

(2010) 11 DEL CK 0246

In the Delhi High Court

Case No : Writ Petition (C) 11533 of 2009

Md. Irshad Ahmad

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 29-11-2010

Acts Referred:

Citation : (2010) 11 DEL CK 0246

Hon'ble Judges : Veena Birbal, J

Bench : Single Bench

Advocate : M. Hasibuddin, for the Appellant; Manoj Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Veena Birbal, J.—By way of present petition, the Petitioner has made the following prayer:

Issue a writ/order/directions especially Mandamus thereby directing Respondent No. 1 and 2 to consider the request letter of voluntary retirement/voluntary separation scheme dated 9.12.2005 and reminder dated 3.3.2006 and 17.7.2006 as the Petitioner official circular No. HPL/ESF/191 dated 3.6.2005, further direct the Respondents to refund back the consequential benefits.

2. Briefly stated, the facts relating to the present petition are as under:

The Petitioner had joined Respondent No. 2 as an Assistant Executive Engineer (Civil) and after sometime was promoted as a Senior Engineer in the year 1990. Thereafter, he was promoted as a Deputy Manager and in the year 2006-2007 was redesignated as a Manager. Petitioner had worked for about 23 years. During the employment, the Petitioner came to know about the office circular No. HPL/ESF/191 dated 3.6.2005 wherein there was a provision that a permanent employee could apply for the benefits of the Voluntary Retirement Scheme (hereinafter referred to "VRS"). The Petitioner applied for taking the benefit of the same vide an application dated 9th December, 2005. It is alleged that the

Petitioner was fully covered by the aforesaid scheme. Thereafter, the Petitioner gave a reminder dated 3rd March, 2006 but Respondent No. 2 did not respond to his request. It is alleged that vide letter dated 17th July, 2006, the Petitioner again filed a fresh application for availing the benefits of VRS. It is alleged that when the Petitioner did not get any response from Respondent No. 2, he tendered resignation vide letter dated 1st June, 2007 along with a cheque of ` 55,437/- in favour of Respondent No. 2 in lieu of three months' notice period. Thereafter, Respondent No. 2 accepted the resignation of the Petitioner and relieved him vide an office order No. 167/2007 dated 23.6.2007.

The grievance of the Petitioner is that Respondent No. 2 had granted benefits of VRS to other employees whereas he has been deprived of said benefit and as such Respondent No. 2 has discriminated the Petitioner. It is contended that due to his bad health, the Petitioner was forced to tender his resignation when his request for VRS was not accepted, as such, Respondent No. 2 should be directed to consider the Petitioner's request for voluntary retirement and to refund back the consequential benefits.

3. Respondent No. 2 has filed a short counter affidavit wherein it is stated that the Petitioner had submitted his request for VRS on 9th December, 2005. It is stated that the acceptance of VRS by the Respondent No. 2 is not a matter of right but depends upon its discretion. Further, it is stated that at the time of his resignation, the Petitioner was working as a "Project Engineer" with designation as an "Executive Engineer" and the said post falls in the Group "B" category. The VRS was in abeyance w.e.f. 6th September, 2006 as per the guidelines of the Government of India for Group A and Group B category as such no decision was taken on his request for VRS. Therefore, without waiting for a final decision the Petitioner tendered his resignation of his own on 1st June, 2007. His resignation thus ended the matter for VRS and as such, Respondent No. 2 was under no obligation to consider it.

4. I have considered the submissions made.

It is an admitted position that the Petitioner had applied for VRS on 9th December, 2005. There are also letters on record dated 3rd March, 2006 as well as 17th July, 2006 by which the Petitioner had requested Respondent No. 2 to relieve him under VRS. During arguments, learned Counsel for Respondent No. 2 has referred to DPE/Guidelines/VIII/1 under the heading of Voluntary Retirement Scheme, specially Clause 9 and Clause 12. The same reads as under:

9. VRS will be applicable to the permanent employees badly workers, work charged established and temporary workers but not to the casual workers. There will be no recruitment against vacancies arising due to VRS.

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12. In implementing the VRS scheme, management shall ensure that it is extended primarily to such employees whose services may be dispensed without

detriment to the company. Care will be exercised to ensure that highly skilled and qualified workers and staff are not given the option. As there shall be no recruitment against vacancies arising due to VRS- it is important that the organization is not denuded of talent. The management of the PS Us shall introduce the VRS with the approval of their Boards and the administrative Ministries.

Clause 12 clearly stipulates that acceptance of VRS is a discretion of the Management and it cannot be claimed as a matter of right. The "post" on which the Petitioner was working fell in Group B Category and the benefit of VRS could not have been availed as a matter of right as per Government of India guidelines as are referred above. Further, the Petitioner has not disputed the position that VRS was kept in abeyance w.e.f 6th September, 2006 in respect of Group A and B category including Project Engineers. In any event, the Petitioner had also tendered his resignation. In view of the above reasoning given, Respondent No. 2 was justified in not responding to application for VRS submitted by the Petitioner. Further the Petitioner was informed in this regard by Respondent No. 2 vide letter dated 24th September, 2007. It may also be mentioned that the reasons given for not accepting VRS application are not challenged in this petition. As regards allegation of discrimination is concerned, Petitioner has not given the name of employees in the petition who as per him have been given the benefit of VRS Few names are given in letter dated 31st August, 2007 who as per him had been given benefit of VRS by Respondent No. 2, however, the Petitioner has not given their designation nor it is his stand that the said employers were falling in Group "A" or "B" category. Even the dates of alleged acceptance of resignation have also not been given whereas the stand of Respondent No. 2 is that none of the Group A and B category employees including the Project Engineers have been granted VRS Nothing has been placed on record by the Petitioner to substantiate the alleged stand of discrimination. Further, the Petitioner of his own will had tendered his resignation. It is also an admitted position that after resigning, the Petitioner has taken up a job in the Gulf. Even the present petition is filed through his attorney i.e. wife. The Petitioner for better prospects had tendered the resignation. There is nothing on record to show that the Petitioner was compelled to resign due to non acceptance of his request for VRS as is alleged by him. There is also a delay of three years in filing the present petition. As per Petitioner, VRS was opted on 17.7.2006 whereas present petition is filed in September, 2009. The delay has also not been explained in any manner.

In view of the above, no relief can be granted to the Petitioner. Petition stands dismissed with no order as to costs.