

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.A. Nos.375, 400, 401, 402, 403, 404, 405, 406, 407, 408,
409, 410, 411, 412, 413, 414, 415, 416, 417, 418 and 419 of 2018**

AFR

The Chairman and Managing Director, ITDC, New Delhi and another ***Appellants***

-versus-

Sri Rabindranath Sahoo and others (In W.A. No.375 of 2018) ***Respondents***

Sri Kubera Patra and others (W.A. No.400 of 2018)

Mrs. Deepali Mohanty and others (W.A. No.401 of 2018)

Sri Tapan Rout and others (W.A. No.402 of 2018)

Sri Suka Biranchinarayan Behera and others (W.A. No.403 of 2018)

Sri Gobinda Chandra Mallick and others (W.A. No.404 of 2018)

Sri Seril Minz and others (W.A. No.405 of 2018)

Sri Trilochan Sethi and others (W.A. No.406 of 2018)

Sri Prasanna Kumar Sarangi and others (W.A. No.407 of 2018)

Mrs. Sanjukta Mohanty and others (W.A. No.408 of 2018)

Sri Ananta Pradhan and others
(W.A. No.409 of 2018)

Saikh Atikur Rehman and others
(W.A. No.410 of 2018)

Sri Pravat Kumar Mishra and others
(W.A. No.411 of 2018)

Sri Dillip Kumar Biswal and others
(W.A. No.412 of 2018)

Sri Bibhuranjan Mishra and others
(W.A. No.413 of 2018)

Sri Balaram Das and others
(W.A. No.414 of 2018)

Sri E. Jayakrushna Patra and others
(W.A. No.415 of 2018)

Sri Bijay Kumar Sahu and others
(W.A. No.416 of 2018)

Mrs. Sipra Pattnaik and others
(W.A. No.417 of 2018)

Sri Jagadish Prasad Mohanty and others
(W.A. No.418 of 2018)

Sri Premnath Shukla and others
(W.A. No.419 of 2018)

Advocates appeared in the cases:

<i>For Appellants</i>	:	Mr. Narendra Kishore Mishra, Senior Advocate along with Mr. N.K. Mishra, Advocate
<i>For Respondents</i>	:	Mrs. Kananbala Roy Choudhury, Advocate

**CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN**

JUDGMENT
06.12.2022

Dr. S. Muralidhar, CJ.

1. These writ appeals by the Indian Tourism Development Corporation (ITDC) are directed against the common judgment dated 11th April, 2018 passed by the learned Single Judge in the corresponding writ petitions filed by the employees of Hotel Nilachal Ashok (HNA), Puri run by the Utkal Ashok Hotel Corporation Limited (UTAHCL), a joint venture of ITDC in the State of Odisha, questioning the action of the Appellants in not paying the amounts under the Voluntary Retirement Scheme (VRS) in accordance with the guidelines of the Department of Public Enterprises (DPE). By the impugned judgment the learned Single Judge has, while accepting the plea of the former employees of HNA, directed that each of the Respondent No.1 employees was entitled to a further 50% ex-gratia and further that the daily salary for the purpose of calculating the VRS dues should be on the basis of 26 days a month.

Background facts

2. The background facts are that UTAHCL was constituted as a joint venture of ITDC in the State of Odisha in 1986. HNA was established at Puri to be run by UTAHCL. On 25th August 1987, a clarification was issued by the ITDC to the Manager of HNA stating *inter alia* that the employees of HNA “may be reimbursed

cost of medical examination only at the rates fixed by the State Government from time to time.” Further as regards the reimbursement of the medical expenditure of ITDC’s Officers on deputation with HNA, the note stated that the matter was under consideration as it involved a policy decision, which would be applicable to all joint venture projects. The note further added as under:

“The Hotel Nilachal Ashok, Puri, is a Joint Venture Project of ITDC and State Tourism Development Corporation and we have adopted the State Governments pay pattern. As such for the present State Governments Medical Rules in regard to reimbursement of medical expenditure may be followed in respect of ITDC Officers on deputation only.”

3. The Respondent No.1 in each of the writ appeals was employed by HNA on various dates in 1990 and subsequently. It appears that in 1997 and 2000, two writ petitions were filed on behalf of the workers of HNA praying that they should be extended the ITDC scale of pay. OJC No.14284 of 1997 was filed by the United ITDC Employees Union and OJC No.4144 of 2000 was filed by Sri Sanjay Singh and others. The above prayer in the writ petitions was on account of the fact that employees of HNA had not received any pay revision and their existing pay pattern remained static for well over a decade. On the other hand, the stand of the present Appellants was that the prayer for the ITDC pay scale was unsustainable as HNA was totally unconnected with the ITDC pay pattern. Both the writ petitions were dismissed by this Court as withdrawn on 29th October, 2015.

4. HNA was a loss-making entity, and its operations ceased sometime in January, 2004. W.P. (C) 3908 of 2004 was filed by the employees' Union of HNA for disbursal of salaries. This was followed by another W.P. (C) No. 2174 of 2011 for revival of the operations of HNA. While both petitions were pending on 22nd January 2011, a notice was published by HNA, which read as under:

“All the employees of Hotel Nilachal Ashok, Puri are hereby notified to offer their written willingness/unwillingness to join under the new management of M/s. Paulmech Infrastructure Pvt. Ltd. as per the leased agreement on or before 31st January, 2011 before the undersigned.

In the event of non-response to this notice it will be deemed that the employee has no objection to join the new management.”

Another notice was published in the local newspaper to the same effect on 25th March, 2011.

5. In response to the above notice, each of the Respondent No.1 employees is stated to have submitted individual letters conveying unwillingness to join the new Management and stating “so I will take VRS as applicable to me.” The case of the ITDC has been that each of the Respondent No.1 employees, on their accepting the VRS, was paid the dues by applying the latest DPE Guidelines dated 26th October, 2004 which were in supersession of the earlier DPE Guidelines dated 5th May, 2000 and 6th November, 2001 respectively.

6. It appears that one set of 29 employees of HNA took the VRS in the first instance in June, 2011 and the remaining in April, 2015. It appears that by letters dated 8th June 2011, 12th August 2011, 11th September 2012 and 14th May, 2013 the employees of HNA wrote to the ITDC protesting that the VRS dues should have calculated with an increase of 100% of the basic salary. Claims were also made for leave encashment and Group Savings Linked Insurance (GSLI). Reference was made to certain Office Memorandums (OM) of the DPEs to the effect that those whose scales of pay had not been revised since 1st January, 1992 would be entitled to 100% increase on their existing pay scales.

7. Meanwhile, on 17th August 2015, both writ petitions i.e. W.P. (C) 3908 of 2004 and W.P. (C) No. 2174 of 2011 filed on behalf of the employees of HNA were disposed of by this Court in light of the above developments.

Pleadings in the writ petitions

8. It is in the above background that the writ petitions from which the present writ appeals arise, were filed in 2016 Court where the common prayer was for a direction to the ITDC to release the balance VRS amount applying the DPE Guidelines.

9. In response to the petitions, replies were filed by the ITDC stating that they had strictly followed the applicable DPE Guidelines as modified on 26th October, 2004. The relevant portion of the modified VRS guidelines of the DPE referred to by

the Appellants in its counter affidavit before the learned Single Judge reads as under:

“Payment of ex-gratia amount under Voluntary Retirement Scheme in respect of employees in CPSE’s following Central Dearness Allowance (CDA) pattern of pay scales at 1.1.1986 level computed on their existing pay scales in accordance with the extant scheme of VRS shall be increased by 50%.”

10. It has been the case of the ITDC that UTAHCL was a Central Public Sector Enterprise (CPSE). In support of this contention, reliance was placed even before the learned Single Judge on a reply to a Starred Question Number 237 before the Lok Sabha on 15th December, 2015 wherein the name of UTAHCL was at serial No.53 in the list of CPSEs shown to be making losses continuously for three consecutive years i.e. 2011-12 to 2013-14.

11. The further case of ITDC is that the DPE became a full-fledged Department in May, 1990 being a part of the Ministry of Heavy Industries and Public Enterprises. The DPE is stated to be the nodal department for all CPSEs. The DPE formulates guidelines and policies relating to CPSEs. The DPE guidelines are stated to be in the nature of recommendations for adoption by Boards of Management of the CPSEs. Chapter VIII of the DPE Guidelines pertains to the VRS.

12. The case of the ITDC further was that each of Respondent No.1 employees was on the Central Dearness Allowance (CDA) pay scale, which was on par with the pre-existing State

Government and Central Government pay scales. It was further pointed out that the pay scales of HNA employees remained at the 1st January, 1986 level. In other words, although there was periodic revision of pay scales for Central/State Government employees with effect from 1st January 1996, 1st January 2006 and 1st January 2016, the pay scales of employees of HNA continued at the revised pay scale of the 4th Central Pay Commission (CPC) as of 1st January, 1986. In support of this plea, samples of the Pay Fitment Orders issued in respect of Respondent No.1 employees of HNA dated 7th February, 1997 were enclosed with an additional affidavit filed by the present Appellants before the learned Single Judge on 2nd August, 2017.

13. According to ITDC, applying the DPE Guidelines pertaining to VRS, which were invoked at the relevant point of time, each of the Respondent No.1 employees was paid the dues which included payment of 50% ex-gratia amount following CDA pattern of pay scales at 1st January, 1986 level. A further affidavit was filed by the ITDC before the learned Single Judge on 8th January, 2018 explaining that in terms of the DPE Guidelines concerning VRS calculation, the daily salary was computed on the basis of 30 days in a month and not 26 days, which was under the pre-revised DPE Guidelines. It was further explained that the VRS compensation was arrived at by calculating 35 days for completed years of service and 25 days for the remaining years till the usual superannuation date.

14. Two additional affidavits were filed by ITDC before the learned Single Judge. One was filed on 2nd August, 2017 and the other on 8th January, 2018. On their part, Respondent No.1 employees filed their objection to the said affidavits by referring to the OM dated 25th August, 1987 in which it had been stated that the State Government pay pattern had been adopted for them. In other words, before the learned Single Judge the Respondent No.1 employees, who had in the writ petitions contended that VRS had not been paid in accordance with the DPE Guidelines, took a different stand that they were not employees of a CPSE. It was specifically urged now that it is the “State Government pay pattern” that had to apply.

Impugned judgment of the Single Judge

15. In the impugned judgment, learned Single Judge formulated the main point for consideration as: “whether the ex-gratia payment and other benefits under the Scheme have already been paid to the petitioners?” The learned Single Judge in the impugned judgment set out the relevant portions of the VRS issued on 5th May, 2000 and an OM dated 8th December, 2000 followed by the revisions on 6th November 2001, 28th February, 2002 and 26th October, 2004. The learned Single Judge noted as under:

“xxx. It appears from the further modification in the revised VRS vide Annexure-B that payment of ex-gratia amount under VRS in respect of employees in CPSEs following Central Dearness Allowance pattern of pay scales at 1.1.1986 level were computed by increasing 50%. So, the question of 100% or 50% as per wage revision in 1992 or

1997 now merged only kind of payment basing on the pay scales as on 1.1.1986 does not arise. It is reiterated that all the petitioners were only granted VRS in 2011.”

16. The learned Single Judge after perusing the counter affidavit filed by the present Appellants observed that they had not placed any document to show that the Respondent No.1 employees had been paid CPSE salary. The learned Single Judge then referred to the aforementioned OM dated 25th August, 1987 and concluded that the Respondent No.1 employees “were being treated with the scale of pay of State Government employees.” It was accordingly concluded that they could not be said to be receiving CDA pay scales. Applying the 2001 Guidelines, it was held that Respondent No.1 employees were entitled to “VRS calculation on the basis of 26 days a month.” As a result, learned Single Judge came to the conclusion that each of the Respondent No.1 Employees was entitled to a further 50% ex- gratia and that the VRS dues should be calculated on the basis of 26 days a month. The learned Single Judge distinguished the decisions in *ITI Limited v. ITI EX/VR Employees/Officers Welfare Association (2011) 1 SCC (L & S) 215* and *Raijibhai Bhikhabhai Parmar v. Reliance Industries Limited 2016 (5) SCALE 116*.

17. In the present appeals while directing notice to issue on 23rd July 2018, the operation of the judgment of the learned Single Judge was stayed.

Submissions of counsel

18. This Court has heard the submission of Mr. Narendra Kishore Mishra, learned Senior Counsel for the Appellants and Mrs. Kananbala Roy Choudhury, learned counsel for Respondent No.1 employees in all the appeals. Written notes of submissions have also been filed.

19. It is submitted by Mr. Mishra that the learned Single Judge misconstrued the purport of the memorandum dated 25th August, 1987. According to him the said memorandum had been issued for the purposes of clarification in respect of employees recruited by the joint venture as also the ITDC officers who were in the deputation with the HNA at the relevant time. For all other purposes, employees of HNA had throughout been treated as employees of CPSE and were receiving CDA pay scales.

20. Mr. Mishra submitted that earlier the Respondent No.1 employees approached this Court with writ petitions on the basis that the DPE Guidelines applied to them. When ITDC pointed out in its counter affidavit that in terms of the latest DPE Guidelines of 26th October 2004, they would be entitled to only 50% ex-gratia and calculation of daily salary on the basis of 30 days in a month and not 26 days, the Respondent No.1 employees changed their stand and maintained that they were to be paid State Government pay scales. He submitted that the learned Single Judge erred in holding that each of the employees was entitled to further 50% ex-gratia which was inadmissible in terms of the

applicable DPE Guidelines. He reiterated the decision in *ITI Limited (supra)* to the effect that once a VRS had been accepted and payment had been made, it cannot be reopened.

21. Mrs. Kananbala Roy Choudhury, on the other hand, pointed out that in replies filed to OJC No.14284 of 1997, which had been filed for seeking implementation of the ITDC pay scale, the stand taken by the present Appellants was that HNA was totally unconnected with the ITDC pay pattern. Therefore, they cannot be allowed to change their stand. Further, there was no OM stating that the State Government pay pattern had been withdrawn from the employees of HNA. There was no amendment made to the OM dated 25th August, 1987. A false affidavit had been filed before the learned Single Judge that the entire VRS dues of the employees had been paid when in fact they were entitled to 50% more ex-gratia amount. Further, there was no proof placed by the ITDC that the employees had been paid salary during the notice period. According to Mrs. Roy Choudhury, the later DPE Guideline of 2004 did not supersede the earlier guidelines.

Analysis and reasons

22. The above submissions have been considered. The facts which are not in dispute are that UTAHCL was a joint venture of the ITDC in the State of Odisha and till the takeover of the Management by a private enterprise in 2011, it was running HNA.

23. The stand of the ITDC before the learned Single Judge throughout was that UTAHCL has only been regarded as a CPSE. A close examination of the OM dated 25th August, 1987 reveals that it is an internal communication from the Senior Vice President (MS) to the Manager of HNA and limited to the issue of “reimbursement of medical expenditure.” The question was at what rate should the reimbursement of medical examination happen? In this, it was stated that “we have adopted the State Governments pay pattern” and this was in the context to the next line, where it was stated that “as such for the present State Governments medical Rules in regard to reimbursement of medical expenditure may be followed in respect of the ITDC Officers on deputation only.”

24. The mere statement that there had been an adoption of the “State Governments pay pattern” by no means indicates that HNA was a State enterprise to the employees of which the State Government pay scale would apply. On the contrary, there was nothing placed before the learned Single Judge to indicate that any of the Respondent No.1 employees ever received State Government pay scales. In fact, there was no material placed before the learned Single Judge by the Respondent No.1 employees to dispute the factual position that the pay scales of the Respondent No.1 employees continued to be at the 1st January, 1986 level and never underwent any revision corresponding to the CPC revisions of 1st January 1996, 1st January 2006 or 1st January, 2016.

25. It appears to this Court that the plea that the Respondent No.1 employees had to be considered as having received State Government pay scales was a stand taken only after the affidavits of the present Appellants before the learned Single Judge made it explicit that the VRS dues had been calculated applying the latest DPE Guidelines as on the date of the VRS. The prayers in the writ petitions were about the applicability of the DPE Guidelines. If HNA was not a CPSE, the question of applying the DPE Guidelines even earlier to the one issued on 26th October, 2004 would not arise.

26. In fact, before this Court it was sought to be argued that the earlier DPE Guidelines of 5th May 2000, 8th December 2000, 6th November, 2001 and 28th February, 2002 were somehow still applicable and since they provided for 100% ex-gratia, each of the Respondent No.1 employees would be entitled to 100% ex-gratia.

27. Once it is clear that it is the CDA pay scales which were extended to Respondent No.1 employees and that they were governed by the DPE Guidelines as regards VRS calculation, then the question to be asked is what are the relevant DPE Guidelines applicable to Respondent No.1 employees who have agreed for VRS?

28. As noticed by the learned Single Judge, the earlier DPE Guidelines of 2000 and 2001 stood revised on 26th October, 2004. One change was that the ex-gratia was to be at 50% in respect of

employees following CDA pattern of pay scale at 1st January, 1986 level. The other change, as explained by the Appellants both before the learned Single Judge and before this Court, is that the daily salary for the purposes of VRS had to be calculated at 30 days a month.

29. The learned Single Judge appears to have erred in going by the Guidelines of 2001 whereas in terms of the clarification issued in 2002, calculation of the VRS had to be at 30 days a month.

30. The sum total of the above discussions is that the learned Single Judge erred in concluding that Respondent No.1 employees were drawing State Government pay scales and that 2004 Guidelines would not apply. The settled position is that once a VRS scheme has been adopted, accepted and payments made, the Court will usually not interfere. In this context reference may be made to a few decisions. In ***Bank of India v. O P Swarnakar (2003) 2 SCC 721***, the Supreme Court held:

“Those who accepted the ex gratia payment or any other benefit under the scheme, in our considered opinion, could not have resiled therefrom.

The Scheme is contractual in nature. The contractual right derived by the concerned employees, therefore, could be waived. The employees concerned having accepted a part of the benefit could not be permitted to approbate and reprobate nor can they be permitted to resile from their earlier stand.”

31. In *HEC Voluntary Retd. Emps.Welfare Assn. v. Heavy Engineering Corporation (2006) 3 SCC 708*, it was explained by the Supreme Court as under:

“We have noticed that admittedly thousands of employees had opted for voluntary retirement during the period in question. They indisputably form a distinct and different class. Having given our anxious consideration thereto, we are of the opinion that neither they are discharged employees nor are superannuated employees. The expression "superannuation" connotes a distinct meaning. It ordinarily means, unless otherwise provided for in the statute, that not only he reaches the age of superannuation prescribed therefor, but also becomes entitled to the retiral benefits thereof including pension. "Voluntary retirement" could have fallen within the afore-mentioned expression, provided it was so stated expressly in the scheme.

Financial considerations are, thus, a relevant factor both for floating a scheme of voluntary retirement as well as for revision of pay. Those employees who opted for voluntary retirement, make a planning for the future. At the time of giving option, they know where they stand. At that point of time they did not anticipate that they would get the benefit of revision in the scales of pay. They prepared themselves to contract out of the jural relationship by resorting to "golden handshake". They are bound by their own act. The parties are bound by the terms of contract of voluntary retirement. We have noticed hereinbefore that unless a statute or statutory provision interdict, the relationship between the parties to act pursuant to or in furtherance of the voluntary retirement scheme, is governed by contract. By such contract, they can opt out for such other terms and conditions as may be agreed upon. In this case the terms and conditions of the contract are not governed by a statute or statutory rules.”

32. These principles were reiterated in ***ITI Limited*** (*supra*). The learned Single Judge was, therefore, in error in distinguishing the above judgment. The Court is satisfied that the impugned judgment of the learned Single Judge is unsustainable in law and is hereby set aside.

33. The appeals are accordingly allowed, but in the circumstances, with no order as to costs.



M. Panda