

(1998) 07 MAD CK 0041
In the Madras High Court
Case No : W.A. No. 992 of 1996

Jayakodi Jacob D.

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 14-07-1998

Acts Referred:

Citation : (1999) 1 LLJ 1025

Hon'ble Judges : Shivaraj Patil, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : S.N. Ravichandran, for the Appellant; S. Ravindran, for T.S. Gopalan and Co. for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard the learned counsel for the parties.

2. The unsuccessful writ petition challenging the validity and correctness of the Award dated January 12, 1994 made by the first respondent

Labour Court in I.D. No. 438 of 1992, has filed this writ appeal challenging the order dated September 1, 1995 made by the learned single Judge

in W.P. No. 7841 of 1995.

2-A. The facts briefly stated which are relevant and necessary for the disposal of this writ appeal, are the following :-

The appellant was working as a Clerical Assistant in the employment of the respondent No. 2. Respondent No. 2 introduced the Voluntary

Retirement Scheme (V.R.S.) from the First Appeal 1987 under which Clerical Assistants could opt for voluntary retirement from service receiving

certain monetary compensation and benefits. The appellant gave a letter opting voluntary retirement on March 31, 1987 (according to the

respondent No. 2 Management, application for voluntary retirement was given in February, 1987). The appellant submitted a letter on April 1, 1987 withdrawing the letter dated March 31, 1987 giving option for voluntary retirement. Thereafter, the appellant wrote one more letter on April 27, 1987 reiterating his stand for withdrawal of option given by him for voluntary retirement. The 2nd respondent by its letter dated May 18, 1987 stated that the request of the appellant could not be considered as all the accounts of the appellant had been settled. The appellant received V.R.S. compensation of Rs. 50,000/- on August 19, 1987 and he made a request on the same day for issue of service certificate. The service certificate was issued on August 20, 1987. Since the appellant did not accept the gratuity amount, documents were sent to the Assistant Commissioner of Labour, which amount also the appellant received later; of course stating that without prejudice to claim higher amount. The appellant also made a request to the second respondent seeking fresh appointment on June 7, 1989. The second respondent gave a reply on June 21, 1989 that it was not possible to give a fresh employment. It is, thereafter, on June 13, 1991 the appellant herein raised I.D. No. 403 of 1991, in Madurai Labour Court which was subsequently renumbered as I.D. No. 438/1992 on the file of Labour Court, Tirunelveli. The Labour Court in the light of the materials placed before Court, both oral and documentary, rejected the claim of the appellant in regard to his non-employment by its order dated January 12, 1994 for the reasons stated therein. The appellant was not happy with the said order of the Labour Court, i.e. the first respondent herein, and filed Writ Petition No. 7841 of 1995 against the said order. The learned single Judge of this Court by the order impugned in this writ petition, dismissed the writ petition not finding any error in the order passed by the Labour Court. The matter did not rest at that. That appellant has filed this appeal challenging the order of the learned single Judge.

3. Before us, the learned counsel for the appellant strongly contended that the case of the appellant could be equated to one of resignation given by the employee and that the Labour Court as well as the learned single Judge ought to have appreciated that even before the acceptance of option given by the appellant opting voluntary retirement, he had every right to withdraw the same as sought in the letter dated April 1, 1987, submitted

on the very next day; the second respondent did not intimate that the voluntary retirement opted by the appellant was accepted and it also did not

give reasons for refusing to allow withdrawal of Voluntary Retirement Scheme pursuant to the letter dated April 1, 1987 given by the appellant.

Learned counsel for the appellant took pains to explain that the case of the appellant at least can be put at par on the retrenchment of an employee.

The submission he made in this context was that the appellant had accepted the V.R.S. compensation. According to the learned counsel,

notwithstanding the acceptance of such compensation, the case of the appellant for withdrawal ought to have been considered. Learned counsel

also added that the appellant had given the letter dated March 31, 1987 under difficult situation in which he was placed; of course in the petition it

was stated that such a letter was given under pressure, but in the evidence, he states that it was given in a perturbed condition. On the other hand,

learned counsel for the second respondent argued in support and justification of the award passed by the Labour Court as well as the Order made

by the learned single Judge confirming the same.

4. We have considered the submissions made by the learned counsel for the parties.

5. The learned Judge referring to the Voluntary Retirement Scheme, has held that the appellant having accepted to retire voluntarily under the

scheme and having taken compensation, he was not entitled to turn round and say that his voluntary retirement ought not to have been accepted

and his case for withdrawal of the same could be considered. The learned Judge again observed that the option given by the appellant for taking

voluntary retirement cannot be equated to resignation in respect of an employee governed by the statute or such resignation is to be accepted in a

particular way as prescribed by the statute. The Labour Court as well as the learned single Judge, on the basis of the materials, have concluded

looking to the Voluntary Retirement Scheme and the conduct of the parties that the appellant had voluntarily retired and got all the benefits flowing

from such a Scheme. The events stated above by us, while narrating the facts, clearly indicate that the appellant pursuant to the Voluntary

Retirement Scheme exercised option to take voluntary retirement; nothing more was required to be done by the Management or by him so as to

give benefits flowing from that scheme; the appellant received V.R.S. compensation of Rs. 50,000/- on August 19, 1987 without any protest, reservation or demur. If the appellant was really serious and that he had not voluntarily retired, nothing prevented the appellant at that stage itself to raise an Industrial Dispute. Further, the request of the appellant to permit him to withdraw the letter for voluntary retirement, was negated by the second respondent as early as May 18, 1987. Again we fail to understand why the appellant had to make repeated representation for long four years instead of approaching the Labour Court or raising a dispute. Added to this, if the appellant was firm in his stand there was no reason as to why he had to apply to the Management seeking fresh employment and so also seeking service certificate possibly to use the same for getting employment elsewhere. The appellant even received the gratuity amount. To explain these circumstances, learned counsel only submitted that the appellant was put in difficult situation and he was under the forced circumstances and to survive, he accepted the V.R.S. compensation. We are not impressed by that submission. The facts, that he had received the V.R.S. compensation, sought for fresh employment, sought for service certificate, received the gratuity amount and waited for long four years to raise the industrial dispute, clearly show that the case of the appellant was an afterthought. Though an attempt was made that the letter of voluntary retirement was given under pressure, no particulars were given in the claim petition. Even in the evidence, it is not explained as to what sort of pressure the appellant had. A vague allegation that due to pressure he had given that letter, cannot be accepted. In this view, the learned single Judge was right in confirming the order of the Labour Court and we do not find any valid or good ground to disturb the order under appeal. Accordingly, the writ appeal is dismissed.

6. At this stage, learned counsel for the appellant makes a fervent appeal to direct the second respondent Management to give fresh employment to the appellant if the appellant has still some years to serve. We notice that the appellant was 53 years of age in 1991. We do not know as on today whether he will still be eligible to be appointed in case the age of superannuation is already over. At any rate, it is not a matter for us to examine. In case the appellant makes an application to the second respondent-Management for fresh appointment, the same may be considered

sympathetically to give fresh appointment, if available.