IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.11.2023

Delivered on : 20.12.2023

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR
And
THE HON'BLE MR. JUSTICE P.DHANABAL

W.P.No. 27374 of 2019
and WMP.No.26828 of 2019

Thirunavukkarasu
Technical Supervisor (Retired)
BCG Vaccine Laboratory, Guindy,
Chennai-600032. ..Petitioner

Vs

1.Secretary,
Ministry of Health and Family Welfare,
Nirman Bhavan
New Delhi -11.

2.The Director General of Health Services
Ministry of Health and Family Welfare,
Nirman Bhavan,
New Delhi-11.

3.Director
BCG Vaccine Laboratory,
Guindy,
Chennai-600032. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records pertaining to the order dated 27.11.2018 passed by the Central Administrative Tribunal, Chennai Bench in O.A.No. 1579 of 2014 and quash the same and consequently direct the respondents 1 to 3 to make ex-gratia payment to the petitioner with interest at the rate of 12% per annum w.e.f. 02.08.2007and till date.

For Petitioner : M/s.S.Meenakshi
For Respondents : Dr.G.Babu, Senior Panel Counsel

O R D E R

D.KRISHNAKUMAR, J.

Challenging the dismissal order passed by the Central Administrative Tribunal, Chennai Bench in O.A.No. 1579 of 2014 dated 27.11.2018, the present writ petition has been filed.

2. The learned counsel for the petitioner has submitted that the petitioner joined service of the 3rd respondent office on

25.04.1969 as a Laboratory Attendant. While he was serving as Technical Supervisor 02.08.2007 he opted for voluntary retirement under the Special Voluntary Retirement Scheme. In the meanwhile the 1st respondent found various posts including the post of Technical Supervisor in the Department as Surplus and decided to abolish the said posts and for that purpose, the respondent introduced a Special Voluntary Retirement Scheme.

3. The learned counsel for the petitioner has further submitted that the petitioner opted for Voluntary retirement under the Scheme. His offer was accepted by the respondents and after declaring that his post was surplus and abolishing his post the 2nd respondent relieved him from service under the Special Voluntary Retirement Scheme. The petitioner was granted with all the benefits under the said Scheme except the benefit of ex-gratia payment. The petitioner has made a representation to the respondent to grant ex-gratia payment under the Special Voluntary Retirement Scheme. The representation was rejected by the respondents. Challenging the said rejection order, the petitioner has filed an application before the

Tribunal. The said application was rejected by the tribunal, hence the present writ petition.

4. On the other hand, the learned counsel for the respondent has submitted that the Ministry of Health & Family Welfare, New Delhi has conducted Work Measurement Study in the 3rd respondent office and recommended abolition of 38 posts. The 38 posts recommended for abolition includes two posts of Technical Supervisor. Subsequently, after due consideration by the Ministry of Health & Family Welfare the competent authority approved abolition of 11 posts with immediate effect that were lying vacant at the time of issue of the order and the remaining 27 posts were treated as abolished from the date of vacation of the post held by the then incumbents in the 3rd respondent's office vide order No. A.11011/7/98-EPI (BCG)/CC&V dated 25.06.2007.

5. The learned counsel for the respondent has further submitted that the post of Technical Supervisor held by the petitioner was recommended for abolition by the work study team,

but the petitioner was not declared surplus. Since the petitioner was not declared surplus, there is no question of opting for availing the benefit under Special Voluntary Retirement Scheme. Therefore, the retirement of the petitioner can be treated only as voluntary retirement from service under regular course and not under Special Voluntary Retirement Scheme. The tribunal has considered the above points in detail and held that the voluntary retirement of the petitioner has to be construed only as an application of retirement under FR 56(k) and not under the surplus scheme, therefore the petitioner is not entitled to claim benefits under Special Voluntary Retirement Scheme and accordingly dismissed the application filed by the petitioner. Therefore, the order of the tribunal is valid and does not require any interference by this Court.

6. Heard both sides and perused the documents available on record.

7. In view of the submissions made by the learned counsels appearing for the parties concerned and to resolve the issue put forth before this Court, the following points needs to be answered

by this Court:

i. Whether the post held by the petitioner was declared as surplus and his voluntary retirement comes under Special Voluntary Retirement Scheme?

ii. Whether the petitioner is entitled for ex-gratia amount under the Special Voluntary Scheme.

8. Point 1 - Special Voluntary Retirement Scheme

8.1 The contention of the respondent is that 38 posts recommended for abolition included two posts of Technical Supervisor. Subsequently, as per the orders of the Ministry of Health & Family Welfare, 11 posts which were lying vacant at the time of issue of the order were abolished and the remaining 27 posts were treated as abolished from the date of vacation of the post held by the incumbents. The petitioner never declared surplus and was allowed to work till his vacation of the post of Technical Supervisor. Hence the retirement of the petitioner should be considered only as regular retirement from service and not under Special Voluntary Retirement Scheme.

8.2 We have perused the records place before this Court. Admittedly by order no. O.M.No. 25013/61/2001/Estt(A), dated 28.02.2002 the Government of India introduced a Special Voluntary Retirement Scheme for surplus Central Government Employees and the petitioner exercised his option by his request dated 06.06.2003 to be declared a surplus in preference to their juniors as called for by the department. Subsequently, based on the petitioner's request, the 3rd respondent by order dated 10.07.2007, accepted the petitioner's request for voluntary retirement under Special Voluntary Retirement Scheme w.e.f. 02.08.2007 F.N. It is also mentioned in the said order that the petitioner is entitled for the ex-gratia amount as applicable under the Scheme. The said order dated 10.07.2007 of the 3rd respondent is extracted below;

> *Consequent upon the abolition of the post of Technical Supervisor vide Ministry of Health & Family Welfare, New Delhi order No.A-11011/7/98-EPI(BCG)/CC & V, dated 25.06.2007 on the recommendation of the IWSU at BCG Vaccine Laboratory, Chennai and with reference to the option dated 09.07.2007 of Shri M.Thirunavukkarasu,*

Technical Supervisor, to go on special voluntary retirement ***as per GOI, DOPT O.M No. 25013/6/2001-Estt (A), dated 28.2.2002, this office is pleased to accept the option of Shri Thirunavukkarasu for voluntary retirement under Special Voluntary Retirement Scheme. Shri Thirunavukkarasu shall stand relived from service w.e.f. 2.8.2007 F.N.***

Shri Thirunavukkarasu is entitled for the ex-gratia amount as applicable under DOPTP OM dated 28.2.2002 referred to above, over and above the normal retirement entitlements under CCS (Pension) Rules, 1972.

The surplus post of Technical Supervisor held by Shri Thirunavukkarasu shall stand abolished w.e.f 2.8.2007 FN, vide Ministry's Order dated 25.6.2007 referred to above."

8.3 The above order passed by the 3rd respondent clearly proves that the petitioner was relived from service under special voluntary retirement scheme. Even in the rejection order dated 22.07.2024 passed by the 3rd respondent seeking for ex-gratia amount under Special Voluntary Retirement Scheme, the 3rd respondent has rejected the claim based on the calculation on the ground that the amount payable for the left out service of 31 months is exceeding the ex-gratia amount. Therefore it cannot be said that the voluntary retirement of the petitioner is under FR 56(K). In view of the clear acceptance by the department, we are satisfied that the petitioner's retirement was under Special Voluntary Retirement Scheme.

9. Point No. 2 – Entitlement of ex-gratia amount:

9.1 Before validating the order passed by the tribunal with respect to rejecting the claim of ex-gratia amount, it would be relevant to extract the guidelines framed by the department in O.M. No. 25013/06/2001-Estt(A), dated 28.02.2002 to grant ex-gratia amount:

> *(a) All permanent employees rendered surplus irrespective of their age and qualifying service can opt for the scheme.*
>
> *(b) An optee of Special VRS will be entitled to receive an ex-gratia amount equal to basic pay plus Dearness Allowance for the number of days worked out on the basis of length of service @ 35 days for each completed*

year and 25 days for each remaining year. For any part of a year, the number of days, for ex-gratia amount, will be worked out on the basis of 365 days in a year. The ex-gratia amount will be further subject to the following conditions :-

(1) Total number of years to be counted for payment of ex-gratia will not exceed 33 years;

(II) No weightage of additional service will be given for the purpose of calculation of ex-gratia;

(III) The ex gratia will be subject to a minimum of Rs. 25,000 or 250 days' emoluments, whichever is higher;

(IV) The ex gratia amount should not exceed the sum of the basic pay plus DA that the employee would draw at the prevailing level for the balance of the period of service left before superannuation;

(V) The ex gratia amount will be paid in lumpsum;

(VI) The ex gratia amount up to Rs. 5.00 lakhs will be exempted from Income Tax;

9.2 Admittedly, in the present case the petitioner had joined service on 25.04.1969 and retired from service under special voluntary retirement scheme on 02.08.2007 F.N.. The petitioner has served 38 years in the respondent-department. The tribunal, in the impugned order, while dismissing the application, has stated the reason that the petitioner has put in more than 33 years of years, therefore he is not eligible for ex-gratia payment under Special Voluntary Retirement Scheme. The above provisions/guidelines mentioned at no .I clearly states that *"total number of years to be counted for payment of ex-gratia will not exceed 33 years"*. It is only for the calculation purpose, they have restricted the total number of years to 33 years and it does not mean that those who have rendered more than 33 years of service are not entitled for ex-gratia. Therefore, we are of the view that the tribunal cannot reject the claim on the ground that the petitioner had rendered more than 33 years and the said ground taken by the tribunal for rejecting the claim of ex-gratia amount is liable to be set aside.

9.3 Insofar as the calculation for ex-gratia amount is concerned, as per provisions stipulated under b(III) & (*IV) of the above circular, the ex gratia will be subject to a minimum of Rs. 25,000 or 250 days' emoluments, whichever is higher; and The ex gratia amount should not exceed the sum of the basic pay plus DA that the employee would draw at the prevailing level for the* *balance of the period of service left before superannuation.* The petitioner's pay (basic pay + DA) drawn at the time of his voluntary retirement is at Rs. 20852/- and the left out service before the superannuation is 31 months. The said amount and the remaining period of service was not disputed by the petitioner. As per the above provisions for calculation, the minimum ex-gratia amount admissible for the petitioner is **Rs.1,73,767/-** (20852/30 x 250), whereas the amount for the remaining left out service of 31 months comes to is **Rs. 6,46,412/-** (20852 x 31). As per Sl.No. 1 of the scheme, ex-gratia has to be calculated on the basis of service at 35 days for each completed years and 25 days for remaining years which should not exceed 33 years. In this case, the petitioner completed 38 years of service, thereby maximum 33 years of service has to be taken into account for calculating the ex-gratia. Therefore, 35 days per year x 33 years = 1155 days. As per the above provisions, the ex-gratia payable to the petitioner comes to **Rs. 8,02,802/-** (20852 x 1155 /30). As per the Department Scheme Circular (b) condition (IV), the ex-gratia amount should not exceed the sum of the basic pay + Dearness Allowance which the employee would draw at the prevailing level for the balance of the period of service left before superannuation.

10. In view of the above calculation, it is proved that the maximum eligible ex-gratia amount has exceeded the amount calculated for the balance period of service left before superannuation of the petitioner. Hence the petitioner is only entitled to Rs.6,46,412/- which is amount taken for the remaining left out service before the superannuation. Therefore, the reason stated by the 3rd respondent that the amount payable for the left out service of 31 months is exceeding the maximum ex-gratia amount cannot be accepted and the same is against the provisions stipulated under b(II) to b(IV) of the circular dated 27.11.2018. The impugned order reveals that it was calculated in para 2(1) as maximum amount admissible under Special Voluntary Scheme, instead of minimum amount. Hence, the impugned order dated 27.11.2018 passed by the tribunal in O.A.No.1579 of 2014 confirming the said rejection order passed by the 3rd respondent is liable to be set aside.

11. In view of the above discussion, we hold that the petitioner's voluntary retirement was made under Special Voluntary Retirement Scheme and the petitioner is entitled for ex-gratia amount of Rs.6,46,412/-. In so far as interest for the said amount is concerned, the petitioner is entitled to interest at the rate of 9 % per annum for the ex-gration amount as per relevant rules in force. Accordingly, the 3rd respondent is directed to disburse the said amount of Rs.6,46,412/- along with aforesaid interest, within a period of eight (8) weeks from the date of receipt of a copy of this order.

12. In fine, the impugned order passed by the tribunal in O.A.No.1579 of 2014, dated 27.11.2018 is set aside. The writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

[D.K.K., J.,] **[P.D.B., J.]**

20.12.2023

Index:yes/no
Internet:yes
Speaking order/Non speaking order
ak

To

1.The Secretary,
Ministry of Health and Family Welfare,
Nirman Bhavan, New Delhi -11.

2.The Director General of Health Services
Ministry of Health and Family Welfare,
Nirman Bhavan, New Delhi-11.

D.KRISHNAKUMAR, J.,

&

P.DHANABAL, J.

ak

Pre-Delivery Order in
W.P.No.27374 of 2019
and
WMP.No. 26828 of 2019

20.12.2023