(2001) 01 AP CK 0077

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16288 of 1999

V. Vinayak Rao and Others — APPELLANT

Vs

A.P. State Irrigation Development Corporation Ltd. and Another — RESPONDENT

Date of Decision : 20-01-2001

Acts Referred:
Constitution of India, 1950 — Article 14, 141

Citation : (2001) 2 ALT 384

Hon'ble Judges : V. Eswaraiah, J;B. Subhashan Reddy, J

Bench : Division Bench

Advocate : A. Chaya Devi, S.V. Bhatt and A. Anasuya, for the Appellant; T. Nageswara Rao, S.C., for the Respondent

Judgement

B. Subhashan Reddy, J.—The petitioners herein were the employees of Andhra Pradesh State Irrigation Development Corporation (hereinafter referred to as "the Corporation"). Staffing pattern was to be restructured because of the financial condition of the Corporation. The Corporation felt the need to cut the manpower by 50% in accordance with the recommendations of the State Level Committee on Public Sector Undertakings and vide circular Memo No. 2295, dated 31-5-1995/1-6-1995, terms and conditions were enunciated and the same were communicated to be followed by all the State Undertakings including the Corporation. Accordingly, the Corporation by its Circular No. 2757, dated 4-7-1997, called for applications from the staff who are willing to opt for Voluntary Retirement Scheme (VRS). But, as the response was not as expected by the Corporation, the same was extended to another batch by the Circular Memo No. 6777, dated 12-12-1997. Even then, the Corporation was not satisfied about the number of optees and then invited further applications from the optees under VRS Scheme vide Circular No. 3464, dated 3-9-1998. As stated above, there were three phases under which options were called for. While the petitioner in W.P. No. 16288 of 1999 is covered by the second phase, the other writ petitioners fall within the third phase.

2. The common relief sought for by the writ petitioners is that their retirement with effect from 31-7-1999 is illegal and arbitrary and that the said order/action of the Corporation should be set at naught by directing the Corporation to continue the petitioners till their respective dates of superannuation. They have also sought for the benefits of not only the salary, but all the attendant benefits like increments etc., for the period they have worked and by not treating the cut-off date as 28-2-1998 or 31-10-1998, as was done by the Corporation.

3. Ms. A. Chaya Devi, the learned Counsel appearing for the petitioners contends that since the Corporation did not adhere to the conditions enumerated in the VRS Scheme, under which the petitioners had opted to retire voluntarily, the petitioners had rightly resiled from VRS option they had exercised and as such, the order dated 31-7-1999 seeking to retire the petitioners under VRS scheme is illegal and arbitrary. On the other hand, Mr. T. Nageswara Rao, the learned Counsel appearing for the Corporation submits that the retirement of the petitioners is in accordance with the VRS scheme enunciated in both the second and third phases vide circulars dated 12-12-1997 and 3-9-1998 and that the payment was made in accordance with the scheme and there is no deviation from the scheme and the writ petitions have to fail. While the learned Counsel for the petitioners has strongly relied upon the judgment of the Supreme Court in J.N. Srivastava Vs. Union of India (UOI) and Another, the learned Standing Counsel for the Corporation has relied upon the judgment of the Supreme Court in Raj Kumar Vs. Union of India (UOI), . In Raj Kumar''s case the Supreme Court was dealing with the resignation of an I.A.S. Officer who had sought for the acceptance of the resignation forthwith and the said resignation was accepted after some time. But, there was a delay in its communication and in spite of that, the Supreme Court held that the delay cannot profit the petitioner therein and that the resignation became effective on the date of acceptance. But the said judgment is not an authority on the proposition as to the right of the employee to withdraw the application opting for voluntary retirement before the effective date. That is so clear from the judgment of the Supreme Court in Balram Gupta Vs. Union of India (UOI) and Anr, which has been followed in J.N. Srivastava v. Union of India (1 supra) and further followed in the latest case in Shambhu Murari Sinha Vs. Project and Development India and Another, . Hence, the law of the land laid down by the Supreme Court is that in the cases relating to voluntary retirement, the effective date is the date on which the employee is to be relieved and before the said date, the employee is entitled to withdraw his application/option for voluntary retirement.

4. Indisputably, the petitioners were made to work even after the cut-off dates set by the Corporation i.e., 28-2-1998 and 31-10-1998 respectively. But, the petitioner in W.P. No. 16288 of 1999 did not file any letter of withdrawal of his option for voluntary retirement. In his application dated 15-7-1999, he had only stressed the right to receive the benefits of increase in salary after the cut-off date i.e., 28-2-1998 and seeking such benefits of increase in salary upto and inclusive of 31-7-1999. His plea that he has filed an application for withdrawal of

his option for voluntary retirement is, thus, rejected. There is no proof that before he was relieved on 31-7-1999, he has filed any application for withdrawal of his option under VRS Scheme. Equally, in the cases of the petitioners in W.P. Nos. 18017/99 and 18653/99, no relief can be granted to annul the acceptance of the option of the petitioners exercised under VRS Scheme even though they had filed withdrawal applications on 6-2-1999 and 6-9-1999 respectively, as they were relieved on 31-7-1999 by receiving the monetary benefits. However, the entitlement of the above three petitioners regarding the benefits of increased salary etc., will be discussed later. In so far as the petitioners in W.P. Nos. 15703/99 and 15742/99 are concerned, they had filed their withdrawal applications on 8-1-1999 and 26-2-1999 respectively and had the benefit of interim directions to continue them in service, granted on 30-7-1999, while they were to be relieved on the next day and the result is that as on date they are still in the service of the Corporation. In consonance with the law laid down by the Supreme Court as mentioned supra, the latest judicial precedent being Shambhu Murari Sinha''s case (4 supra), the plea of the petitioners in W.P. Nos. 15703/99 and 15742/99 to annul the acceptance of the applications of the petitioners under VRS Scheme merit acceptance, as they had filed the said applications before the effective date i.e., 31-7-1999 and also did not accept the monetary benefits under VRS Scheme. The learned Standing Counsel has invited our attention to the judgment dated 2-2-1999 rendered by a learned Single Judge in W.P.No. 1765 of 1999, which was affirmed by the Division Bench in W.A. No. 240/99. But, the learned Single Judge did not deal with the aspect of the effective date as the said question was not raised. In fact, the same is made clear by the Division Bench in the Writ Appeal that the said argument was not raised before the learned Single Judge and as such, the same was not permitted to be raised in the Writ Appeal for the first time. In any event, the dicta laid down by the Supreme Court takes precedence over any other High Court Judgment and that legal aspect need not be emphasized any further.

5. We now come to the second contention with regard to entitlement of the petitioners in W.P. Nos. 16288, 18017 and 18653 of 1999 regarding their entitlement for the benefits of increase in salary after the cut-off dates 28-2-1998 and 31-10-1998 respectively. In fact, this aspect fell for consideration in W.P. No. 21901/98 and a learned Single Judge of this Court by judgment dated 19-1-1999 held that the cutoff date fixed for voluntary retirement u/s 6 as 28-2-1998, has to be extended upto 31-7-1998 as the petitioners therein were not relieved upto 31-7-1998 and were made to work till such date. In fact, the learned Single Judge took note of the fact that the Corporation has treated the cut-off date for the first phase of voluntary retirees as 31-10-1997 in spite of the fact that earlier, the same was fixed as 31-8-1997. The reason for extending the cut-off date was the date relieving the optees. This judgment of the learned Single Judge was affirmed by the Division Bench in W.A. No. 633 of 1999. Even though the learned Single Judge and the Division Bench laid stress on the point of discrimination as the optees under the Voluntary Retirement Scheme under

second and third phases were discriminated against, as compared to the retirees under the first phase, as the benefit of extension of cut-off dates was not provided to the optees under second and third phases even though similarly situated to that of the optees under the first phase. Apart from the above infraction of Article 14, the law laid down by the Supreme Court mentioned supra being the law of the land under Article 141 of the Indian Constitution is that the effective date of retirement is the date of relieving the employees from their duties and if that be so, there is no reason why the petitioners in the above three writ petitions cannot be entitled to claim the service benefits upto 31-7-1999. It is stated by the learned Counsel for the Corporation that since the judgment of the Division Bench in W.A. No. 633/99 has been carried in appeal to Supreme Court in SLP No. 10914 of 1999 and as the stay has been granted on 27-9-1999 by the Supreme Court, the Division Bench judgment cannot be followed. Firstly, the order of the Supreme Court staying the operation of the judgment of the Division Bench is confined to only that case and secondly, the judgment in this case is based upon the Supreme Court judgments directly on the point referred to supra, and as such, the contention of the learned Counsel for the Corporation cannot be acceded to. The learned Counsel for the Corporation would also submit that the petitioner in W.P.No. 16288 of 1999 is not entitled for any service benefits accruing after 28-2-1998 for the reason that disciplinary proceedings were pending against him and in view of the financial stringency, the amounts could not be paid to the petitioners immediately after accepting their options. We cannot also accept these two submissions for the reason that the disciplinary proceedings against the petitioner in W.P. No. 16288/99 were disposed of on 12-8-1998 while he was relieved an year later i.e., 31-7-1999. The financial stringency is no ground for not paying the service benefits accruing after the date set by the Corporation for the reason that the Corporation had failed to fulfill their commitment before the cut-off date as the employees had opted under VRS Scheme hoping to get the amounts on the dates set and it will be quite arbitrary to deny them the service benefits accruing after the cut-off dates set by the Corporation merely on the failure of the Corporation not able to mobilise the funds for payment.

6. For the foregoing reasons;

(1) we set aside the order of the Corporation seeking to retire the petitioners in W.P. Nos. 15703/99 and 15742/99 and they shall be entitled to be in service of the Corporation till their respective dates of superannuation;

(2) the plea of the petitioners in W.P. Nos. 16288/99, 18017/99 and 18653/99 to annul the acceptance of their options under VRS Scheme under Phase-II and Phase-III, is negatived;

(3) while the petitioners in W.P. Nos. 18017/99 and 18653/99 are entitled for the full payment of the service benefits like increments etc., accruing upto 31-7-1999, the petitioner in W.P. No. 16288/99 shall be entitled for service benefits like increments etc., accrued upto 31-7-1999, but the Corporation shall

be entitled to deduct 10% of the said benefits because of the order passed in disciplinary proceedings on 12-8-1998.

(4) the payments to the petitioners in W.P. Nos. 16288/99, 18017/99 and 18653/99 shall be calculated and paid within two months from the date of the receipt of a copy of this order; and

(5) in view of the facts and circumstances, we direct the parties to bear their own costs. The writ petitions are disposed of accordingly.