

(1999) 06 AP CK 0073
In the Andhra Pradesh High Court
Case No : WA No. 633 of 1999

Vice-Chairmand and Managing Director, A.P.S.I.D.C. Ltd.,
HUDA-Maitrivanam, Hyderabad and another

APPELLANT

Vs

Ch. R. Varaprasad and others

RESPONDENT

Date of Decision : 15-06-1999

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1999) 4 ALD 105 : (1999) 4 ALT 124 : (1999) 2 LLJ 1436

Hon'ble Judges : M.S. Liberhan, C.J;G. Raghuram, J

Bench : Division Bench

Advocate : Mr. T. Nageswar Rao, SC for APSIDSC Ltd, for the Appellant; Mrs. A. Chaya Devi, for the Respondent

Judgement

M.S. Liberhan, CJ.

1. This appeal is directed against the judgment of the learned single Judge dated 19-1-1999 disposing of the WP 21901 of 1998. The appellants are the Vice-Chairman and Managing Director of APSIDC Ltd., and the General Manager of the said Corporation, respondents 3 and 4 in the writ petition. While disposing of the said writ petition it was declared that the action of the appellant-Corporation in not paying the three months notice pay to the writ petitioners-respondents 1 to 32 herein, is arbitrary and discriminatory and that consequently the respondents 1 to 32 in the appeal are entitled for three months notice pay. The question of payment of gratuity was declined to be adjudicated upon in the writ petition on the holding that the relevant rules in that regard have not been placed before the Court. Consequently the writ petitioners were accorded liberty to approach the appropriate forum in respect of this area of their grievance. It was further held that since the writ petitioners had continued in service till 31-7-1998 and were relieved on the said date, it would be inappropriate to treat the cut off date as 28-2-1998 for the purpose of calculation of retirement benefits under Voluntary Retirement Schemes (VRS) and further that since the appellant Corporation had

in identical fact situation affected rectification in respect of first batch of VRS optees, the writ petitioners are entitled on parity of treatment to draw salary treating them as have continued in service upto 31-7-1998. Aggrieved thereby, the appeal is filed by the Corporation.

2. In the appeal it is contended, in brief, as under :

(a) Consequent on the proposals for major restructuring of the appellant-Corporation and the recommendations of the State Level Committee on Public Enterprises constituted by the State Government and with a view to reduce its main power by about 50% appropos the recommendations of the State Level Committee, by a circular memo dated 31-5-1995/1-6-1995 VRS was introduced indicating terms and conditions therefor. In its memo dated 21-3-1996 the State Government has communicated consolidated guidelines on the VRS, inter alia to all public enterprises. Founded on the aforementioned circular instructions/guidelines, by its memo dated 4-7-1997 the appellant-Corporation invited applications for VRS. In response thereto applications have been received, and the options of over 416 employees have been accepted w.e.f. 18-10-1997, fixing cut off date for calculation of terminal benefits as 31-10-1997 and that the funds made available by the State Government vide G.O. Ms. No. 166, dated 21-10-1997, all the employees were relieved on 15-11-1997 paying terminal benefits as applicable to them. It is the admitted case of the appellant-Corporation that while accepting VRS applications in the first phase w.e.f. 18-10-1997, the cut off date was prospectively fixed w.e.f. 31-10-1997. It is also admitted that the appellant-Corporation paid 3 months notice pay also to the employees who opted for VRS. It is, however, stated that the pay and allowances equivalent to 15 days salary from 1-11-1997 to 15-11-1997 was not admitted by the Director of Treasury and Accounts in the post audit conducted by them as per Government orders in view of the clarifications given by the Government in its memo dated 1-10-1997. Contents of the audit objection, in summary, are to the effect that in the circumstances where management takes time to decide the acceptance of a VRS application and allows the notice period to lapse or the individual concern has drawn full salary during the notice period served by him, notice period pay would not be admissible as the individual has already drawn salary for the period.

(b) The appellant-Corporation contends that as adequate number of surplus staff did not respond to the first phase VRS offer, a second phase of VRS has been initiated vide memo dated 12-12-1997. In response to this offer the writ petitioners have communicated their option to avail the VRS. According to the appellants the terms of this offer of VRS, to the extent relevant to the case on hand are as under :

(i) Notice pay of one month/three months as per Corporation Rules subject to clearance by the State Government; (ii) the VC & MD was empowered to grant, modify, alter, withdraw or extend the period of operation of the above scheme at any time either in whole or in part at his discretion and if the circumstances

warranted; (iii) The decision of the VC & MD on the interpretation of the scheme shall be final; (iv) For calculation of VRS benefits, ex-gratia and for reckoning eligibility date of acceptance of the application will be considered. Any increase in salary after the cut off date cannot be taken into consideration. However, for calculation of 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 application of VRS.

(c) The appellant-Corporation contended that 212 employees including the writ petitioners have opted to avail this scheme of VRS. Their offer has been accepted w.e.f, 5-2-1998 and was communicated to the individuals fixing the cut off date as 28-2-1998 for the purpose of calculating the quantum of terminal benefits. The admitted fact of the matter, however, is that they were continued till 31-7-1998, allegedly for completion of formalities such as audit claims and release of funds by the Government and other administrative formalities. It is also contended that consequent on the release of the requisite funds by the State Government vide G.O. Ms. No.281, dated 25-7-1998, 191 employees, whose claims were pre-audited and cleared by the Director of Treasury Accounts, were relieved on 31-7-1998, paying the terminal benefits. Admittedly, the terminal benefits were calculated on the basis of the cut off date of 28-2-1998 notwithstanding that they were continued till 31-7-1998 for administrative reasons.

(d) On this factual matrix, the appellant urged that the writ petitioners are not entitled to the benefit of three months' notice pay as was extended to the first phase VRS optees in view of the fact that second phase VRS optees were allowed to work till the expiry of three months beyond the cut off date for which period pay and allowances including the Management's contribution of Provident Fund has been paid. It is further urged that the offer of VRS itself clearly mentions that payment of three months' notice pay is subject to clearance by the Government and in view of the Government's clarification dated 1-10-1997, the three months notice pay to the second phase VRS optees has not been claimed and that this stand has also been endorsed by the appropriate Audit department. In conclusion the appellants urged that since the terminal benefits on the basis of the cut off date have been paid in accordance with the legal regime obtaining under the administrative instructions of the Corporation read in conjunction with those of the State Government, the writ petitioners are not entitled to the benefits of the 3 months notice pay and having opted for VRS clearly conscious of the terms involved, the writ petitioners cannot be permitted to resile from such terms. The appellant-Corporation has also pleaded financial difficulties and absence of availability of State Government's support in terms of funds, for giving effect to the Judgment of the learned single Judge.

3. Encapsulating the aforementioned submissions of the appellant-Corporation on facts and law, the following propositions are urged for appellate consideration :

(1) The writ petitioners-respondents having opted VRS clearly conscious and

aware of the underlying terms and conditions, cannot be permitted to resile from such accepted terms and conditions.

(2) The package of benefits under this VRS is separate from the package available under the earlier VRS for the first phase and there thus need be no similarity of treatment and no legal or Constitutional rights of the writ petitioners are contravened by the dissimilar treatment as between the two distinct schemes of voluntary retirement.

(3) Relief of the petitioners from service w.e.f. 31-7-1998 notwithstanding the acceptance of their VRS option w.e.f. 28-2-1998 being on account of administrative delays, the writ petitioners are not entitled to the benefit of three months notice pay or the calculation of the terminal benefits reckoning 31-7-1998 as the relieving date for computation of such benefits.

(4) That giving effect to the judgment under appeal casts a fiscal burden on the Corporation in the absence of State Government's support in this behalf.

4. We are not persuaded as to the vitality of any of the aforementioned submissions. We are clearly of the view that the distinctions sought to be drawn and made by the appellant-Corporation between the optees under first phase of VRS and the writ petitioners coming under the second phase is an invalid distinction amounting to hostile discrimination. The mere fact that the writ petitioners belong to a separate package of VRS or that they have opted for VRS clearly conscious and alive to the terms of such scheme, does not, in our view, impose a legal embargo to claim the benefits urged in the writ petition or clothe the appellant-Corporation with any immunity to escape the constitutional requirement of conforming to the settled principles of valid classification, under Article 14 of the Constitution. The appellant-Corporation is an agent and instrumentality of the State of Andhra Pradesh. It is obligated to conform to all constitutional and public law limitations. The writ petitioners are employees of the appellant-Corporation. The appellant-Corporation is obligated to extend equal treatment and the writ petitioners enjoy corollary rights qua the aforesaid obligations of the appellant. It is the settled principle of reasonable classification that the classification must be founded on intelligible differentia which distinguishes persons or things that are grouped together from those left out of the group and the differentia must have a rational relation to the objects sought to be achieved. Incidental to this doctrine is that there should be a nexus between the basis of classification and the object of the instrument under consideration - vide *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, . Another settled nuance of the classification doctrine is that "mini-classifications based on micro-distinctions are false to our egalitarian faith and only substantial and straightforward classifications plainly promoting relevant goals can have constitutional validity. To overdo classification is to undo equality." vide *State of Jammu and Kashmir v. Shri Triloki Nath Khosa and others* (1974) SCC 19.

5. On application of the above principles of classification the conclusion is irresistible that the object of the two Voluntary Retirement Schemes is identical, viz., enabling the streamlining of the appellant-Corporation enabling the employees to be retrenched as a consequence, to avail terminal benefits infurtherance of their legitimate expectations of a dignified existence. These schemes are product of a human exit policy introduced by the appellant instrumentality of the State as facet of its public law obligations of fair treatment. The objects sought to be achieved thus being common, there can be no valid point of discrimination between the terms of one package and the other. The Corporation having extended the benefit of the notice pay to the first batch of optees and the delay between the date of acceptance of the second VRS i.e., 28-2-1998 and the actual date of severance of employment i.e., 31-7-1998 having been occasioned solely on account of administrative formalities of the appellant-Corporation, no reasonable and rational grounds exist for extending hostile and dissimilarity treatment to the writ petitioners-respondents. It is a equally settled principle that employees in a public employment context cannot be non-suited merely by recourse to terms and conditions enunciated by a public employer by resort to a contention that such terms are contractual in nature - vide Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, .

6. The last ground urged namely the difficulty in giving effect to the judgment of the learned single Judge due to financial difficulties of the appellant-Corporation, does not in our view constitute a valid, legal ground to deny the constitutionally available relief to the writ petitioners, particularly in the context of the fact that the State Government being a party to the writ petition would be obligated to give affect to the judgment of this Court along with the appellant-Corporation.

7. In the aforesaid view of the matter we find no legal infirmity or error of discretion in the judgment under appeal. The appeal is accordingly dismissed with no order as to costs.