETITIONERS
VS.
STATE OF PUNJAB AND ORS .... RESPONDENTS

2. CWP-15951-2012 (O&M)

HARJINDER SINGH AND ORS ..... PETITIONERS
VS.
STATE OF PUNJAB AND ORS ..... RESPONDENTS

3. CWP-17360-2012 (O&M)

GURMEET SINGH & ORS ..... PETITIONERS
VS.
STATE OF PUNJAB AND ORS ..... RESPONDENTS

4. CWP-24901-2012 (O&M)

SUKHWINDER SINGH & ORS ..... PETITIONERS.
VS.
STATE OF PUNJAB AND ORS. ..... RESPONDENTS

5. CWP-555-2013 (O&M)

BALJINDER SINGH AND ORS ..... PETITIONERS
VS.
STATE OF PUNJAB AND & OTHERS ..... RESPONDENTS

6. CWP-10803-2013 (O&M)

MOHINDER SINGH OTHI AND ORS ..... PETITIONERS
VS.
STATE OF PUNJAB AND ORS ...... RESPONDENTS

7. CWP-13871-2013 (O&M)

JASPREET SINGH AND ORS .... PETITIONERS
VS.
STATE OF PUNJAB AND ORS .... RESPONDENTS

8. CWP-14002-2013 (O&M)

GURJANT SINGH AND ORS .... PETITIONERS
VS.
STATE OF PUNJAB AND ORS .... RESPONDENTS

9. CWP-21089-2013 (O&M)

INDERJIT SINGH & ORS .... PETITIONERS
VS.
STATE OF PUNJAB AND ORS .... RESPONDENTS

10. CWP-26762-2013 (O&M)

BAKHSHISH SINGH & ORS .... PETITIONERS
VS.
STATE OF PUNJAB AND ORS .... RESPONDENTS

11. CWP-10799-2013 (O&M)

SUKHBIR SINGH MANN AND ORS .... PETITIONERS
VS.
STATE OF PUNJAB AND ORS .... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. K.S.Boparai, Advocate
for the petitioners in CWP-15530-2012, CWP-15951-2012, CWP-24901-2012, CWP-10803-2013, CWP-10799-2013 and CWP-555-2013.

Mr. H.S.Saggu, Advocate
for the petitioners in CWP-17360-2012, CWP-13871-2013 and CWP-14002-2013.

Mr. K.R.Dhawan, Advocate
for the petitioners in CWP-26762-2013.

Mr. R.S.Joon, Advocate for
Mr. H.S.Batth, Advocate
for the petitioners in CWP-21089-2013.

Ms. Anu Chatrath, Sr. Advocate with
Ms. Ambika Bedi, AAG, Punjab.

Mr. Vikas Singh, Advocate
for respondent No.3 in
CWP-17360-2012 and CWP-24901-2012 and
for respondents No. 3 and 4 in CWP-10803-2013,
CWP-21089-2013, CWP-13871-2013 and CWP-10799-2013.

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ARUN MONGA, J.

In this bunch of 11 petitions, the erstwhile employees (petitioners) of the Patiala Cooperative Sugar Mills Limited have *inter alia* sought quashing of Voluntary Retirement Scheme (VRS for short), whereby, they were paid compensation while dispensing with their services. A further direction has also been sought directing the respondents to take the petitioners back in service or adjust them in any other cooperative or any Government department. In case the petitioners do not succeed in aforesaid prayer, an alternate relief has been sought to the effect that 50% dearness allowance be added in the last drawn pay, while computing the compensation payable to them, as per definition of 'salary' defined in the VRS itself.

2. Having heard the rival contentions of the respective learned counsels and on perusal of the pleadings alongwith the relevant record filed therewith, I am of the view that as far as the prayer seeking quashing of VRS is concerned, the same cannot be accepted for the reasons stated in the succeeding paragraphs.

3. Primary argument to assail the VRS is that those who did not opt for the VRS were in the end better of as they were later on adjusted either in some other cooperative or in the Government department, as against the claim of the petitioners, who were induced into accepting the VRS on the premise that in case they do not opt for the same, they would have to face the prospects of retrenchment, in accordance with law. I do not find any force in the said argument as, other-than the bald assertion that those who did not opt for the VRS have been given better treatment, there is nothing on record to establish the same.

4. In the premise, there has been no hostile discrimination or arbitrariness or otherwise any violation of Article 14 of Constitution of

India as contended on behalf of the petitioners. All the employees were given equal treatment inasmuch as the option to accept the VRS or to face the consequences of its non-acceptance.

5. A perusal of the VRS reflects that it was not mandatory in character. Petitioners could have therefore easily opted not to avail the benefits under the scheme. Having once willingly accepted the VRS and, thereafter, availing the monetary benefits arising therefrom, it is too late in the day now to turn around and challenge the same on the ground of same being arbitrary or unreasonable or otherwise being in contravention of Article 14, *ibid.*

6. Even otherwise, after the petitioners willingly exercised their options to avail the financial benefits as per the VRS, they are estopped in law from challenging the validity of the VRS. Resultantly, prayer to seek quashing of VRS is rejected and a consequence thereof, no *mandamus* can be issued directing the respondents to take the petitioners back in service or adjust them in any other department/cooperative.

7. Furthermore, there is a specific condition in the VRS that once an employee opts for the same, he shall not be eligible for re-employment and/or adjustment in any government job or in any cooperative sugarmill or any subsidiary. The relevant Clause 10 (ix) of the VRS is reproduced here-in-below:-

> *"An employee who seeks voluntary retirement under this scheme shall not be eligible for preferential employment/re-employment/adjustment in any Government job, in any CSM or any of its subsidiaries. An employee who seeks voluntary retirement shall not have any right for seeking any quota/reservation in any Government job in any CSM or any of its subsidiaries."*

8. A Perusal of the above leaves no manner of doubt that having once voluntarily opted the VRS, the petitioners are bound by the conditions of the same and their prayer for adjustment in any other cooperative sugar mills or government department is not tenable in law. Particularly, in view of their having voluntarily opted for VRS.

9. As regards the alternative relief sought by the petitioners, it would be apposite to reproduce the relevant Clause 3 (v) of VRS as below:-

> "***3. DEFINITION***
>
> *XXXXX*
>
> *(v) "Salary" means Basic Pay plus appropriate %age of VDA (Variable Dearness Allowance) and it shall be calculated on the basis of the last salary drawn."*

10. The issue whether salary includes emoluments or dearness allowance is no more res-integra, as the same has been conclusively settled by catena of judgments. For ready reference, the relevant extract from one of the recent Apex Court judgment i.e. ***Regional Provident Fund Commissioner (II) West Bengal vs. Vivekananda Vidyamandir and others,*** reported as ***2019 (2) S.C.T. 178*** is reproduced hereinbelow:-

> "10. Any variable earning which may vary from individual to individual according to their efficiency and diligence will stand excluded from the term "basic wages" was considered in ***Muir Mills Co. Ltd., Kanpur Vs. Its Workmen, AIR 1960 SC 985*** observing:
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> > "11. Thus understood "basic wage" never includes the additional emoluments which some workmen may earn, on the basis of a system of bonuses related to the production. The quantum of earning in such bonuses varies from individual to individual according to their efficiency and diligence; it will vary sometimes from season to season with the variations of working conditions in the factory or other place where the work is done; it will vary also with variations in the rate of supplies of raw material or in the assistance obtainable from machinery. This very element of

variation, excludes this part of workmen's emoluments from the connotation of "basic wages"…"

11. In Manipal Academy of Higher Education vs. Provident Fund Commissioner, (2008) 5 SCC 428, relying upon Bridge Roof's case it was observed:

> "10. The basic principles as laid down in Bridge Roof's case (supra) on a combined reading of Sections 2(b) and 6 are as follows:
>
> (a) Where the wage is universally, necessarily and ordinarily paid to all across the board such emoluments are basic wages.
>
> (b) Where the payment is available to be specially paid to those who avail of the opportunity is not basic wages. By way of example it was held that overtime allowance, though it is generally in force in all concerns is not earned by all employees of a concern. It is also earned in accordance with the terms of the contract of employment but because it may not be earned by all employees of a concern, it is excluded from basic wages.
>
> (c) Conversely, any payment by way of a special incentive or work is not basic wages."

12. The term basic wage has not been defined under the Act. Adverting to the dictionary meaning of the same in ***Kichha Sugar Company Limited through General Manager vs. Tarai Chini Mill Majdoor Union, Uttarakhand, (2014) 4 SCC 37***, it was observed as follows:

> "9. According to http://www.merriam webster.com (Merriam Webster Dictionary) the word 'basic wage' means as follows:
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> 1. A wage or salary based on the cost of living and used as a standard for calculating rates of pay
>
> 2. A rate of pay for a standard work period exclusive of such additional payments as bonuses and overtime.
>
> 10. When an expression is not defined, one can take into account the definition given to such expression in a statute as also the dictionary meaning. In our opinion, those wages which are universally, necessarily and ordinarily paid to all the employees across the board are basic wage. Where the payment is available to those who avail the opportunity more than others, the amount paid for that cannot be included in the basic wage. As for example, the overtime allowance, though it is generally enforced across the board but not earned by all employees equally. Overtime wages or for that matter, leave encashment may be available to each workman but it may vary from one workman to other. The extra bonus depends upon the extra hour of work done by the workman whereas leave encashment shall depend upon the number of days of leave available to workman. Both are variable. In view of what we have observed above, we are of the opinion that the amount received as leave encashment

> and overtime wages is not fit to be included for calculating 15% of the Hill Development Allowance."

11. It is thus settled position in law that word 'salary' also includes all the emoluments and dearness allowance, as notified from time to time. In any case, the definition of salary, as contained in the VRS itself is very unambiguous, inasmuch as, it states that salary shall mean basic pay plus appropriate percentage of variable dearness allowance. It further envisages that the salary shall be calculated on the basis of the last salary drawn by an employee. It is borne out from the record (Annexure P-9) that at the relevant time, when the petitioners opted for VRS, 50% dearness allowance was already being given on the basic pay drawn by an employee.

12. Resultantly, I have no doubt in my mind that the petitioners are/were entitled to be given 50% dearness allowance on the last basic pay drawn by them in terms of the definition of salary as contained in the VRS. To that extent, the claim of the petitioners merits acceptance. In this context reference may be had to a judgment dated 06.04.2011 rendered by this Court in CWP-16035-2010, titled as ***BS Baidwan & Ors VS. Punjab State Federation of Cooperative Sugar Mills Ltd. & Ors*** wherein his Lordship Surya Kant, J. (as he then was) speaking for this Court opined as below:-

> "*I say so for the reasons that the State of Punjab has pervasive control over the day-to-day affairs of the Punjab State Federation of Cooperative Sugar Mills which is an Apex Body of the Cooperative Sugar Mills, who are directly or indirectly funded by the State Government. The Voluntary Retirement Scheme was also launched/notified by the State of Punjab and not by the Federation. The violation of the terms and conditions of the VRS scheme notified by the State*

> *Government, therefore, will not be a simplicter case of breach of contract restricting the claim to damages only. Such a contract essentially being a part of public policy can be enforced by a writ court."*

13. Applying the ratio of judgment in BS Baidwan's case, *ibid,* a writ of *mandamus* is issued directing the respondents to add 50% of the dearness allowance in the last drawn basic pay of those employees who opted for VRS and grant them the benefit of the definition of term salary as contained in the definition Clause of the VRS. It is made clear that the financial liability as a consequence thereof shall be joint and several qua all respondents.

14. Let the calculation be carried out within a period of 02 months and the financial benefits thereof shall be disbursed to the petitioners alongwith interest @ 6% per annum with effect from the date of entitlement till the actual date of disbursement.

15. Disposed of in above terms.

16. Miscellaneous application, if any, also stands disposed of.

17. Photocopy of this order be placed on the file of other connected cases.

16.10.2019 **(ARUN MONGA)**
smriti **JUDGE**

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No