

Mukul Kumar Vs. National Project Constructions Corporation Ltd. and ors.

Mukul Kumar Vs. National Project Constructions Corporation Ltd. and ors.

SooperKanoon Citation : sooperkanoon.com/519626

Court : Jharkhand

Decided On : May-12-2006

Reported in : [2006(3)JCR512(Jhr)]

Judge : Permod Kohli, J.

Appeal No. : W.P. (S) No. 4077 of 2002

Appellant : Mukul Kumar

Respondent : National Project Constructions Corporation Ltd. and ors.

Advocate for Def. : Manoj Kumar Sah, Adv. for the Respondent Nos. 2, 3 and 5

Advocate for Pet/Ap. : Saurav Arun, Adv.

Disposition : Appeal allowed

Judgement :

ORDER

Permod Kohli, J.

1. Petitioner was serving as an Executive Engineer (Civil) in the respondent No. 1- Company. The respondent-Company formulated a Scheme for voluntary retirement for its employees as is notified by a Circular dated 3rd of April, 1994. Petitioner applied for his voluntary retirement on 28th of March, 2000 (Annexure-1)

under the aforesaid scheme. Since no decision was taken, he sent a reminder dated 3rd of August, 2000. The respondent-Company vide Communication dated 20th of February, 2002 asked the Junior Officer, NPCC Ltd. to intimate to the petitioner that his request for voluntary retirement can be accepted subject to an undertaking that his dues will be paid on receipt of V.R.S. funds from the Government and that he will not go for litigation and also not claim any interest on the delayed payment. On receipt of the aforesaid communication, (copy whereof was also addressed to the petitioner), he submitted an undertaking as desired by the respondent-Company on 22nd March, 2002. Even after filing such an undertaking, he was not relieved. Petitioner is repeatedly making representations for relieving him from service. He was again informed to obtain No Demand Certificate from the Unit. Petitioner applied for grant of No Demand Certificate and various communications are there on record. Even the case of the petitioner was recommended by the Manager (Personal Accounts) for grant of No Objection Certificate with further observation that if any recovery is required to be made the same shall be recovered from the dues of the Unit Officer. On being denied the benefit of the Voluntary Retirement Scheme, despite the fact that petitioner had already furnished the undertaking as was earlier demanded by the respondent-Company, petitioner has approached this Court seeking a direction in the nature of mandamus to accept the request of the petitioner for voluntary retirement and to pay him all dues with penal interest.

2. In the counter affidavit filed by the respondents, it has been stated that the Scheme envisage refusal of the benefits of the Voluntary Retirement Scheme, if any disciplinary proceedings are pending against the employees. For this reference is made to paragraph 5.4 of the Voluntary Retirement Scheme dated 3.4.1991, which reads as under:

5.4. An employee against whom vigilance/departmental enquiry is either-envisaged/or pending shall not be eligible for voluntary retirement.

3. It is further stated in Paragraph 25 of the counter affidavit that the dispute pending against the petitioner culminated in his exoneration from the charges on 18th April. 2002 and thus he became eligible thereafter. Admittedly, petitioner was

eligible for voluntary retirement under the Scheme except pendency of vigilance proceedings against him. These proceedings also came to be terminated as per the reply of the respondents. Respondents also accepted the undertaking of the petitioner for payment of all the benefits accruing on a later date. In spite of the acceptance of the request subject to furnishing of the undertaking and clearance of the Vigilance Proceedings against the petitioner, the benefit of the Scheme has not been conferred upon him. After 18th April, 2002, there does not seem to be any legal impediment in acceptance of the request of the petitioner for voluntary retirement under the Scheme. No other valid reason has been stated as to why the petitioner should not be granted the relief as prayed for.

4. Apart from above, petitioner has specifically averred in paragraph 18, 19 and 20 of the writ petition that the employees Junior to him, who applied later in time, have been allowed the benefit of voluntary retirement Scheme and in some cases, even where Vigilance proceedings are pending, benefit has been allowed to the employees but similar benefit had been denied to the petitioner without any lawful basis. This fact has not been denied by the respondents in the counter affidavit.

5. In view of the above circumstances, this writ petition is allowed. Respondents are directed to decide the request of the petitioner for grant of voluntary retirement under the Scheme within a period of two months and on acceptance of the request of the petitioner, if there is no other legal impediment, the admitted dues thereof shall be paid within a period of three months thereafter. Failure on the part of the respondents to pay the dues within the aforesaid period on acceptance of the request, petitioner shall be entitled to Interest @ 6% on the expiry of the period stipulated hereinabove till the amount is actually paid.