

(2003) 06 OHC CK 0078
In the Orissa High Court
Case No : O.J.C. No. 7582 of 2001

Sri Sudarsan Biswal and Others

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 17-06-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2003) 2 OLR 130

Hon'ble Judges : P.K. Tripathy, J

Bench : Single Bench

Advocate : K.C. Kanungo, S. Behera, R.N. Singh, M.K. Mandal and S. Jiban Dash, for the Appellant; Addl. Standing Counsel for O.P. No. 1, S.K. Pattnaik and U.C. Mohanty for O.P. No. 2, for the Respondent

Judgement

P.K. Tripathy, J.—Petitioners, who are employees under the Orissa State Co-operative Oil Seeds Growers" Federation Ltd. (in short "the Federation"), have filed this writ application under Articles 226 and 227 of the Constitution of India with the prayer to issue appropriate writ by directing the opposite parties to not to implement the option for voluntary retirement made by the petitioners in view of withdrawal of the said option by the petitioners (on different dates as per the Annexure-3 series) on the ground that they went to continue in service and because by then the authority had not accepted their option for voluntary retirement and therefore Clause 3. 2 of the Circular (Annexure-2) is not applicable to them.

2. It is not in dispute between the parties that petitioners are working as Field Superintendents in the Federation. It is also not in dispute that in view of the decision of the Government. Annexure-1 and the Circular of the Federation, Annexure-2, all the petitioners in time submitted their option for voluntary retirement but withdrew the same on different dates in September, 2000. Contention of the petitioners is that, in spite of withdrawal of the option by them the opposite party members are bent upon to implement Voluntary Retirement

Scheme (in short "V.R.S.") as against them. Petitioners' further case is that when they are prepared to swim or sink along with the Organisation (Federation) notwithstanding its bad financial condition, insistence of the opposite parties to give them voluntary retirement is against the interest of justice and breach of the service conditions.

3. The Manager (P & A) of the Federation has a counter affidavit on behalf of opposite party No. 2. Substance of the objection is that petitioners are in a confused state of mind and have advanced inconsistent, and contradictory contentions at different point of time after the V.R.S. was adopted by the Federation. They applied to avail option of V.R.S. Then as per Annexure-3 series they withdrew the same, but petitioner No. 3 on 31.3.2001 prayed to defer his V.R.S. for one month. In other words, the said petitioner was still opting for voluntary retirement under the V.R.S. notwithstanding submitting his withdrawal of the option in September, 2000. Similarly, on 16.5.2001 General Secretary of the Association of the Employees of the Federation, namely "Orissa Karmachari Sangha" sought for extension of the date of relief under the V.R.S. after 31st July, 2001 and all the petitioners along with some others on 19.6.2001 also made a similar request for extension of the date of accepting the option after 30th June, 2001. The relevant correspondences have been annexed as Annexures "G", "H" and "J". In the counter affidavit it has further been stated on behalf of opposite party No. 2 that acceptance of option for voluntary retirement being involved with financial implications, therefore the opposite party members made correspondence with the State Government for necessary financial assistance, and when that letter was at the stage of finalisation and the State Govt. accorded sanction keeping in view the bad financial condition of the Federation and desirability of departure of excess staff from the Federation, at that stage petitioners have come up with this writ application.

4. In the rejoinder only explanation has been given for conducting themselves in the manner alleged in the counter affidavit.

5. Clause 3.2 of the Circular, Annexure-2. reads as hereunder :

"3.2 Application for V.R. cannot be withdrawn after sanction order has been communicated to the concerned employee."

Capitalising on that clause petitioners have projected the whole case for withdrawal of the option. It appears from the above narrated facts that the criticism of the opposite party regarding inconsistent conduct of the petitioners is not incorrect inasmuch as petitioners, as it appears, wanted to opt for V.R.S. with the hope to get employment in some other undertakings controlled or managed by the State Government. Certainly that cannot be the spirit behind the V.R.S. adopted by the State Government for allowing a person for opting for voluntary retirement from one organisation to take all financial benefits thereof and to again serve in another organisation owned or controlled by the State Government. If that is the system which has been adopted by the State

Government in any other case then that is improper. On the other hand the V.R.S., as the concept came and grew is with the purposes like (i) to eliminate unwilling workers from the organisation; (ii) to downsize the establishment to make it financially viable for that organisation or the office to run smoothly and efficiently and (iii) inter alia to create employment opportunity for new commers. Therefore, V.R.S. is to be adopted accordingly. A person taking voluntary retirement under the V.R.S. cannot be assured of any further employment by the employer or the State Government. As noted above, if any such step has been taken by the State Government or the Federation, then that is not only improper but also highly irregular.

6. Be that as it may, in the case at hand the above referred Annexures filed by both the parties indicate that petitioners are in two mind whether to walk away from the Federation or to stick to the service with the risk of suffering any financial and service hazardous. When V.R.S. is adopted in an organisation, once the option is given as rightly pointed out by opposite party No. 2, the matter is processed for finding out financial resources to meet to the requirement of payment to the employees granted voluntary retirement. In this case when the Federation has projected the case of the petitioners as the employees opted to retire under the V.R.S. and in that respect it has obtained funds from outside Agencies through the State Govt., therefore, aforesaid conduct of the petitioners are not proper in changing their attitude in the alleged manner. The above quoted Clause 3.2 provides that the employee is debarred from withdrawing the option from the date the order is communicated. When the language in that Circular is not by stating that "from the date of service of the order of sanction of V.R.S.", therefore the word "communicated" has to be given dictionary meaning. The different narration by the petitioners in the writ application and the rejoinder indicates that they were aware about processing of their option and the decision therefore by the authority on their applications for voluntary retirement or else there was no necessity for them to seek for extension of time to implement their option. Since the petitioners are the official staff working under the Federation and they knew about the order passed by the authority, therefore, that satisfies to the requirement of the term "communicated". Therefore, petitioners cannot take protection of Clause 3.2, to back out from their option on the ground of non-service of order by the authority regarding their option on V.R.S. Be that as it may, since some time has elapsed in the meantime, petitioners are given a period of two weeks" time to make a clear statement before their authority about their option whether to retire under the V.R.S. or want to withdraw the same. Any of the petitioners not filing such a written statement before the competent authority within the aforesaid period shall be deemed to have opted for V.R.S. If any of the petitioners shall make a statement to not to press his application for voluntary retirement, then he shall also undertake therein to abide by any consequence that may follow during his continuance in the Federation relating to service career and financial hurdles. That consequence must occur in accordance with law, rules and procedure besides in exigencies of administration. In the

event such option being given by any of the petitioners, it will be appropriate for the opposite parties to treat the option for voluntary retirement being withdrawn and the opposite party shall pass appropriate order as expeditiously possible and preferably within a period of six weeks. However, if any category of employees in the Federation are found to be in excess of the requirement, then the opposite parties are not precluded from taking appropriate step for removal or adjustment of surplus staff in accordance with law.

The writ application is accordingly disposed of.