

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1248 of 2018

In

Civil Writ Jurisdiction Case No.2303 of 2015

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Ashok Kumar, son of Late Baldeo Singh, Resident of Mohalla- Mahabir
Asthan, Moldiar Tola Mokama, Distt. Patna, Bihar

... .. Appellant/s

Versus

1. National Textile Corporation Limited, Scope Complex, Core-IV, Lodhi Road, New Delhi 110003 through the chairman cum Managing Director
2. The Chairman cum Managing Director, National, National Textile Corporation Limited, Scope Complex, Core-IV, Lodhi Road, New Delhi 110003
3. The Director (H&R), National Textile Corporation Limited, Scope Complex, Core-IV, Lodhi Road, New Delhi 110003
4. The Managing Director cum in-charge, National Textile Corporation Limited, 7 Jawaharlal Nehru Marg Kolkata- 7000 13
5. The Deputy General Manager National Textile Corporation Limited, Sab Office Kolkata- 7, Jawaharlal Nehru Marg, Kolkata, 700013
6. The Senior Manager (F&A) Legal/IA, National Textile Corporation Limited Sub-officer, Kolkata, 7 Jawaharlal Nehru Road, Kolkata- 700013.

... .. Respondent/s

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Letters Patent of the Patna High Court-Clause 10 Constitution of India---
Article 14-Service Law---Pay Fixation--challenge to decision of the writ court
whereby Appellant's claim for pay-scale revision was rejected on the ground
that the appellant had not opted for Voluntary Retirement Scheme under the

circular dated 30.04.2010---plea that the Voluntary Retirement Scheme was never implemented in case of employees who opted for it and, consequently, merely because the appellant had not opted for the Voluntary Retirement Scheme, the same could not be made the basis to deny the benefits.

Held: appellant, by his own conduct, did not place himself in the category of employees who were extended the benefit of notional pay-scale revision, therefore, this cannot be a ground to complain of any act of positive hostile discrimination in order to avail the benefits-it is the clear case of the respondents that no official who had not opted for the Scheme has been granted any such benefits---no error in judgment of writ court-appeal consigned with observation that if appellant establishes his claim that any official who did not opt for the scheme was extended the benefit then the Corporation would be liable to consider the same in accordance with the treatment meted out to any such employee. (Para 3, 11, 12)

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... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Suresh Prasad Singh No. 1, Advocate
Mr. Kumari Rashmi, Advocate

For the Respondent/s : Dr. Mayanand Jha, Advocate
Mr. Giridhar Gopal Tiwary, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE**and****HONOURABLE JUSTICE SMT. ANJANA MISHRA****ORAL JUDGMENT****(Per: HONOURABLE THE CHIEF JUSTICE)****Date : 15-04-2019**

Heard Shri Suresh Prasad Singh No. 1, learned
counsel for the appellant and Shri Mayanand Jha, for the
respondent National Textile Corporation.

2. The challenge raised in this petition is to the
judgment of the learned Single Judge dated 30th July, 2018 in



C.W.J.C. No. 2303 of 2015, whereby the order passed rejecting the representation of the petitioner on 24th October, 2014 has been upheld. The appellant had claimed parity of pay-revision as per the 6th Central Pay Revision Commission Report, as was granted to 35 other employees on the ground that merely because the appellant had not opted for the Voluntary Retirement Scheme, he could not have been denied the said benefit when others who in spite of having opted for the scheme were continued and were extended the said benefit.

3. Learned counsel for the appellant submits that in effect, those employees who were extended the benefit with, whom discrimination was being complained of, the Voluntary Retirement Scheme was never implemented in their case even if they had opted and, consequently, merely because the appellant had not opted for the Voluntary Retirement Scheme, the same could not be made the basis to deny the said benefits. Similar benefits of 6th Pay Revision Commission Report has been extended to the employees whose names had been referred to in the writ petition including that of Shri Arun Kumar Jha.

4. The contention, therefore, in short is that even if the policy of MVRs (Modified Voluntary Retirement Scheme) could have been availed of and the appellant had not opted, then



in that event the same standards ought to have been applied and the appellant also ought to have been placed on a similar footing. For this, the appellant appears to have approached the Central Administrative Tribunal and thereafter on not getting the relief, he again approached the High Court in C.W.J.C. No. 19771 of 2013 that was disposed of 24th July, 2014 calling upon the respondent to consider the claim of the petitioner and pass an appropriate order.

5. Pursuant to the aforesaid directions of the High Court, the order impugned in the writ petition dated 24th October, 2014 was passed stating therein that pay-scale revision has not been allowed to the appellant on the ground that the appellant had not opted for Voluntary Retirement Scheme. It recites that the policy did require the submission to the Voluntary Retirement Scheme only when such consideration of revision of pay-scale could be considered.

6. In order to appreciate the controversy, the circular dated 30th April, 2010 containing the offer is extracted hereinunder:-

“National Textile Corporation Limited

(A Government of India Undertaking)

Scope Complex,
Core-IV, 7 Lodhi Road,



New Delhi- 110003

No. NTC/PERS/5 (13)/09

CIRCULAR

Subject: MVRS benefits on notionally fixed revised pay to employees of closed Mills, JV Mills and erstwhile subsidiary offices.

Pay revision of employees of NTC in the cases of those covered under the CDA pay pattern effective from 01-01-2006 and IDA pay pattern effective from 01-01-2007, is being implemented effective from 01-03-2010. **This revision in the cases of Executives and Staff of CDA and IDA is not applicable per-se** to employees of the closed Mills, JV Mills and erstwhile subsidiary offices which have no work, as it will cause extra financial burden to the Company which is on a turn around mode. Such employees have been paid wages/salaries without any work for the last many years by now. **However, the Company will be extending them MVRS benefits by notionally fixing their pay in the revised pay scales from the effective date of 01-01-2006 and 01-01-2007 in the cases of CDA and IDA pay pattern employees respectively on their accepting MVRS.** Though this will be an additional cost to the Company, this will be an added compensation for the employees who intend to avail MVRS. This will enable the Company to bring down the financial burden in payment of idle wages of the Company.



All concerned employees are requested to note the above decision and **submit their MVRS applications on or before 31-05-2010** as per the existing Scheme.

Employees of the closed Mills/JV Mills and erstwhile subsidiary offices of the Corporation who opted for transfer to the New Green Field Projects, can also apply for MVRS. However, acceptance of their MVRS will be subject to the decision of the Management on their suitability for transfer to the Green Field Projects or elsewhere and availability of vacancy.

All concerned employees are requested to note that **this will be the last chance for them to avail MVRS**. Some of the left over employees who do not opt for MVRS, may be considered by the Management for transfer to the working units/working offices anywhere in the country subject to availability of vacancy. Management will be left with no other option but to dispense with the services of the remaining employees of this category according to the terms of their employment.

All concerned are requested to give wide publicity and personal information to the employees concerned in the matter.

(B.K. MISHRA)
DIRECTOR (FINANCE)”



7. It may be put on record that the pay-fixation order of the appellant had earlier culminated in the passing of the office order dated 21st December, 2009 that has been filed on record as Annexure-7 to the writ petition.

8. The gravamen of the entire claim of the appellant is that if the said scheme under the circular, even though opted for by an employee like Arun Kumar Jha, had been circulated, and even though the appellant had not been personally put to notice about the same, yet its implementation did not bring about any retirement of the said employees who were continued throughout and they received the benefits of the pay-scale revision which has been denied to the appellant who was also continuing in service even without opting for the Voluntary Retirement. This, therefore, is a clear discrimination, inasmuch as, those in spite of having opted for the retirement, yet continued in service, were at par with the appellant, who, without opting for retirement, had been continued in service. This, therefore, attracts Article 14 of the Constitution of India and consequently, any denial of benefit of pay-scale revision being arbitrary, the appellant is entitled to the same benefits.

9. The learned Single Judge, however, accepted the



contention on behalf of the respondents that since the appellant had not opted for the Voluntary Retirement Scheme, therefore, he formed a different class and, therefore, without applying for the same, he could not be extended the benefits of the pay-scale revision.

10. The respondents had come up with a case in their counter affidavit that no such official, who had not opted for the Voluntary Retirement Scheme and was continued in service, was extended such benefit. Had it been so, the appellant would have also been extended the said benefit, but there is no official at all who, having not opted for the scheme, was also given the benefit of pay-scale revision. Thus, there was no discrimination practised by the Corporation and consequently, the conclusion drawn by the learned Single Judge does not suffer from any infirmity.

11. We have considered the submissions raised. The appellant seeks the benefit of the action of the respondents where the respondents are alleged to have extended benefits also to those who had opted for the Voluntary Retirement Scheme including Arun Kumar Jha. This fact does not appear to be disputed, but what we find is that the circular dated 30th April, 2010 has not been challenged. It is also not disputed that no



employee, like the petitioner who had not exercised a choice of voluntary retirement under the circular dated 30.04.2010, has been extended the benefit of notional pay scale revision. It is true that the appellant continued in service, and so have some of the others, but the fact remains that some of the other employees did opt for the voluntary Retirement Scheme while the appellant held back his choice. In our opinion, the circular dated 30th April, 2010 extends the benefit of notional pay-scale revision to only those who had shown their willingness and did actually opt for the Voluntary Retirement Scheme. The appellant having not chosen to do so, he cannot be allowed to contend that he forms the same class and belongs to the same category. The appellant by his own conduct, therefore, did not place himself in the category of such employees as Shri Arun Kumar Jha and others and, therefore, this cannot be a ground to complain of any act of positive hostile discrimination in order to avail the benefits, inasmuch as, it is the clear case of the respondents that no official who had not opted for the Scheme has been granted any such benefits. The petitioner having voluntarily lost this opportunity cannot base his claim on the principle of Article 14 of the Constitution of India and we, therefore, do not find any error in the judgment of the learned Single Judge so as to



interfere with the same.

12. It is, however, left open to the appellant to establish his claim in the event any such official who did not opt for the scheme yet was extended the said benefit. If this is established by the appellant, then the Corporation would be liable to consider the same in accordance with the treatment meted out to any such employee. We, therefore, consign this appeal with the aforesaid observation.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

P.K.P./-Jagdish

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