

L.MOHAPATRA, J & C.R.DASH, J.

O.J.C. NO.10082 OF 1996 (Decided on 25.08.2011)

GANESWAR BISWAL

.....Petitioner.

.Vrs.

STATE OF ORISSA & ORS.

.....Opp.Parties.

For Petitioner - M/s. Rangadhar Behera, S.K.Swain & D.R.Rath.

For Opp.Parties - Govt. Advocate (for O.P.1)

M/s. P.N.Mohapatra & K.C.Mohanty (for O.P.2)

C.R. DASH, J. The petitioner was working as an N.M.R. in the establishment of Orissa Power Generation Corporation ('O.P.G.C.' for short), a public sector undertaking under the Govt. of Orissa in Energy Department. The O.P.G.C. floated a Voluntary Retirement Scheme ('V.R.S.' for short) for the N.M.R. workmen working under it. The bone of contention between the petitioner and the O.P.G.C. relates to the V.R.S. The stand of the O.P.G.C. is that the petitioner having opted for voluntary retirement under the V.R.S. and having taken all the financial benefits admissible under the V.R.S., the writ petition is not maintainable. The petitioner's stand is that he had no interest to take voluntary retirement, but he having been coerced to accept the offer of voluntary retirement under the V.R.S. and after he was relieved from service under the V.R.S., service of some of the N.M.Rs. similarly circumstanced with him having been regularized, action against him vide Annexure-3, the Notice offering V.R.S. to him and Annexure-4 the relieve order under the V.R.S. are violative of Articles 14 and 21 of the Constitution of India and the same are liable to be quashed.

2. It is not disputed that the V.R.S. was floated by the O.P.G.C. and Notice was issued to the petitioner on 31.10.1995 vide Annexure-3 to give option under the V.R.S. The petitioner does not dispute the fact that he had opted for voluntary retirement and took all the financial benefits admissible to him under the V.R.S. Contention of the petitioner is to the effect that under normal circumstance he would not have taken voluntary retirement, as he was not interested for the same. The tone and tenor of the Notice vide Annexure-3 however was coercive, in as much as if the petitioner would not have opted for voluntary retirement, action under the provisions of Industrial Disputes Act as contemplated in the Notice vide Annexure-3 would have been taken against him. It is further contended that after the petitioner had opted for voluntary retirement under the V.R.S., Service of some of the N.M.Rs. similarly circumstanced with the petitioner was regularised and in that view of the matter, the petitioner has got a just claim for regularisation of his service despite his voluntary retirement.

3. Whether the petitioner had any interest to take voluntary retirement under the V.R.S. or not is a question which cannot be gone into or addressed in a writ petition, because his action of taking voluntary retirement is presumed to be voluntary in nature unless the contrary is proved. The facts, which run contrary to the act of voluntariness of the petitioner is alleged to be the last paragraph of the Notice, vide Annexure-3, legality

and validity of which the petitioner has challenged. For better appreciation and ready reference, Annexure-3 is quoted as hereunder :-

“N O T I C E

Notice No. 761

Date : 31.10.95

You, the N.M.R. Employees are well aware that a large number of N.M.R. Employees were recruited during the construction stage of the project. On reduction of construction activity and workload, the Management now do not require such a large labour force. However the Board of Management has now decided that to reduce the strength of N.M.R. Employees, a Voluntary Retirement Scheme may be offered to the N.M.R. Employees so that the surplus employees can be reduced. The terms and contents of the said Scheme is enclosed.

The Scheme shall come into force with effect from 31.10.95 and shall remain open for the N.M.R. Employees to make application till 30.11.95.

The N.M.R. Employees who are interested to Retire Voluntarily under the Voluntary Retirement Scheme are hereby intimated to make applications in the prescribed form available with the Sr. Asst. Manager (Administration) of Corporate Office, General Manager, Mini/Micro, Berhampur and Sr. Manager (Power), Mini Hydel Division, Cuttack.

In case N.M.R. Workmen shall not come forward and opt for the Voluntary Retirement Scheme, the Management shall be constrained to retrench the N.M.R. personnels as per provisions of the Industrial Disputes Act and they shall not be entitled to the ex gratia payment as mentioned in the Voluntary Retirement Scheme.

Sd/-

Copy to : Notice Board
Person concerned

Sr. Manager (Power),
Mini Hydel Project Division,
Cuttack.”

4. Some of the employees similarly circumstanced with the present petitioner had moved this Court in O.J.C. No.3476 of 1997 challenging legality of the selfsame Notice vide Annexure-3 (as quoted supra). The ground of challenge in the aforesaid writ petition was same as in the present writ petition. This Court vide order dated 04.09.1998 dismissed the said writ petition by holding that the petitioners therein having opted to take voluntary retirement and they having accepted the benefits thereunder, it is too late in the day to visit the Writ Court asking the Court to lift the veil and grant them the relief as prayed for.

5. The prayer, grounds of challenge and contentions of the petitioners in the aforesaid writ petition (O.J.C. No. 3476 of 1997) being the same with the present writ petition and the petitioners therein being similarly circumstanced with the present petitioner, we would normally be inclined not to differ from the view expressed by an earlier co-ordinate Bench in similar writ petition. Learned counsel for the petitioner however wants us to address the questions raised by him in the light of the law settled by Hon'ble the Supreme Court in the case of **Central Inland Water Transport**

Corporation Ltd. and another vs. Brojo Nath Ganguly and another, A.I.R. 1986 S.C. 1571 and other such reported decisions.

Learned counsel for the opposite parties with all vehemence submits that none of the decisions cited by the learned counsel for the petitioner is applicable to the facts of the present case and the petitioner having opted for voluntary retirement and having received the benefits under the V.R.S., cannot now agitate the issue and claim for regularization in service.

6. According to the V.R.S. (part of Annexure-3), the scheme shall be applicable to all the N.M.R. workmen, those who have completed minimum three years of service in corporate office and mini micro organization. According to Clause-2 of the said scheme, in order to avail the benefit under the scheme, an N.M.R. employee is to make application to the Management in the prescribed form. According to Clause-3 of the scheme, the employee who applied for voluntary retirement under the scheme and the applications thereof are accepted by the Management will be eligible for the financial benefits as enumerated. Clause-4 of the scheme stipulates that the Management shall have the power to reject the application of an employee for voluntary retirement without assigning any reason thereto.

7. A proposal is made when one person signifies to another his willingness to do or abstain from doing anything with a view to obtaining the assent of the other to such act or abstinence (Section 2(a) of the Contract Act). Herein the O.P.G.C., by reason of the scheme, has not expressed its willingness to do or abstain from doing anything with a view to obtaining assent of the employee to such act. Further the power of the O.P.G.C., as found from the scheme to accept or reject any application for voluntary retirement is absolutely discretionary. The scheme, therefore, cannot be said to be an offer, which, on the acceptance by the employee, would fructify in a concluded contract. The scheme having regard to its provisions merely constitutes an invitation to treat and not an offer. The proposal of the employee when accepted by the O.P.G.C. would constitute a promise within the meaning of Section 2 (b) of the Contract Act. Only then the promise becomes an enforceable contract. (See **Bank of India and others vs. O.P. Swaranakar etc.**, A.I.R. 2003 S.C. 858).

Hon'ble Supreme Court in **National Textile Corporation (M.P.) Ltd. vs. M.R. Jhadav**, A.I.R. 2008 S.C. 2449, has further explained the aforesaid aspect of V.R.S. constituting a contract by holding thus :-

“17. When a scheme is floated for voluntary retirement, it constitutes an offer to treat. It is not an offer stricto sensu. Only when pursuant to the said invitation to treat, an employee opts for such a scheme, it constitutes an offer. When such an offer is made, it is required to be accepted.

The matter relating to implementation of the said offer would indisputably be governed by the terms and conditions of the scheme.....”

Further the Hon'ble Supreme Court in the aforesaid case of **National Textile Corporation**, has held thus :-

“20. Subject, of course, to the terms of ‘invitation to treat’ as also those of the offer as envisaged under the Indian Contract Act, an offer has to be accepted. Unless an offer is accepted, a binding contract does not come into being. A Voluntary Retirement Scheme contemplates cessation of the relationship of master and servant. The rights and obligations of the parties thereto shall become enforceable only on completion of the contract. Unless such a stage is reached, no valid contract can be said to have come into force. Acceptance of an offer must, therefore, be communicated.”

8. It is an admitted that in the present case that the offer has been communicated to the petitioner and he has already received all the financial benefits admissible under the V.R.S. Hon’ble Supreme Court in the case of **HEC Voluntary Retd. Emps. Welfare Soc. & Anr. vs. Heavy Engineering Corporation Ltd. & Ors.**, A.I.R. 2006 S.C. 1420, has held thus :-

“The voluntary retirement scheme speaks of a package. One either takes it or rejects it. While offering to opt for the same, presumably the employee takes into consideration the future implications also.”

Proceeding further, it has further been held by Hon’ble the Supreme Court that :-

“It is not in dispute that the effect of such voluntary retirement scheme is cessation of jural relationship between the employer and the employee. Once an employee opts to retire voluntarily, in terms of the contract he cannot raise a claim

9. In view of the settled law on the point, the offer of voluntary retirement by the petitioner having been accepted by the O.P.G.C. (opp. party) and the petitioner having received all the financial benefits under the V.R.S., this Court cannot go into the question as to whether the petitioner had any interest to take voluntary retirement or not. It is to be only seen whether the last paragraph of the notice vide Annexure-3 constitutes a coercion as contended by the petitioner.

10. The last paragraph of the Notice vide Annexure-3 is to the effect that in case an N.M.R. workman does not come forward and opt for V.R.S., the Management shall be constrained to retrench the N.M.R. personnel as per the provisions of the Industrial Dispute Act and they shall not be entitled to the ex gratia payment as mentioned in the V.R.S. This Clause in the Notice, vide Annexure-3, is contended to be coercive.

11. We must read the Notice in conjunction with the objectives for which the V.R.S. was floated. According to the assertions in the counter affidavit, and the notice (Annexure-3) the V.R.S. was floated with the objective to downsize the staff, as the organization had become over-staffed after cessation of construction works in different places. To achieve such an objective, the Management thought of two methods, i.e. voluntary retirement under V.R.S. and retrenchment of surplus employees in accordance with the provisions of the Industrial Disputes Act. The former is facilitative by floating of the V.R.S. and the latter is statutory. In the notice vide Annexure-3, the authorities have made their objective and the methods to achieve the objective clear. Paragraph-3 of the notice vide Annexure-3 simply makes it clear that if the sought objective is not achieved by the first method then the management shall be constrained to resort to the second

method and in that event the financial benefits admissible under the facilitative method under the V.R.S. cannot be claimed. The tone and tenor of the notice vide Annexure-3 does not in any way amount to pressurizing the N.M.R. workmen and putting them under coercion to respond to the V.R.S., which, according to settled law is only an "invitation to treat" and an employee has the right either to take it or reject it. On the contrary, by making their mind and intention clear in Annexure-3 the authorities have helped the employees to take a just decision before opting for V.R.S. by taking into considerations the future implications also, which includes possibility of retrenchment with no facilitative financial benefits. We are, therefore, not inclined to accept the contention of learned counsel for the petitioner on this score.

12. It is asserted by the petitioner that Manguli Charan Behera and Susanta Bahinipati are the two N.M.R. workmen, who are similarly circumstanced with him (petitioner); they were retrenched from service under the V.R.S. but subsequently their services have been regularized. Such an assertion by the petitioner has been refuted in the counter affidavit. In the counter affidavit, it is averred that aforesaid two N.M.R. workmen had never opted for voluntary retirement and services of both of them were regularized depending on vacancies according to their suitability. The petitioner has filed rejoinder. In the rejoinder, the aforesaid averment in the counter affidavit is not at all challenged on facts. The petitioner in the rejoinder has taken a stand that, aforesaid two N.M.R. workmen being junior to the petitioner, should have been retrenched from service in accordance with the aforementioned second method (action under the Industrial Disputes Act) if they did not opt for voluntary retirement under the V.R.S.

13. The stand and contention raised by the petitioner and learned counsel appearing for him is too spacious to be accepted. The objective of the V.R.S. was to downsize the staff. If the staff could not have been down sized under the V.R.S. according to the requirement and expectation, the authorities of O.P.G.C. would have resorted to action under the Industrial Disputes Act for retrenchment as contemplated. The Court in exercise of its jurisdiction of judicial review cannot ask the O.P.G.C. to adopt one of the methods or act according to the wish of the petitioner, who is no more having any jural relationship with the O.P.G.C. after his retirement under V.R.S. Further the claim of the petitioner to be senior to Manguli Charan Behera and Susanta Bahinipati is misconceived and ridiculous inasmuch as after his retirement under the V.R.S. his (petitioner's) seniority is irrelevant so far as regularization of left-over staff (after the exercise of downsizing) is concerned. We are, therefore, not inclined to accept the contention of learned counsel for the petitioner on this score.

14. Learned counsel for the petitioner wants us to address the petitioner's grievance in the light of the decision of Hon'ble the Supreme Court in the case of **Central Inland Water Transport Corporation Ltd.** (supra). The aforesaid case is a landmark case relating to service contracts. On interpretation of the relevant service rule, Hon'ble Supreme Court held that the rule empowering the Government Corporation to terminate service of its permanent employees by giving notice or pay in lieu of notice period is opposed to public policy and violative of Article 14 and Directive Principles contained in Articles 39 (a) and 41 of the Constitution of India. Analyzing the provisions of the Contract Act and the Constitution of India, Hon'ble Supreme Court struck down the clause in the relevant Service Rule providing for termination of services of the officers by giving them three months' notice observing that, considering the inequality in the

bargaining power of the parties, the clause in the contract of employment was void under Section 23 of the Contract Act as opposed to public policy besides being ultra vires Article 14. The aforesaid decision and all other decisions relied on by the learned counsel for the petitioner relates to contract of employment with certain power with the employer to terminate the service of a permanent employee by giving three months' notice or following similar methods. The ratio of those decisions does not apply to the facts of the present case, which is concerned with rights and claim of the petitioner after his voluntary retirement under a scheme floated by the O.P.G.C.

15. Having gone through the decision cited by the parties diligently and having considered the fact of the case meticulously in the light of those decisions, we are of the view that the petitioner, after a concluded contract culminating in cessation of jural relationship of the employee and the employer between him and the O.P.G.C., cannot now claim for regularization of service.

16. Learned counsel for the petitioner submits that in obedience to the interim order of this Court dated 10.12.2009 the petitioner having deposited in Court all the amounts he had taken under the V.R.S., the case for regularization of service of the petitioner is to be considered taking a lenient view of the matter.

The contention raised by learned counsel for the petitioner is too spacious to be accepted. No doubt, the conduct of the petitioner in depositing the amount in Court shows his earnestness and bona fides to return to the service under the O.P.G.C; but the petitioner being ceased of such a right, the Court under the writ jurisdiction cannot revive the right any more and grant relief to the petitioner.

17. In view of the above, the writ petition is dismissed.

18. The amount already deposited by the petitioner in Court be returned to him (petitioner) along with accrued interest thereon within fifteen days, on proper identification.

Writ petition dismissed.