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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**W.P.(C) Nos.7707-45/2005**

11<sup>th</sup> January, 2011

AEPC VRS EMPLOYEES UNION & ORS.

..... Petitioners  
Through: Mr. Manu Mridul, Mr.  
Anant K. Vatsya and  
Mr. Bushra Parveen,  
Advocates.

VERSUS

APPAREL EXPORT PROMOTION COUNCIL

..... Respondent  
Through: Mr. G.C.Rawal, Sr. Adv.  
with Mr. Kuljeet Rawal,  
Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

**VALMIKI J. MEHTA, J (ORAL)**

1. By means of the present writ petition challenge is laid by the petitioners who took voluntarily retirement prior to 31.7.2004 to the action of the respondent in granting ex gratia payment to its employees who were on the roll as on 31.7.2004 pursuant to its office order dated 2.8.2004. This office order reads as under:-

“AEPC/REG/SM/180<sup>TH</sup> EC

Date: 2<sup>nd</sup> August, 2004

Based on the recommendation of Finance & Budget Sub-Committee Meeting held on 30.7.2004 in the morning, the

Executive Committee in its meeting held on 30.7.2004 had approved Ex-gratia for the Financial Year 2003-2004 to all employees of the Council who are on the pay roll of Council as on closing of 31.7.2004 @ 20% based on Basic + Dearness Allowance drawn during the relevant year.

Accordingly, you may make the payment of Ex-gratia to the eligible employees.”

2. The relevant VRS Scheme is dated 17.7.2001 and para-6 of this VRS Scheme provides for the compensation to be granted under the Scheme and the same reads as under:-

6. EXTENT OF COMPENSATION

An employee whose application for Voluntary Retirement is accepted, shall be entitled to the following.

- (a) Provident Fund amount to the credit of the employee under the Provident Fund Scheme & Rules.
- (b) Encashment of the encashable portion of the unutilized accumulated privilege and sick leave to the credit of the employee.
- (c) Gratuity as admissible as per the Payment of Gratuity Act 1972.
- (d) **Ex-gratia as announced time to time by the Council.**
- (e) VRS compensation equivalent to Ninety days emolument for each complete year of service (if the employee in question has completed more than six months service during the year of Voluntary Retirement, the same will be counted as full year's service for this purpose. Similarly if the period of service completed during the year of Voluntary Retirement is less than six months the same will be ignored in toto) OR the salary for the number of months service left whichever is less.
- (f) Salary for the purpose of VRS will consist of Basic pay and DA only.

(g) Arrears of wages due to revision etc will not be included in computing the eligible amount.”

3. Learned counsel for the petitioner has argued two main points in support of the petition. His first contention is that in terms of para-6(d) of the scheme, all employees who took VRS pursuant to this scheme were entitled to ex-gratia payment, if it was announced during the financial year in which the VRS scheme was prevalent. Secondly, it is argued that there is a pick and choose policy i.e., policy of discrimination between the petitioners and the other employees who actually had applied for VRS i.e. some of them were given voluntarily retirement prior to 31.7.2004 but some were not given VRS as on 31.7.2004 and thus the former were discriminated against as they did get ex-gratia payment while the latter did.

4. The issues in the present case as raised by the learned counsel for the petitioners are fully covered against the petitioners as per the decision of the Supreme Court in the case of **Ceat Vs. Anand Abasaheb Hawaldar (2006) 3 SCC 56** . The Supreme Court in the judgment in **Ceat's case (supra)** has held that there would be unfair practice not because there is discrimination but only if there are pleadings and proof of ‘partiality’ and ‘favoritism’. The Supreme Court has noted that every unequal treatment does not automatically mean favoritism or partiality. Paras 7 to 17 of this judgment are relevant and the same read as under:-

“7. In order to appreciate rival submission the entries in Schedule IV of the Act need to be noted. They read as follows:

“SCHEDULE IV

*General Unfair Labour Practices on the Part of Employers*

1. To discharge or dismiss employees—

(a) by way of victimisation;

(b) not in good faith, but in the colourable exercise of the employer’s rights;

(c) by falsely implicating an employee in a criminal case on false evidence or on concocted evidence;

(d) for patently false reasons;

(e) on untrue or trumped up allegations of absence without leave;

(f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;

(g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the employee, so as to amount to a shockingly disproportionate punishment.

2. To abolish the work of a regular nature being done by employees, and to give such work to contractors as a measure of breaking a strike.

3. To transfer an employee mala fide from one place to another, under the guise of following management policy.

4. To insist upon individual employees, who were on legal strike, to sign a good-conduct bond, as a precondition to allowing them to resume work.

5. To show favouritism or partiality to one set of workers, regardless of merits.

6. To employ employees as ‘badlis’, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees.

7. To discharge or discriminate against any employee for filing charges or testifying against an employer in any enquiry or proceeding relating to any industrial dispute.

8. To recruit employees during a strike which is not an illegal strike.
9. Failure to implement award, settlement or agreement.
10. To indulge in act of force or violence.”

**8.** It will be appropriate to first deal with Item 5 which relates to the act of favouritism or partiality by the employer to one set of workers regardless of merit.

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**11.** In Item 5 of Schedule IV to the Act, the legislature has consciously used the words “favouritism or partiality to one set of workers” and not differential treatment. Thus, the mental element of bias was necessary to be established by cogent evidence. No evidence in that regard was led. On the contrary the approach of the Industrial Court and the High Court was different. One proceeded on the basis of breach of assurance and the other on the ground of discrimination. There was no evidence brought on as regards the prerequisite i.e. favouritism or partiality. Favouritism means showing favour in the matter of selection on circumstances other than merit. (Per *Advanced Law Lexicon* by P. Ramanatha Aiyar, 3rd Edn., 2005.) The expression “favouritism” means partiality, bias. Partiality means inclination  to favour a particular person or thing. Similarly, it has been sometimes equated with capricious, not guided by steady judgment, intent or purpose. Favouritism as per *Webster’s’ Encyclopaedic Unabridged Dictionary of the English Language* means the favouring of one person or group over others having equal claims. Partiality is the state or character of being partial, favourable, biased or prejudiced.

**12.** According to *Oxford English Dictionary*, “favouritism” means—a deposition to show, or the practice of showing favour or partiality to an individual or class, to the neglect of others having equal or superior claims; under preference. Similarly, “partiality” means the quality or character of being partial, unequal state of judgment and favour of one above the other, without just reason. Prejudicial or undue favouring of one person or party; or one side of a question; prejudice, unfairness, bias.

**13.** Bias may be generally defined as partiality or preference. It is true that any person or authority required to act in a judicial or quasi-judicial matter must act impartially:

“If however, ‘bias’ and ‘partiality’ be defined to mean the total absence of preconceptions in the mind of the judge, then no one has ever had a fair trial and no one ever will. The human mind, even at infancy, is no blank piece of paper. We are born with predispositions and the processes of education, formal and informal, create attitudes which precede reasoning in particular instances and which, therefore, by definition, are prejudices.” (Per Frank, J. in *Linahan, Re*<sup>1</sup>, F 2d at p. 652.)

**14.** It is not every kind of differential treatment which in law is taken to vitiate an act. It must be a prejudice which is not founded on reason, and actuated by self-interest — whether pecuniary or personal.

**15.** Because of this element of personal interest, bias is also seen as an extension of the principles of natural justice that no man should be a judge in his own cause. Being a state of mind, a bias is sometimes impossible to determine. Therefore, the courts have evolved the principle that it is sufficient for a litigant to successfully impugn an action by establishing a reasonable possibility of bias or proving circumstances from which the operation of influences affecting a fair assessment of the merits of the case can be inferred.

**16.** As we have noted, every preference does not vitiate an action. If it is rational and unaccompanied by considerations of personal interest, pecuniary or otherwise, it would not vitiate a decision. The above position was highlighted in *G.N. Nayak v. Goa University*.

**17.** The factual scenario does not establish any favouritism or partiality. When VRS I scheme was introduced same was offered to every employee. It is nobody’s case that there was any hidden intent and/or that the employer had any previous knowledge at the time of introducing the scheme that some of the employees would not accept it. It is not the case of the complainants that the employer had at that

point of time intended to pay something more to those who did not accept VRS I. The memorandum of understanding which was the foundation for VRS II, of course gives a different package, but on the clear understanding that litigations of all types were to be withdrawn.” (Emphasis added)

5. A reading of the writ petition shows that the only grounds which are pleaded are with respect to the discrimination/unequal treatment/policy of pick and choose. It is nowhere the case of the petitioners that there is any favoritism or partiality. The Supreme Court has laid down that unequal treatment is permitted unless and until it is pleaded and proved that there is favoritism and partiality and which is not so in present case.

6. Further, the Supreme Court in the case of **A.K. Bindal Vs. Union of India (2003) (5) SCC 163** has observed that once employees opt to retire under a VRS Scheme and accept benefits therein, their rights as employees come to an end and thereafter they cannot assert their rights as employees. I may note that it is not the case of the appellant that they took the VRS under any coercion or undue influence. The petitioners have therefore voluntarily accepted the golden handshake and severed their umbilical cord with the employer disentitling them to the relief prayed in the present petition.

7. In view of the above, there is no basis to accept the argument that there is any favoritism or partiality. The differential treatment

pursuant to the circular dated 2.8.2004 is not such so as to hold the petitioners entitled to the ex-gratia payment announced subsequent to their having taken benefits of voluntarily retirement.

8. The second issue which is urged by the counsel for the petitioners is on the basis of para 6(d) of the VRS Scheme. A reference to this para-6(d) shows that the same pertains to ex-gratia as announced from time to time by the council. This sub para (d) is only one part of the compensation in the package of compensation and surely would refer to ex-gratia payments as announced from time to time by the council before the scheme was announced and even if a liberal interpretation is taken, it would mean ex-gratia payment declared up to the dates on which voluntary retirement has been taken by the petitioners with benefits thereof. The language of 6(d) does not permit an interpretation that the ex-gratia payment announced from time to time within a relevant financial year is also to be allowed to the petitioners although petitioners have already voluntarily retired. In fact, the interpretation as suggested on behalf of the petitioners would amount to rewording the scheme, and which is not possible to do. In fact, if the liberal interpretation as canvassed is accepted, para 6(d) of the VRS scheme can also be interpreted to literally mean ex-gratia as announced from time to time by the council even for subsequent years because this para 6(d) does not give the future cutoff date. Surely,

this was not the intention of the authorities at the time the VRS scheme dated 17.7.2001 was put into operation.

9. In view of the above, I am unable to agree with the contentions as raised by the learned counsel for the petitioners. The writ petitions therefore accordingly fail and the same are dismissed leaving the parties to bear their own costs. The rule is discharged.

**JANUARY 11, 2011**  
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**VALMIKI J. MEHTA,J**