

**(2012) 03 MP CK 0046**

**In the Madhya Pradesh High Court**

**Case No : Writ Petition No. 3981 of 2007**

Ashok Prajapati

APPELLANT

Vs

Indore Malwa United Mills, Indore and Another

RESPONDENT

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**Date of Decision : 29-03-2012**

**Acts Referred:**

**Citation : (2012) 03 MP CK 0046**

**Hon'ble Judges : N.K. Mody, J**

**Bench : Single Bench**

**Final Decision : Allowed**

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## **Judgement**

Hon"ble Shri N.K. Mody, J.—The prayer in this petition is to direct the respondent No. 1 to grant VRS/MVRS to the petitioner. Facts of the case are that petitioner was appointed by the respondent No. 1 on the post of Gardener and he worked for 13 years and was declared as permanent employee of respondent No. 1 vide order dated 09/04/2002. Respondent No. 1/Mill was closed w.e.f. 31/03/2003. An scheme was introduced by the respondent No. 1 for MVRS with certain conditions. The petitioner applied under the scheme on 28/06/2002 and the application was allowed vide order dated 25/03/2004 but the benefit was not given to the petitioner under the said scheme. Hence petition was filed by the petitioner before this Court which was registered as WP No. 2305/2005 and was disposed of vide order dated 23/08/2005 with a direction to the respondent No. 1 to decide the representation of the petitioner in proper perspective and if it is permissible under the law to give benefit to the petitioner to modify VRS then the same may be provided to him. Since this order was not complied with, therefore, contempt petition was filed which was numbered as 657/2006 and was disposed of vide order dated 17/11/2006 with a direction to the respondent No. 1 to take final decision in the light of order dated 23/08/2005 in WP No. 2305/2005 passed by this Court and if the order has not been complied with, then, it shall be viewed seriously. Petitioner was directed to submit copy of the order alongwith copy of the orders passed from time to time. In compliance of that vide order

dated 10/04/2006 respondent No. 1 informed the petitioner that an amount of Rs.30,720/- towards closure compensation and gratuity and Rs.18,328/- towards back-wages is payable to the petitioner.

2. Learned counsel for the petitioner submits that action of respondent No. 1 is illegal, unconstitutional and not as per the scheme. It is submitted that as per the scheme petitioner is entitled for the benefit under MVRS. It is submitted that necessary directions be issued.

3. Learned counsel for the respondents submit that MVRS is Annexure-R/1 according to which scheme shall apply to all the employees is dated 23/01/2002 which lays down the law accordingly. It is submitted that Annexure-R/2 is the modification of scheme Annexure-R/1 which was deleted in the meeting of Board of Directors held on 19/10/2002. It is submitted that as per Annexure-R/2 benefit of MVRS can be given only in case the concerned employee has withdrawn the case for any claim including back-wages etc. It is submitted that since number of cases were filed by the petitioner were pending, therefore, petitioner was not entitled for the benefit of MVRS. It is submitted that since petitioner was entitled for closure compensation, therefore, the same was rightly paid to the petitioner. It is submitted that the terms of MVRS is a matter of contract between the employer and employee and is not a statutory right of the employee. It is submitted that it is for the employer to stipulate the conditions of the voluntary retirement scheme and it is upto the employee whether to accept it or not. Learned counsel placed reliance on a decision in the matter of National Textile Corporation (M.P.) Ltd. Vs. M.R. Jhadav, wherein Hon"ble Apex Court had an occasion to take into consideration the concept of VRS and held that VRS is an invitation to treat an offer of voluntary retirement made by an employee needs to be accepted by the employer in order to constitute a binding contract of VRS. It was further held that if explicit acceptance conveyed to employee and he continued working upto his retirement on superannuation could not claim benefit of ex gratia payable in case of VRS for which he made request while in service. Reliance is also placed on a decision in the matter of Board of Trustees, Visakhapatnam Port Trust and Others Vs. T.S.N. Raju and Another, wherein Hon"ble Apex Court held that no employee could claim voluntary retirement as of right. It was further held that VRS was not a proposal or an offer but merely an invitation to treat and the applications filed by the employees constituted an offer and unless accepted in writing the application for voluntary retirement could not be effective. It was further held that High Court cannot direct its acceptance, it can only direct its consideration. It is submitted that in the facts and circumstances of the case, petition filed by the petitioner has no merits and the same be dismissed.

4. From perusal of record, it is evident that the petitioner was appointed w.e.f. 13/08/1989, he was discontinued w.e.f. 03/06/1991. In compliance of the order passed by the Court his services were restored w.e.f. 23/03/1996. Thereafter, the petitioner filed the petition for classification whereby application filed by the

petitioner was dismissed against which an appeal was filed which was numbered as 265/2011 and vide order dated 09/04/2002 the Industrial Court allowed the appeal with a direction that petitioner is entitled for the scheme. The scheme of VRS is Annexure-R/1 which came in force on 24/12/2001. In compliance of that an appropriate application was filed by the petitioner on 28/06/2002. Thereafter the VRS Annexure-R1 dated 24/12/2001 was amended w.e.f. 19/10/2002 whereby it was directed that in the meeting of Board of Directors held on 19/10/2002 it was decided that the revival scheme is based on certain assumption and that the cost of scheme does not provide for such additional Financial Commitment and that various agencies like the Central Government/ State Government/Financial Institutions/EPF Organizations/ESI Organizations/ Electricity Boards etc. have come forward for sacrifices as per the scheme, therefore, in the interest of organization, employees who have filed cases in any of the Court be given the benefit of MVRS only if they withdraw the case or any claim for back wages etc. By that time the amendment was made in the original scheme, the application filed by the petitioner was pending. There is nothing on record to demonstrate that the amendment made in the scheme Annexure-R/1 was intimated to the petitioner. In the application which was filed by the petitioner is on a printed proforma and there is no clause in which the petitioner was required to withdraw the case which is pending. In the facts and circumstances of the case only because some case was pending at the time when the application was filed by the petitioner, it cannot be said that petitioner is not entitled for MVRS. In view of this, petition filed by the petitioner is allowed and the impugned order Annexure-P/1 is quashed. Respondents are directed to give the benefit to the petitioner under the MVRS as no case filed by the petitioner is pending in any of the Court. It is made clear that amount which has already been paid by the respondents to the petitioner shall be adjusted towards the benefits MVRS. With the aforesaid observations, petition stands disposed of. No order as to costs. C.C. as per rules.