

(2003) 05 SC CK 0005

In the Supreme Court Of India

Case No : Civil Appeal No. 5638 of 1999 and 2159-2160, 4067-4069 and 4658-4659 of 2001

Vice Chairman and Managing Director A.P.S.I.D.C. Ltd. and
Another

APPELLANT

Vs

R. Varaprasad and Others

RESPONDENT

Date of Decision : 22-05-2003

Acts Referred:

Constitution of India, 1950 — Article 136, 14

Citation : AIR 2003 SC 4050 : (2003) AIRSCW 2989 : (2003) 5 JT 268 : (2003) 3 LLJ 23 : (2003) 5 SCALE 42 : (2003) 11 SCC 572 : (2004) SCC(L&S) 84 : (2003) 1 SCR 226 Supp : (2003) 1 SLJ 114 : (2003) 4 Supreme 245 : (2003) 2 UPLBEC 1709

Hon'ble Judges : Shivaraj V. Patil, J;Arijit Pasayat, J

Bench : Division Bench

Advocate : L. Nageshwara Rao, Roy Abraham, Seema Jain and Himinder Lal, T.V. Ratnam and K. Subba Rao, for the Appellant;

Final Decision : Disposed Of

Judgement

Shivaraj V. Patil, J.

Civil Appeal No. 5638 of 1999

1. The Andhra Pradesh State Irrigation Development Corporation Ltd. (for short 'Corporation') is a Government company, registered under the Companies Act, 1956. Pursuant to the national policy, the State of Andhra Pradesh issued instructions for floating Voluntary Retirement Scheme (VRS) in the Government companies and corporations. The Corporation introduced the VRS (Phase-I) on 1.6.1995. In the light of the said Scheme the Corporation issued a circular on 4.7.1997 inviting applications from the employees, who were eligible under the Scheme. In response to the same 416 employees submitted their options seeking voluntary retirement. The Corporation accepted their options on 18.10.1997 treating 31.10.1997 as cut off date for all purposes of VRS. The

funds, for giving benefits under the Scheme to the employees, were made available to the Corporation by the State Government during the first week of November, 1997. The employees, whose options had been accepted, were relieved from service on 15.11.1997. As per the Scheme offered, the employees were entitled to three months pay in lieu of notice. The cut off date was fixed as 31.10.1997. The employees had worked 15 days beyond the cut off date and earned salary for the period. Hence they were given two months and 15 days notice pay in addition to the 15 days salary. On 1.10.1997 the State Government issued a clarification stating, "in the circumstances where the management takes time to take a decision about the acceptance of the application of the employee and allow the notice period to lapse or the individual concerned has drawn all salary during the notice period, in these cases notice period pay would not be admissible as the individual has already drawn salaries during the notice period."

2. The Corporation issued another VRS (Phase II) on 12.12.1997 seeking options from the employees. 212 employees, including respondents 1 to 32 in this appeal, submitted their options for voluntary retirement. The options were accepted fixing the cutoff date as 28.2.1998 for the purpose of calculating the VRS claims of the employees. Since the State Government insisted for pre audit clearance by the Director of Treasuries and Accounts to pay the claims of the employees, it took some time and the funds were provided by the State Government only on 25.7.1998. The optees were relieved from service on 31.7.1998. They were permitted to continue in service beyond the notice period of three months and they were given full salary and allowance up to 31.7.1998, i.e., for a period of five months (including period of notice pay) beyond the cut off date. They were not given notice pay while settling their claims under the Scheme because they had also drawn salary during that period.

3. The respondents 1 to 32 filed writ petition No. 21901 of 1998 in the High Court seeking a writ of mandamus directing the Corporation to pay all service benefits as if they were in service up to 31.7.1998. The Corporation resisted the writ petition by filing a detailed counter affidavit contending, that the writ petitioners were not entitled for any relief. The learned single Judge of the High Court allowed the writ petition and directed the Corporation to pay three months notice pay treating the cut off date as 31.7.1998 though specific prayer was not made in the writ petition to this effect. The Corporation was also directed to calculate the terminal benefits of the optees as if they were continued in service till 31.7.1998 notwithstanding the cut off date fixed was 28.2.1998. Aggrieved by this order of the learned single Judge the appellants filed writ appeal No. 633 of 1999 before the Division Bench of the High Court. The same was dismissed by the Division Bench holding that the action of the Corporation in not giving notice pay to the employees covered under the second phase of VRS was discriminatory and violative of Article 14 of the Constitution of India as such benefit was given to the employees covered under the first phase of the VRS. Under these circumstances the appellants have called in question the validity and correctness of the impugned judgment and order of the Division Bench of the High Court affirming

the order of the learned single Judge.

4. Mr. L. Nageshwara Rao, learned senior counsel for the appellants - Corporation, urged that the High Court was not right in holding that the employees were entitled to get notice pay even though they were continued in service having drawn full salary and allowances beyond the stipulated notice period; the High Court was also not justified in directing the Corporation to treat two sets of optees of VRS Phase I and Phase II, similarly when they were governed by distinct and different sets of guidelines and conditions; that the terminal benefits to which the employees were entitled could be calculated as on and up to the cut off date of 28.2.1998; once the option seeking voluntary retirement were accepted with reference to a cut off date the employees were not entitled to claim terminal benefits beyond that date. According to the learned counsel the employees were continued in service beyond 28.2.1998 because of the condition that they could not be relieved from service even after the cut off date until they were paid the amount due to them as per VRS; they were paid salary and other allowances even after the cut off date till the date on which they were actually relieved from service after making the payment; that period between 1.3.1998 and 31.7.1998 could not be taken into consideration for the purpose of calculating the terminal benefits as per the VRS.

5. In opposition the learned counsel representing the respondents in their arguments supported the impugned judgment and order. They reiterated the submissions that were made before the High Court.

6. The learned counsel for the parties took us through the relevant portions of various documents on which they placed reliance.

7. To resolve the controversies that arise for consideration in this appeal, it becomes necessary to look at the guidelines, the VRS and circulars issued by the Corporation seeking the options of the employees for voluntary retirement. The claims of the parties are to be examined in the light of these documents as between them. Annexure P-1 dated 1.6.1995 is a circular issued by the Corporation in which it is stated that the Management is pleased to issue a Voluntary Retirement Scheme for employees of the Corporation and the Scheme will be known as "APSIDC Employees Voluntary Retirement Scheme 1995". The relevant clauses, which have bearing on the controversies to be resolved reads:-

"c) For calculation of VRS Ex-gratia, as well as reckoning eligibility, the date of acceptance of the application will be taken into consideration. Any increase in the salary after the cut-off point/date cannot be taken into consideration. However, for calculating the compensation for "Remaining period of service" wherever applicable, no compensation shall be paid for the period for which the salary has already been drawn by the employee after submission of VRS application.

d) The VRS option exercised is final as far as employee is concerned.

e) There shall be no separate notice either for the employee or the Corporation. In terms of service conditions mentioned in the offer of appointment/service rules/S.R.S.

XXX XXX XXX (SIC) The payments that are due from the Corporation under the scheme shall be released to the concerned on the date of relief subject to receipt of funds from Government."

Under the Scheme the Vice Chairman and Managing Director shall have power to amend, modify, alter or withdraw or extend the period of operation of the Scheme at any time either in whole or in part, at his discretion, if the circumstances so warrant.

8. Annexure P-2 is circular dated 4.7.1997, issued by the Corporation referring to Annexure P-1 dated 1/6/1995 and other circulars inviting applications from the employees, who were eligible and willing to accept VRS to apply in the prescribed form. By memo dated 1.10.1997 (Annexure P-3) Government of Andhra Pradesh issued amendment to the Voluntary Retirement Scheme guidelines, issued in the memo No. 1038/PE.I/A2/94-4 dated 23.1.1996. The amendment reads:-

1. (a) In the said Memo, for the existing Clause 6(a)(iv) the following shall be substituted, namely:-

"IV one month's/three months' notice pay (as per the conditions of service applicable)

If an application of an employee opting for Voluntary Retirement is accepted instantaneously and payment is arranged by the management on the same day, the concerned individual would be entitled to payment of ex-gratia alone with the notice period pay. It is however clarified that payment of ex-gratia for service rendered or left over service (whichever is less) as well as the amount payable for the notice period should not exceed the basic pay plus D.A. that would have been paid to the employees who have opted for Voluntary Retirement Scheme till the date of this superannuation.

In the circumstances where the Management takes time to take a decision about the acceptance of an application submitted by the employee for Voluntary Retirement Scheme; and allows the notice period to lapse or the individual concerned has drawn full salary during the notice period served by him, in these cases notice period may not be admissible as the individual has already drawn the salary during the notice period."

9. This amendment came into force from the date of issue of memo itself, i.e., from 1.10.1997. In this appeal we are concerned with respondents 1 to 32 falling under VRS phase III.

10. In the light of the contentions urged two points arise for consideration - (1) whether the terminal benefits and financial package available under the Scheme are to be calculated up to the cut off date fixed for accepting the applications of

the employees, who opted for voluntary retirement or they should be calculated up to the actual date of relieving them from service, and (2) whether the respondents were entitled for notice pay of three months.

11. In Clause (c) of Annexure P-1, extracted above, it is expressly and clearly stated that the date of acceptance of the applications of the employees seeking voluntary retirement under the Scheme shall be the date for calculation of VRS ex-gratia, as well as for reckoning eligibility. Added to this it is also made clear that any increase in the salary after the cut off point/date cannot be taken into consideration. It is also stated that for calculating the compensation for "remaining period of service" wherever applicable no compensation shall be paid for the period for which the salary has already been drawn by the employees after submission of VRS applications. Clause (j) of the Annexure states that the payments that are due from the Corporation under the Scheme shall be released to the concerned on the date of relieving subject to receipt of funds from the Government. This clause, in our view, has no bearing as far as the cut off or effective date is concerned for the purpose of calculating the terminal benefits including VRS ex-gratia and other benefits available under the VRS, to which an employee is entitled, particularly so, when in Clause (c), as already stated above, it is mentioned that for calculation of VRS ex-gratia as well as reckoning its eligibility the date of acceptance of applications will be taken into consideration. Clauses (c) and (i) are meant to serve different purposes. One is for the purpose of calculation of the benefits in terms of money under the VRS and the other is to see that the employee is not sent out without such payment. If that happens it will lead to a great hardship to an employee without any financial support to carry on life. It is for that reason Clause (i) appears to have been incorporated so that an employee is not rendered jobless. The payments that are due to be made by the Corporation under the Scheme depended upon the release of the funds by the Government. If some time is taken in this process even after acceptance of the voluntary retirement application, an employee is not relieved from service, he is to be paid salary and allowances from the date of acceptance of voluntary retirement application/cut off date till he is actually relieved from the service. The employee may continue in service in the interregnum by virtue of Clause (i) but that cannot alter the date on which the benefits that were due to an employee under the VRS to be calculated. Clause (c) itself indicates that any increase in salary after the cut off point/date cannot be taken into consideration for the purpose of calculation of payments to which an employee is entitled under the VRS. It is further made clear that for remaining period of service, wherever applicable, no compensation shall be paid for the period for which the salary has already been drawn by the employee after submission of application for voluntary retirement.

12. This being the position both learned single Judge and the Division Bench of the High Court were not right in taking a contrary view that the benefits available under the Scheme and terminal benefits should be reckoned and calculated as on the date of actual relieving the employee notwithstanding the cut

offdate mentioned by the Corporation and accepted by the employees. An employee even after accepting his application could not be relieved unless entire amount to which he was entitled under the Scheme was paid. Such payment depended on making funds available by the State Government. All employees who accepted VRS could be relieved at a time or batch by batch depending on availability of funds. Further funds may be made available early or late. If the argument of the respondent that relieving date should be taken as effective date for calculating terminal benefits and financial package under VRS, the dates may be fluctuating depending on availability of funds. Hence it is not possible to accept this argument. When the employees have opted for VRS on their own without any compulsion knowing fully well about the Scheme, guidelines and circulars governing the same, it is not open to them to make any claim contrary to the terms accepted. It is matter of contract between the Corporation and the employees. It is not for the courts to re-write the terms of the contract, which were clear to the contracting parties, as indicated in the guidelines and circulars governing them under which Voluntary Retirement Schemes floated.

13. In the circumstances we are of the view that the terminal benefits and financial package available under the Scheme are to be calculated up to the cut off date fixed for accepting the application of the employees and not up to the date of their actual relieving from service. Hence the relevant date for the purpose of calculating of terminal benefits and benefits of VRS to the respondents was 28.2.1998 and not 31.7.1998.

14. As per Clause (e) of Annexure P-1 it is made abundantly clear that there shall be no separate notice either for the employee or Corporation in terms of service conditions mentioned in the offer of appointment/service rules/S.R.S. As per Annexure P-3 Memo dated 1.10.1997 Government of Andhra Pradesh issued amendment to the Voluntary Retirement Scheme Guidelines contained in the Memo dated 23.1.1996 and this amendment came into force with immediate effect. As per the amendment, extracted above, if an application of an employee opting for voluntary retirement is accepted instantaneously and the payment is arranged by the Management on the same day the concerned individual would be entitled to payment of ex-gratia alone with the notice period pay. It is also clarified that in the circumstances where the Management takes time to take a decision about the acceptance of an application submitted by the employee for the VRS and allows the notice period to lapse or the individual concerned has drawn full salary during the notice period served by him, notice period pay would not be admissible as the individual has drawn the salary during the notice period.

15. In the present case admittedly the cut off date fixed was 28.2.1988, which is not disputed. The contention was that since the employees continued to be in service till 31.7.1998, they were entitled to the terminal benefits and the benefits available under the VRS as on 31.7.1998, the date on which they were actually relieved. While discussing first point we have clarified the position in this regard. As per Clause (e) of Annexure P-1 no separate notice was required to be issued in

terms of service conditions mentioned in the offer of appointment/service rules/ S.R.S. But once a cut off date was fixed for the purpose of calculating the benefits under the VRS and thereafter an employee is continued in service to satisfy Clause (i) of Annexure P-1 and if that period happens to be three months or more, that itself shall be treated as notice period. In that case he shall not be entitled for notice period pay again as is clear from the Memo dated 1.10.1997 (Annexure P-3), on the ground that an employee having drawn full salary during the notice period although no separate notice was required to be given, would not be entitled for pay for the notice period. Even while dealing with the cases of VRS Phase I, the employees were given notice pay for two months 15 days and salary for 15 days. In those cases the Corporation had treated the cut off date as 31.10.1997 but the employees were actually relieved from service on 15.11.1997, as the funds were not made available immediately. It clearly shows that for the period for which the employees even under VRS first phase worked for 15 days after the cut off date were not given notice pay for full three months. In the present case the cut off date was 28.2.1998 but the respondents were actually relieved from service on 31.7.1998. Thus they worked for a period of five months after the cut off date for which they had drawn salary. Out of these five months three months would be adjusted towards notice pay as in the VRS Phase I only 15 days were adjusted as notice pay as those employees had worked only for 15 days beyond the cut off date. In the impugned judgment the Division Bench held that the Corporation could not discriminate between the employees of VRS Phase I and VRS Phase II. We fail to see how there was any discrimination. Unfortunately, the Division Bench of the High Court did not examine the issues that arose for consideration keeping in mind the relevant clauses, guidelines and specific terms contained in VRS including the amendment to the guidelines. Rights and benefits available to the employee under a particular VRS ought to be examined in the light of the specific terms and conditions governing them. Since this has not been done the Division Bench committed an error in recording its findings. On the other hand, there appears to have been consistency in the stand of the Corporation. Added to this the amendment as per Annexure P-3, reference to which has already been made above, justified the stand of the appellants for the reason that no separate notice was required to be given and if an employee had drawn the salary during the notice period, he would not be entitled to claim pay for notice period again. In this view we answer the point No. 2 in the negative and against the respondents.

16. In the light of what is stated above, we are of the view that the judgment and orders of the learned single Judge and of the Division Bench of the High Court cannot be sustained. Hence they are set aside and the appeal is allowed with no order as to costs.

Civil Appeal Nos. 4067-4069 of 2001 and Civil Appeal Nos. 2159-2160 of 2001

17. In view of our conclusions arrived at in Civil Appeal No. 5638 of 1999, these appeals also are entitled to succeed. We may also mention that the respondent in

Civil Appeal No. 4067 of 2001 is governed by VRS Phase II and the respondents In Civil Appeal Nos. 4068-4069 of 2001 and 2159-60 of 2001 are governed by VRS Phase III. It may be added that the terms and conditions, which are applicable to VRS Phase II are similar to VRS Phase III also, as the matters are identical. In this view these appeals are also allowed. The impugned judgment and orders of the High Court are set aside. No costs.

CIVIL APPEAL NOS. 4658-4659 OF 2001

18. These appeals are directed against the common order made in W.P. 15703 of 1999 and W.P. No. 15742 of 1999. Respondent No. 1, Vijay Kumar, in C.A. No. 4658 of 2001 and respondent No. 1, A. Simhadri, in C.A. No. 4659 of 2001 (hereinafter referred to as 'respondent') filed writ petition Nos. 15703 of 1999 and 15742 of 1999 in the High Court seeking direction to the appellant-Corporation to continue them in service till they attain superannuation. Both are covered by VRS Phase-III. The Corporation fixed 31.10.1998 as cut off date for VRS Phase-III. Respondent Vijay Kumar and A. Simhadri filed applications seeking voluntary retirement under the said Scheme on 31.10.1998 and 10.10.1998 respectively. Corporation accepted their options on 24.11.1998 and 27.10.1998, which were also acknowledged by the respondents on 26.11.1998 and 2.11.1998. Thereafter, they applied for withdrawal of the option given for VRS on 8.1.1999 and 26.2.1999 respectively. These respondents could not be relieved from service along with large number of other employees who were relieved on 31.7.1999 under VRS Phase-III because of the interim order granted by the High Court in the writ petitions filed by them. The Division Bench of the High Court, by the impugned order, allowed the writ petitions and directed the Corporation to continue their services till their attaining the age of superannuation. In doing so, the High Court followed the decisions of this Court in Balram Gupta Vs. Union of India (UOI) and Anr., J.N. Srivastava Vs. Union of India (UOI) and Another, and Shambhu Murari Sinha Vs. Project and Development India and Another, . The High Court was of the view that the respondents had filed their withdrawal applications on 8.1.1999 and 26.2.1999 and had the benefit of interim directions to continue in service granted by the High Court on 30.7.1999 while they were to be relieved on 31.7.1999 and the result was that they were still in service on that date. The High Court further observed that these respondents had made the applications for withdrawal before the effective date i.e. 31.7.1999 and they having not accepted the monetary benefits under the VRS Scheme, could withdraw their applications opting for VRS. In this view, the writ petitions of these respondents were allowed. Before us, the learned counsel on both sides relied on the decision of this Court in Bank of India and Others Vs. O.P. Swarnakar etc., and few other decisions. The decisions cited on behalf of the respondents do not help them. Unlike in those decisions these respondents filed application offering to take voluntary retirement under the Scheme; their applications were accepted by the Corporation which were acknowledged by these respondents; they made representations for withdrawal from the VRS Scheme several days after the Corporation accepted

their applications made seeking voluntary retirement; merely because they could not be relieved in view of the interim order passed by the High Court in the writ petitions and that they could not be relieved immediately after the cut off date for want of funds to be received from the Government by the Corporation, they could not take away the result or escape consequence of the acceptance of their voluntary retirement by the Corporation. In other words, question of withdrawal of their applications made for seeking voluntary retirement after their acceptance did not arise and they could not be permitted to do so in law. It is fairly settled now that the voluntary retirement once accepted in terms of the Scheme or rules, as the case may be, cannot be withdrawn. In these appeals from the facts it is clear that the applications of the respondents opting for voluntary retirement under the Scheme were accepted and even the acceptance was communicated to them. Thereafter, they filed the writ petitions. Hence the High Court was not right in allowing the writ petitions holding that they applied for withdrawal before the effective date considering the date of relieving the employees as the effective date. In the light of the discussions made in Civil Appeal No. 5638 of 1999 the High Court, in our view, was wrong in treating 31.7.1999 as an effective date. The decisions relied on by the respondents before the High Court or in this Court on facts do not help them. Moreover, position is to be examined on the facts, terms of the VRS and circumstances governing a particular case of withdrawal offer made seeking voluntary retirement after its due acceptance.

19. In view of this legal position, the impugned order cannot be sustained. We would have set aside the same but for the peculiar facts and circumstances of the case stated hereinafter. These respondents though sought for voluntary retirement under the Scheme could not be relieved even on 31.7.1999 along with large number of other employees because of the interim order passed by the High Court in the writ petitions filed by them. Consequently, they continued in service. Even in the SLPs filed by the Corporation, though leave was granted, interim order was specifically refused as is clear from the order dated 23.7.2001 passed by this Court in these appeals, which reads:-

"leave granted. Tag with C.A. Nos.4067-4069/2001. No stay."

20. It appears to us that the respondents have continued in service; may be they have attained superannuation by now or they are likely to attain superannuation in near future; at any rate, they having been continued for all these years and taking note of the peculiar facts and circumstances of these cases, we do not think it is just and appropriate to disturb the impugned order under Article 136 of the Constitution of India in the light of what is stated above. Consequently, these appeals are disposed of accordingly but with no order as to costs.