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**(2007) 05 AHC CK 0265**  
**In the Allahabad High Court**

J.C. Saxena

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 18-05-2007

**Acts Referred:**

Constitution of India, 1950 — Article 12

**Citation :** (2007) 4 AWC 4209 : (2008) 1 SLJ 481 : (2007) 3 UPLBEC 104

**Hon'ble Judges :** Sudhir Agarwal, J;Anjani Kumar, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

Anjani Kumar and Sudhir Agarwal, JJ.—The petitioner having been allowed to retire voluntarily under Voluntarily Retirement Scheme (hereinafter referred VRS) on 21.5.1994 has sought a writ of mandamus commanding respondents to count his service from 27.5.1964 to 2.6.1973 and to give him 5 years weightage in calculating benefit of VRS or in the alternative to let him continue in service and revoke his VRS.

2. The facts in brief are that the petitioner was appointed as Technical Supervisor Grade-III under Chief Inspectorate of Textile and Clothing, Government of India, Ministry of Defence on 7 May 1964 (Annexure 1). The appointment was temporary and on probation of 2 years. He was declared quasi permanent w.e.f. 1st July 1967 under Rules 3 and 4 of the Civilians in Defence Service (temporary service) Rules 1949. In 1973, Export Council of India (hereinafter referred to as the "Council") advertised vacancy of technical officer. The petitioner applied and after his selection, vide appointment letter dated 22 September 1973 he was appointed as technical officer in the pay scale of Rs. 300-600 in the Council. The appointment was temporary and terminable without any notice. the petitioner joined pursuant to the said appointment at Bhadohi and continued to work under the said Council. The Council is an undertaking of Government of India and a subsidiary company of State Trading Corporation of India Limited. It is "State" within the meaning of Article 12 of the Constitution of India. In 1993, the Council

took a decision to close down export inspection agencies and offered a golden handshake permitting VRS to its employees vide scheme dated 21 May 1994 (Annexure 4). The petitioner submitted his option for accepting VRS on 19th July 1994 along with a representation that his service rendered as Technical Supervisor under Ministry of Defence, Chief Inspector of Textile and Clothing should be counted for the purpose of retrial benefits. Respondent No. 2 accepted his application for VRS on 19th July 1994 itself and he was relieved on 10 August 1994. In the meantime he made various representations including dated 26.8.1998 and 27.6.1998 to respondent No. 2 to give benefit of the said period when he has worked in Government of India. The petitioner also made a representation to the Director, Ministry of Defence and thereafter preferred this writ petition.

3. The respondents No. 1 to 3 have filed counter affidavit stating that the petitioner has not approached this Court with clean hands and therefore, his writ petition is liable to be dismissed. He has received and enjoyed a huge amount under VRS as long back as in 1995 and now after lapse of about five years, has filed this writ petition for reopening an issue which is a closed chapter. It is pointed out that VRS scheme was accepted by 870 persons including the petitioner and 991 persons did not accept but opted to continue in service. Under the scheme the petitioner has accepted and was paid over Rs. 3.38 lakhs and now after such a long time he has filed this petition. It is also pointed out that earlier also he filed writ petition No. 43851 of 1999 with same cause of action in which there were 21 petitioners including the present petitioner and without disclosing the factum of the aforesaid writ petition, this second writ petition has been filed and therefore, it is liable to be dismissed under Chapter XXII Rule 7 of the Rules of the Court. On merits it is pointed out that there is no provision under law entitling the petitioner to count his past services rendered in Ministry of Defence Government of India. VRS was voluntary and was not forced upon him. If he was not satisfied with his option, he should not have accepted it and petitioner should not have received monetary benefits thereunder. It is not open to the petitioner to resile there from now. The writ petition is wholly misconceived and is liable to be dismissed.

4. The petitioner has filed rejoinder affidavit wherein he has reiterated averments made in the writ petition by generally denying the averments of the counter affidavit.

5. We have heard learned Counsel for the parties and perused the record.

6. Assailing VRS Scheme and seeking a mandamus for giving 5 years weightage, the petitioner and 20 others have filed writ petition No. 43851 of 1999 wherein the following reliefs have been sought.

(A) to issue a writ order or direction in the nature of certiorari quashing and declaring the Voluntary Retirement Scheme dated 19.7.1994 (Annexure "2" to the writ petition), as ultravires;

(B) to issue a writ, order or direction in the nature of mandamus directing the respondents to permit the petitioners to work as regular employees of the respondents as if they have never filled the form of option under Voluntary Retirement Scheme dated 19.7.1994;

(C) to issue a writ, order or direction in the nature of mandamus permitting the petitioners to discharge their function as they are performing prior to 19.7.1994 and their continuity of service may be maintained;

(D) to issue a writ, order or direction in the nature of mandamus directing the respondents to grant facilities of 33% commutation of pension and 67% of regular pension;

(E) to issue writ, order or direction in the nature of mandamus granting the respondents to grant 5 years of weightage in payment of ex- gratia who has completed 20 years service;

(F) to issue writ, order or direction in the nature of mandamus directing the respondents to grant all the reliefs which has been granted to the employees who have completed 20 years of service, to those employees also who have not completed 20 years of service;

(G) to issue a writ, order or direction in the nature of mandamus to grant all the reliefs to the petitioners after 19.7.1994 which is being given to other Central Government employees after retirement, as per the provision of CCS. (Pension) Rules 1972;

(H) to issue any other writ, order or direction which this Hon"ble Court may deem fit and proper in the circumstances of the case;

(I) to award costs in favour of the petitioners.

7. During the pendency of the said writ petition, the petitioner has filed the present writ petition. We found that reliefs No. 1, 2 and 4 of the present writ petition are similar to reliefs No. b, c and e of earlier writ petition. It is also evident from record that the petitioner in the present writ petition has not said anything about his earlier writ petition. Chapter XXII Rule 7 of Allahabad High Court Rules provides where an application has been rejected, the petitioner has no right to move second application on the same cause of action. The petitioner has made a declaration in para 1 of the present writ petition that this is the first writ petition he has filed for the relief, which he has sought. Apparently the declaration is false and incorrect inasmuch as substantial reliefs which he has sought in this writ petition are same, which were sought by him in Writ Petition No. 43851 of 1999.

8. The earlier writ petition of the petitioner has been dismissed by a Division Bench by this Court vide order dated 27.3.2003 observing that there is no illegality in VRS, petitioners were given option on their own choice which has been accepted and they have also accepted benefit, therefore, no there is no

justification to interfere in the present writ petition.

9. We are therefore satisfied that though it is a second writ petition but the petitioner has not disclosed about the earlier writ petition. Filing of successive writ petition on the same fact is not only against public policy but also amounts to abuse of the process of the Court ( Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Others,

10. Learned Counsel for the petitioner sought to argue that there is an additional prayer in the present writ petition that he should be given benefit of past service rendered in Ministry of Defence but this by itself would not make this writ petition based on different cause of action. Admittedly when the earlier writ petition was filed even this relief could have been claimed by the petitioner. In Rakesh Kumar Agarwal v. State Bank of India, Mumbai and Ors. 2003(3) ESC 1333 a Division Bench of this Court held:

Even if a party does not pray for the relief in the earlier writ petition, which he ought to have claimed in the earlier petition, he cannot file a successive writ petition claiming that relief, as it would be barred by the principle of constructive res judicata.

11. The same view has been taken by Full Bench in Farhat Hussain Azad and Ors. v. The State of U.P. and Ors. 2005 ACJ 359. A successive writ petition or second writ petition for the same cause of action is therefore not maintainable and liable to be dismissed.

12. Even otherwise we find that by not disclosing the fact of earlier writ petition in the present one, the petitioner is guilty of approaching this Court with unclean hands.

13. In Ram Saran Vs. I.G. of Police, CRPF and Others, , the Apex Court observed "A person who seeks equity must come with clean hands. He, who comes to the court with false claims, cannot plead equity nor would the court be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner...."

14. In Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education and Ors. 2003 (Suppl.) 3 SCR 352 , it was reiterated after referring to various earlier decisions of the Apex Court that fraud misrepresentation and concealment of material fact vitiates all solemn acts. In The State of Andhra Pradesh and Another Vs. T. Suryachandra Rao, , the Apex Court after referring to various earlier decisions held that suppression of a material document would also amount to a fraud on the Court. The same view has been reiterated in Bhaurao Dagdu Paralkar Vs. State of Maharashtra and Others, . In R. Vishwanatha Pillai Vs. State of Kerala and Others, the Apex Court observed that a person, who seeks equity, must act in a fair and equitable manner. In Rajabhai Abdul Rehman Munshi Vs. Vasudev Dhanjibhai Mody, it was held that if there appears on the part of a person, who has approached the Court, any attempt to overreach or

mislead the Court by false or untrue statements or by withholding true information which would have a bearing on the question of exercise of the discretion, the Court would be justified in refusing to exercise the discretion or if the discretion has been exercised in revoking the leave to appeal granted even at the time of hearing of the appeal. The same view was reiterated and followed in *Vijay Syal and Another Vs. State of Punjab and Others*,

15. A litigant who has approached this Court in extra ordinary equitable jurisdiction with unclean hands, his conduct makes him liable to pay an exemplary cost for abusing the process of the Court besides wasting precious time of the Court which could have been utilized for other more deserving cases. Moreover, he is also guilty of swearing a false affidavit. Thus the petitioner must be saddled with the liability of heavy cost so that in future such thing may not recur.

16. The writ petition is accordingly dismissed with cost quantified at Rs. 10,000/-. The cost of Rs. 10,000/- shall be deposited by the petitioner within two months with the Registrar General of this Court, who shall forward 50% thereof to the Legal Aid Society of Allahabad High Court and 50% to the Mediation Centre, Allahabad High Court. In case of failure by the petitioner to pay the amount of cost, it shall be recovered as arrears of land revenue for which the Registrar General of this Court shall take appropriate steps.