

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/09/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION.NO.21531 OF 2000

R. Vaidyanathan,
Flat 2-A, Green Haven,
19, West Road, West CIT Nagar,
Chennai 600 035. .. Petitioner

-Vs-

1. MMTC., Ltd.,
rep. by its Chairman-cum-
Managing Director,
Core-1, Scope Complex,
7, Institutional Area,
Lodhi Road, New Delhi 110 003.

2. Engineers India Ltd.,
rep. by its
Chairman-cum-Managing Director,
Engineers India Bhavan,
No.1, Bhikaji Cama Place,
New Delhi □ 110 066.

3. General Manager (P),
MMTC Ltd.,
Core-1, Scope Complex,
7, Institutional Area,
Lodhi Road, New Delhi 110 003. .. Respondents

Petition filed under Article 226 of the Constitution of India for the
issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr. N.G.R. Prasad for
M/s. Row & Reddy

For Respondent-1 : Mr. John for
M/s.Ramasubramaniam Associates

Respondent-2 : Mr.A. Jenasenan

:J U D G M E N T

Petitioner has filed the writ petition for issuing certiorarified mandamus to quash the order dated 29.5.2000 and directing the first respondent to grant benefits such as ex-gratia benefit and medical benefit by taking into account the services of the petitioner rendered under the second respondent, Engineers India Limited.

2. The petitioner, who is a qualified engineer, after working for about 3 years under the Tamil Nadu Electricity Board, joined Engineers India Limited, the second respondent, in December 1979. In December, 1985, there was some correspondence between the first respondent, MMTC and the second respondent, Engineers India Limited, whereunder the first respondent had requested the second respondent to send several persons including the petitioner for an interview for the post of Joint Divisional Manager under MMTC. Thereafter the petitioner was selected and being relieved by the second respondent on 26.2.1986. The petitioner joined under MMTC on 27.2.1986. Subsequently, the amount payable towards gratuity and leave benefits for the services rendered by the petitioner under the second respondent were calculated and adjusting certain amounts towards due from the petitioner, balance amount of Rs.9069/- was paid to the petitioner by the second respondent, which was accepted by him without any demur. However, the amount lying in the provident fund account had been transferred to the first respondent, MMTC.

3. While the matter stood thus, in 1993, MMTC introduced a Voluntary Retirement Scheme. Benefits under the scheme were described in paragraph 5. In the present case, the question relating to payment of ex-gratia payment being relevant, relevant clause as contained in 5.1 is extracted hereunder :

□ 5.1. An employee whose application for voluntary retirement is accepted shall be entitled to the following benefits:-

(i) Ex-gratia payment equivalent to 1= months emoluments (Pay + DA/Pay + DA+FDA as applicable) for each completed year of service of the monthly emoluments at the time of retirement, multiplied by the balance number of months of service left before normal date of retirement, whichever is less.

NOTE:

Past service rendered in other PSUs would be counted for payment of exgratia under this Scheme provided that transfer of service took place with the consent of both the PSUs, continuity of service is established and CPF etc. has been transferred to MMTC.□

4. Subsequently, in 1999, MMTC again issued a circular relating to voluntary retirement scheme, wherein it was indicated :

□ . . . 4. Benefits under the Scheme

(A) The ex-gratia payment shall be equivalent to three months[] emoluments (Pay + DA or Pay + DA + FDA as the case may be) for each completed year of service or the monthly emoluments at the time of retirement multiplied by the balance number of months of service left before normal date of retirement, whichever is less.[]

It was further indicated :

[] . . . All other terms and conditions of MMTC Voluntary Retirement Scheme 1993 remain unchanged. . . .[]

5. Pursuant to the latter scheme, the petitioner filed an application indicating his willingness to opt for voluntary retirement scheme. The petitioner in his application dated 22.9.1999 against the heading relating to completed years of service in MMTC has indicated that he had completed 13= years of service. However, with an asterisk mark at the bottom of the application he had indicated the service rendered in Tamilnadu Electricity Board and the service rendered in Engineers India Ltd. from 3.12.1979 to 26.2.1986 and further indicating that applications for such services were forwarded through proper channel.

6. An Office Memorandum dated 29.9.1999 was issued by MMTC informing the petitioner that Voluntary Retirement application submitted by him has been accepted by the competent authority subject to vigilance clearance and the petitioner was relieved with effect from 10.12.1999 . On 23.12.1999, ex-gratia payment calculated on the basis of 14 years of service was given to the petitioner apart from other payments. In April, 2000, the amount due to the petitioner on account of CPF was released and in May, 2000, his pension was released.

7. It seems that thereafter the petitioner made a request for taking into account the services rendered in Engineers India Limited for the purpose of calculating ex-gratia payment. By letter dated 29.5 .2000, MMTC refused to consider the request of the petitioner, which is to the following effect:

[] . . . Kindly recall your request made on telephone to GM(P) for taking into account service rendered by you in Engineers India Ltd. (EIL) for the purpose of ex-gratia calculations. In this connection, we would like to inform you that in terms of DPE guidelines, when an employee moves from one enterprise to another with the consent of Management of both the PSEs and the ending organization liquidates its liability towards CPF, Gratuity, EL and HPL by making lumpsum payment to the borrowing organisation, in such condition, the service rendered in the previous organisation are taken into account for the purpose of calculating Voluntary Retirement benefits. In case, an individual does not meet any one of these conditions say he has encashed his Gratuity, EL/HPL, then his service in the borrowing organisation is treated as de-nova and the previous service is not considered for the purpose of VR benefits be taken into account.

2. On your movement from EIL to MMTC, as per our records, while payment towards CPF was remitted, Gratuity amount payable to you for the service rendered in EIL was remitted to you directly. Besides, we have no records with regard to your EL/HPL, for which clarification is being sought for from EIL. Going by the present status, in line with the Govt. orders, it may not be possible to consider your request to take your previous service into account for calculating your VR benefits. . . .□

8. Thereafter, the petitioner made a further representation. In the said representation, among other things, the petitioner referred to MMTC's order No.5/12/89-IR dated July 3, 1992 and contended that even if gratuity was transferred to MMTC it should not debar the employee to get the benefit of transferred service. Since thereafter no reply has been received by the petitioner, the present writ petition has been filed claiming the reliefs already indicated.

9. In the affidavit filed in support of the writ petition, it has been indicated that at the time of induction of the petitioner into MMTC there was no Voluntary Retirement Scheme in contemplation and if he would have been made aware of such exigency, he would not have received gratuity or leave benefits.

10. A counter affidavit has been filed on behalf of the first respondent wherein, while not disputing the basic facts, reference has been made to DPE guidelines issued in 1992. It has been contended that such DPE guidelines form part of the scheme and the petitioner cannot claim that he was not aware of the DPE guidelines which had been issued in the year 1992. It has been highlighted that as per the DPE guidelines, past service of a person in a public sector undertaking can be considered only if the lending organization has liquidated its liability towards CPF, gratuity, Earned Leave, Half Pay Leave by making lumpsum payment to the borrowing organization. It has been stated that in the present case, only CPF account has been transferred and the other benefits such as gratuity, earned leave, half pay leave had not been credited to MMTC, and therefore, the petitioner was not entitled to count his past service rendered under EIL for the purpose of calculating ex-gratia.

11. It is the contention of the respondents that expression "CPF etc.," in 1993 scheme must be understood in the context of the guidelines given by the DPE. There is no doubt that Voluntary Retirement Scheme is based on the guidelines issued by DPE. It is unfortunate that in the scheme, expression "CPF etc.," was used without specifically referring to various subjects. However, since such scheme had been prepared on the basis of the guidelines of the DPE, petitioner cannot now claim that he was not aware of the guidelines issued by the DPE.

12. The petitioner in his application form had not categorically claimed that his entire service rendered under EIL must be counted nor had he made it clear that his offer should not be accepted unless the entire services rendered under EIL is counted. The petitioner has also only indicated the service rendered under EIL and Tamil Nadu Electricity Board

as a foot-note to his main application. In the absence of any categorical assertion in such application, it cannot be said that merely accepting voluntary retirement, the respondent No.1 had also accepted the claim of the petitioner. No case of estoppel has been made out.

13. In course of hearing, the learned counsel for the petitioner has referred to the Office Order No.5/12/89-IR dated July 3, 1992, which is to the following effect :

□ . . . Addition to Clause 5.1(iv):

However, ex-gratia plus three months□ notice pay in no case shall exceed the pay for the balance period of the employee□s service in the Corporation had he continued till superannuation.

Addition to Clause 5.1 (v):

While reckoning the past services, the services rendered in other PSUs including the period of deputation in MMTC, would also be counted provided that the transfer of services took place with the consent of both the PSUs and further that terminal benefits of CPF, Leave Salary, HPL and EL have been duly transferred to MMTC. However, in case of gratuity, even if it is not transferred to MMTC, this may not debar the employee to get the benefit of transferred services for which a reference has been made to DPE. Services rendered by the employee in the Government prior to joining MMTC shall not be reckoned.

2. Other terms and conditions of the scheme including the amendments issued from time to time would remain unchanged.

3. These orders shall come into force with effect from 29.6.1992. .
. □

14. This does not lay down in so many words that irrespective of receipt of the gratuity by the concerned employee, the past services should be counted. The only indication from such correspondence is that a reference had been made to DPE on the above aspect. On the other hand, the extracted portion clearly indicate regarding transfer of terminal benefits of CPF, Leave Salary, HPL and EL to MMTC. The expression □CPF etc.,□ as used in 1993 Voluntary Retirement Scheme has to be understood in the light of this office order issued by MMTC. Applying the above text, since the petitioner had received the benefits of leave salary, HPL and EL from the previous employer, he would not have been eligible to count his past service.

15. For the aforesaid reasons, I do not find any merit in this writ petition, which is accordingly dismissed. There would be no order as to costs.

Index : Yes

Internet : Yes

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To

1. MMTC., Ltd.,
rep. by its Chairman-cum-
Managing Director,
Core-1, Scope Complex,
7, Institutional Area,
Lodhi Road, New Delhi 110 003.

2. Engineers India Ltd.,
rep. by its
Chairman-cum-Managing Director,
Engineers India Bhavan,
No.1, Bhikaji Cama Place,
New Delhi □ 110 066.

3. General Manager (P),
MMTC Ltd.,
Core-1, Scope Complex,
7, Institutional Area,
Lodhi Road, New Delhi 110 003.

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