
(2015) 09 OHC CK 0030
In the Orissa High Court
Case No : OJC No. 15274 of 1997

Siraj

APPELLANT

Vs

Ircon International Ltd. and Others

RESPONDENT

Date of Decision : 15-09-2015

Acts Referred:

Constitution of India, 1950 — Article 16

Citation : (2015) 09 OHC CK 0030

Hon'ble Judges : B.R. Sarangi, J

Bench : Single Bench

Advocate : R.K. Rath, Senior Advocate, for the Appellant; Sabitri Ratho, Advocates for the Respondent

Final Decision : Allowed

Judgement

Dr. B.R. Sarangi, J—The petitioner, who was working as a Laboratory Assistant in the Office of the Ircon International Ltd., a Government of India undertaking, Ministry of Railways, has filed this application seeking to quash the order dated 10.07.1997 vide Annexure-7, accepting the voluntary resignation submitted by the petitioner and order dated 30.09.1997 vide Annexure-9 releasing the petitioner from service and further seeking for a direction to regularize his service with effect from the date the services of his juniors have been regularized pursuant to Annexure-11-B and Annexure-11-C, the Office Order Nos. 456/2003 and 483/2003 respectively.

2. The epitome of facts of the case, in hand, is that the petitioner entered into service on 26.03.1985 on daily rated basis as a Laboratory Assistant. He having continued as such till 21.10.1986, was granted ad hoc scale w.e.f. 21.10.1986. While he was posted at Bhubaneswar under opposite party No. 2, he was communicated with orders dated 10.07.1997 and 30.09.1997 by which he was compelled to take voluntary retirement from service. The petitioner while posted at Mathura in the State of Uttar Pradesh, having faced a lot of harassment and humiliation submitted an application for voluntary retirement on 22.03.1996 in

Annexure-1, which was not accepted by the opposite party No. 1. In other words, the same was rejected vide order dated 09.04.1996 specifically indicating that the petitioner is not entitled to seek voluntary retirement as he has not completed 10 years of service to opt for voluntary resignation floated by opposite party No. 1. On 24.11.1995, the opposite party No. 1 floated another Voluntary Resignation Scheme in which it was specifically mentioned that ad hoc employees having 10 years or more service as on 31.10.1995 can seek for voluntary resignation by making a written request vide Annexure-3. Accordingly, the petitioner sought for voluntary resignation pursuant to the above scheme and requested for acceptance of the resignation latest by 31.10.1997 pursuant to his application dated 23.12.1996 in Annexure-4. As per the letter of the Advisor dated 19.06.1997, GM/HRM was intimated that the petitioner has complained that he has applied for voluntary resignation under Ircon's Voluntary Retirement Scheme on 23.12.1996 and his application was forwarded by Delhi-Mathura Project on 26.03.1997 to the Corporate Office. The petitioner expressed his keenness for taking advantage of the scheme and wanted to know whether his resignation is being considered and therefore he show law into the complained and advise him adjust. In response to the same, note has been given "the category of Laboratory Assistant is not covered under VRS Scheme. Hence the request of Mohd. Siraj for VRS could not been accepted". Accordingly, it was directed that the same should be intimated on Fax to CPM/Cal for information to the petitioner. Accordingly, by memo dated 25.03.1997, the behavior was intimated that Corporate office has recently decided that the staff who have completed five years or more service on 31.12.1996 shall submit application for voluntary resignation from IRCON service. Accordingly, the petitioner vide letter dated 10.07.1997(Annexure-7) was intimated that his VRS application submitted on 23.12.1996 has been accepted vide Corporate Office Order No. 601/97 dated 07.07.1997. The petitioner filed an application on 01.09.1997 for withdrawal of voluntary resignation and stated that Office Order No. 601/97 dated 07.07.1997 be treated as cancelled and he be allowed to continue in service of Ircon International Ltd. Instead of considering the said letter in Annexure-8, he has been intimated vide Annexure-9 dated 30.09.1997 that since his application for voluntary retirement has been accepted by the competent authority vide Corporate Office Order No. 601/97, he is relieved from service w.e.f. 30.09.1997 and it was intimated that all dues other than CPF, GIS shall be paid by the Office duly drawn from Calcutta Office. Assailing the said order, the petitioner approached this Court by filing the present application stating that since his VRS has not been accepted vide Annexure-5, which has been communicated to him, he is continuing in service. Subsequently acceptance of his application for voluntary retirement by reducing the period from 10 years to 5 years in Annexure-7 is absolutely misconceived one and communication made thereof cannot sustain in the eye of law and consequential direction for release of benefit also cannot sustain. While entertaining the writ application, this Court passed an interim order on 10.11.1997 directing stay of Annexures-7 and 9 for a period of four weeks and the said interim order has been extended from time to time.

Opposite party Nos. 1 and 2 appeared and filed Misc. Case No. 4366 of 1997 for vacation of interim order. This Court while vacating the interim order directed for listing the matter for final disposal. But in the meantime, there was subsequent development in view of the fact that on 23.04.2003 a committee was constituted to consider the regularization of the services of the employees where the petitioner's name finds place in serial No. 15 pursuant to Annexure-11-A dated 23.04.2003. But subsequently, though the services of his juniors have been regularized vide Annexure-11-B and Annexure-11-C, Office Order Nos. 456/2003 and 483/2003 respectively, the petitioner's service has not been regularized on the plea that his VRS has been accepted by the authority in Annexure-7.

3. Mr. R.K. Rath, learned Senior Counsel for the petitioner strenuously urged that the petitioner having communicated with the fact that he has not completed 10 years of service, his application for voluntary resignation has not been accepted vide Annexure-5, subsequent steps taken for acceptance of VRS reducing the eligibility period from 10 years to 5 years without any application therefor, the action of the authorities is arbitrary and unreasonable and therefore, he seeks for quashing of Annexures- 7 and 9. He further seeks for regularization of service as his name has been recommended vide Annexure-11-A by the committee constituted for regularization of service from the date the services of his juniors have been regularized pursuant to Annexure-11-B and Annexure-11-C, respectively. To substantiate his case, he has relied on *The Manager, Government Branch Press and Another Vs. D.B. Belliappa*, AIR 1979 SC 429 : (1979) 38 FLR 337 : (1979) LabIC 146 : (1979) 1 LLJ 156 : (1979) 1 SCC 477 : (1979) 2 SCR 458 and *Om Prakash Goel Vs. The Himachal Pradesh Tourism Development Corporation Ltd., Shimla and another*, AIR 1991 SC 1490 : (1991) 63 FLR 245 : (1991) 3 JT 6 : (1991) LabIC 1414 : (1991) 1 SCALE 892 : (1991) 3 SCC 291 : (1991) 2 SCR 701(1) : (1991) 2 UJ 176 .

4. Ms. S. Ratho, learned counsel for opposite party Nos. 1 and 2 submitted that pursuant to memo dated 25.03.1997 in Annexure-6 opposite party No. 1 revised the criteria for filing application under the VRS Scheme to the effect that those workmen who have completed five years or more service on 31.12.1996 would be eligible to avail the benefits. Consequently, the application submitted by the petitioner in Annexure-4 dated 23.12.1996 has been accepted. With regard to maintainability of the writ application, she urged that since disputed questions of fact fall under Schedule-III of the Industrial Dispute Act, 1947 and there is availability of alternative remedy under the statute, instead of availing the said forum under the Industrial Disputes Act, the present writ application is not maintainable. She further urged that due to shrinkage/closure of the activities of the project, the Company resorted to terminate the service of surplus employees on payment of retrenchment compensation, gratuity, bonus payment in lieu of notice in accordance with provisions of law. Since the petitioner has been engaged in a project work, with the closure of the Project, his application for VRS has been accepted and therefore, no illegalities or irregularities have been committed by the authority in accepting the VRS submitted by the petitioner by

reducing the eligibility criteria from 10 years to 5 years. It is stated that since the project has been closed, employees who have been engaged under the project, have no legal right to seek continuance in employment or even to seek employment in other projects of the said Company. To substantiate her contention, she has relied upon the judgments of the apex Court in Hindustan Steel Works Construction Ltd., etc. etc. Vs. Hindustan Steel Works Construction Ltd. Employees' Union, Hyderabad and another etc. etc., AIR 1995 SC 1163 : (1995) 70 FLR 946 : (1995) 2 JT 410 : (1995) LabIC 1590 : (1995) 1 SCALE 814 : (1995) 3 SCC 474 : (1995) 2 SCR 10 : (1995) 2 SLJ 93 , Lal Mohammad and Others Vs. Indian Railway Construction Co. Ltd. and Others, AIR 2007 SC 2230 : (2007) 112 FLR 847 : (2007) 2 JT 458 : (2007) 2 SCALE 138 : (2007) 2 SCC 513 : (2007) 1 SCC(L&S) 725 : (2007) 1 SCR 784 : (2007) AIRSCW 5910 : (2007) 6 Supreme 201 and Secretary, State of Karnataka and Others Vs. Umadevi and Others, AIR 2006 SC 1806 : (2006) 6 CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415 .

5. From the facts pleaded above, the following questions emerge for consideration.

"(i) Whether the petitioner's resignation vide Annexure-4 dated 23.12.1996 still survived for consideration by the authority by accepting the same in Annexure-7 dated 10.07.1997 and giving effect to vide Annexure-9 dated 30.09.1997, respectively?

(ii) Whether the petitioner is entitled to get regularization of service as claimed from the date his juniors have been regularized pursuant to Annexure-11-B and Annexure-11-C respectively?

(iii) To what relief the petitioner is entitled to?"

6. As regards question No. (i), it appears that admittedly, the petitioner was initially appointed on daily rated basis as a Laboratory Assistant under the opposite parties on 26.03.1985 and he worked as such till 20.10.1986. Thereafter, he was allowed to continue on ad hoc scale w.e.f. 21.10.1986. While he was continuing, opposite party No. 3 issued Circular No. IRCON/Estt/VRS dated 24.11.1995 floating voluntary resignation scheme, pursuant to which the petitioner submitted his application for voluntary retirement on 22.03.1996 giving effect from 10.04.1996. Accordingly, the SPM/DIN recommended the case of the petitioner for acceptance of VRS and to release him by 10.04.1996 pursuant to Annexure-1. But the same has not been accepted vide letter dated 07.04.1996 stating that on scrutiny of service records, it appears that the petitioner had served the IRCON w.e.f. 26.03.1985 to 20.10.1986 on daily rated basis (as casual) and was awarded ad hoc scale w.e.f. 21.10.1986. As the service rendered by the petitioner on daily rated basis is not to be counted as qualifying service for computing 10 years of service for the eligibility for opting the Scheme for voluntary resignation, he was not eligible for the same. Again another

Voluntary Resignation Scheme was introduced vide Circular dated 24.11.1995 wherein it was stated that the same Scheme will be applicable to ad hoc employees having 10 years or more service as on 31.10.1995 and it is further stated that any employee may seek voluntary resignation by making written request. Pursuant to such Circular the petitioner submitted his application vide Annexure-4 dated 23.12.1996 stating that his resignation be accepted latest by 31.10.1997 as he may opt for VRS before the said date with an undertaking that he will not withdraw his request for voluntary retirement at a later date. Since no action was taken on such application, he met the Advisor/OM, who on consideration of the grievance made by the petitioner, recommended the case of the petitioner vide Annexure-5 stating that his application was forwarded by Delhi-Mathura project on 26.13.1993 to the Corporate Office. It is further stated that the petitioner expressed his keenness for taking advantage of the Scheme and wanted to know whether his resignation is being considered. Accordingly, the Advisor/OM requested the GM/HR to look into the grievance of the petitioner and advise him accordingly. In Annexure-5, there is an office notice where it has been categorically stated as follows:

"The category of Lab. Asst. is not covered under VRS Scheme. Hence, the request of Mohd. Siraj for VRS could not be accepted.

Sd/- 30.6.1997"

In the said note, direction has been given to communicate the same through FAX to CPM/Cal for information of the petitioner on 5.7.1997. Accordingly, the petitioner has been intimated that as VRS submitted in Annexure-4 dated 23.12.1996 has not been accepted by the authority as category of Lab. Asst. is not covered under the VRS scheme. Therefore, for all times to come, the petitioner's resignation has not been accepted. When the matter thus stood, on 25.3.1997 the scheme was modified to the extent that the staffs who have completed five years or more service as on 31.12.1996, may submit their voluntary resignation from IRCON service. Though the petitioner has not submitted any application and his application dated 23.12.1996 in Annexure-4 has been rejected vide Annexure-5, the order impugned in Annexure-7 dated 10.7.1996 has been passed stating that the authorities have accepted the application for voluntary resignation pursuant to office order No. 601/97 and directed the petitioner to receive the consequential benefits pursuant to Annexure-9 dated 20.9.1997. Once the application submitted in Annexure-4 dated 23.12.1996 has not been accepted as the VRS is not applicable to the Lab. Asst. vide Annexure-5 and the same has been communicated to the petitioner, the authorities cannot and could not act upon the same by accepting the resignation vide Annexure-7 and consequentially direct for receipt of the benefits in Annexure-9. The petitioner having been communicated that his application dated 23.12.1996 in Annexure-4 has not been accepted, the said application is no more available to be considered for acceptance vide Annexure-7 and as such Annexure-7 and the consequential order for release of benefits in Annexure-9

cannot sustain in the eye of law. The petitioner might have been appointed for a project work by the opposite parties and on completion of the same, the petitioner's service may not be required, but that ipso facto cannot automatically be taken into consideration for acceptance of the VRS application submitted in Annexure-4 which has already been disposed of vide Annexure-5 by not accepting the same as the scheme is not applicable to the post held by the petitioner, namely, Lab. Asst.

7. Learned counsel for opposite party Nos. 1 and 2 has placed reliance on Hindustan Steel Works Construction Ltd. (supra) where the apex Court has held that once the project is closed, the employees, who are engaged under the project has no legal right to seek continuance in employment or even seek employment under any other project of the same company. Much reliance is placed on paragraph 16 of the said judgment. The same view has also been expressed by the Apex Court in Lal Mohammad (supra). The ratio decided in those cases has been considered taking into account the facts of the respective cases. The Constitution Bench of the apex Court in The State of Orissa Vs. Sudhansu Sekhar Misra and Others, AIR 1968 SC 647 : (1970) 1 LLJ 662 : (1968) 2 SCR 154 , has held as follows:--

"A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It is not a profitable tax to extract a sentence here and there from a judgment and to build upon it."

Therefore, the ratio decided in Hindustan Steel Works Construction Ltd. (supra) and Lal Mohammad (supra) has no basis to the present context.

8. In view of such position, since the application submitted by the petitioner on 23.12.1996 having been considered and not accepted by the authority vide Annexure-5, the same is no more available to be reconsidered to enable the authority to pass an order in Annexures-7 and 9. Question No. (i) is answered accordingly.

9. So far as question No. (ii) is concerned, it is seen that due to non-acceptance of VRS, the petitioner was continuing in service when the opposite parties 1 and 2 constituted a committee to regularize the services of ad hoc/contract staff looking into their service history as available in the personal file and also the service book. A list of 87 candidates was prepared by the authorities vide Annexure-11-A for consideration of their regularization by the Committee, in which the name of the petitioner finds place at Sl. No. 15, but the services of the petitioner have not been regularized though juniors to him, who have completed 10 years of service in a scale of pay as on 30.6.2003 and are free from DAR/Vigilance, have been regularized in the service of the company w.e.f. 1.7.2003 against the post and in the pay scale indicated against each and the regularization was also directed to be effective only on assuming charge of the

post in the new place of posting mentioned against each of the name and as such their salary for the month of July, 2003 and onwards will be drawn at the new place of posting. In the said order it is also stated that they will be governed by the service conditions, conduct and discipline rules as applicable to the regular employees of the company and it is further directed that they will remain on probation for a period of two years from 1.7.2003 and thereafter their services shall be regularized. Vide office orders No. 456/03 and 483/03 in Annexures-11-B and 11-C respectively, though the services of the juniors to the petitioner have been regularized, the services of the petitioner have not been regularized. No reason has been assigned for non-regularization of the services of the petitioner though he had completed 10 years of ad hoc service and as such, his case was placed before the Committee duly constituted by the authority for regularization.

10. In *The Manager, Govt. Branch Press (supra)* the apex Court has held that if the services of a temporary Government servant are terminated arbitrarily, and not on the ground of his unsuitability, unsatisfactory conduct or the like which would put him in a class apart from his juniors in the same service, a question of unfair discrimination may arise, notwithstanding the fact that in terminating his service, the appointing authority was purporting to act in accordance with the terms of the employment. Where a charge of unfair discrimination is levelled with specificity, or improper motives are imputed to the authority making the impugned order of termination of the service, it is the duty of the authority to dispel that charge by disclosing to the Court the reason or motive which impelled it to take the impugned action and therefore, fairness founded on reason is the essence of the guarantee epitomised in Arts. 14 and 16 (1) of the Constitution of India.

11. In *Om Prakash Goel (supra)* in paragraph 6 the apex Court has held as follows:

"In this context, the learned counsel also questioned the termination order from another angle. In that order it is mentioned that the services of the petitioner are no longer required, therefore, they are terminated. But from the record it is clear that juniors to the petitioner are retained and they are continuing in service. In the affidavit it is clearly mentioned that juniors whose names are given there are retained in service in violation of Arts. 14 and 16 of the Constitution. In the counter-affidavit only a vague reply is given simply stating that the averments made by the petitioner are not correct. In *K.C. Joshi Vs. Union of India (UOI) and Others*, AIR 1985 SC 1046 : (1985) 51 FLR 145 : (1987) 163 ITR 597 : (1985) 2 LLJ 416 : (1985) 1 SCALE 707 : (1985) 3 SCC 153 : (1985) 3 SCR 869 : (1985) 2 SLJ 68 : (1985) 17 UJ 950 it is observed that if it is discharged simpliciter, it would be violative of Art. 16, because a number of store-keepers junior to the appellant are shown to have been retained in the service". Likewise in *Jarnail Singh and Others Vs. State of Punjab and Others*, AIR 1986 SC 1626 : (1986) 2 LLJ 268 : (1986) 1 SCALE 1009 : (1986) 3 SCC 277 : (1986) 2 SCR 1022 :

(1986) 2 SLJ 157 : (1986) 2 UJ 235 it was observed as under (at p. 1635):

"In the instant case, ad hoc services of the appellants have been arbitrarily terminated as no longer required while the respondents have retained other Surveyors who are juniors to the appellants. Therefore, on this ground also, the impugned order of termination the services of the appellants are illegal and paid being in contravention of the fundamental rights guaranteed under Arts. 14 and 16 of the Constitution of India."

After a careful perusal of the record we are satisfied that the juniors to the petitioner are retained. Therefore on this ground also the termination order is liable to be quashed."

12. In view of the fact that pursuant to Annexures-11-B and 11-C since juniors to the petitioner have been allowed to continue in service, the petitioner's service has to be regularized and he should be extended with all the service benefits at par with his juniors against the post held by him and he should be extended with all the consequential benefits as admissible to the post. The contention raised by the learned counsel for the opposite parties 1 and 2 with regard to the applicability of Uma Devi (supra), this Court is of the considered view that the ratio decided in that case is not applicable to the present case. Admittedly, juniors have been given regularization and therefore, the petitioner is entitled to get such benefits as claimed by him. Question No. (ii) is answered accordingly.

13. Considering the above facts and circumstances and the law governing the field, the orders passed in Annexures-7 & 9 are hereby quashed and the opposite parties 1 and 2 are directed to regularize the services of the petitioner from the date his juniors have been regularized pursuant to Annexures-11-B and 11-C and the same be extended to him with all the consequential benefits within a period of three months from the date of communication of this judgment.

14. The writ application is allowed accordingly. No order as to costs.