

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

+ **W.P.(C) No. 1210/2015 and C.M. No.2126/2015**

% 6th February, 2015

SH. KRISHAN KUMAR VATS Petitioner
Through: Mr. Lokesh Kumar, Advocate.

Versus

BSES YAMUNA POWER LTD & ORS. Respondents
Through: Mr. S.N. Chaudhary, Advocate for
respondent No.1.
Ms. Shobhna Takiar, Advocate for
respondent Nos.2 and 3.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India, the petitioner who was the erstwhile employee of the DVB and whose services were thereafter taken over by the respondent no.1 herein viz the BSES Yamuna Power Limited, seeks the relief of quashing of the Special Voluntary Retirement Scheme (SVRS)-2003 dated 18.12.2003 issued by the respondent no.1 and the order dated 30.12.2003 by which the petitioner was given voluntary retirement under the SVRS-2003 scheme.

2. What strikes this Court right at the outset is that the stated illegal action of the respondent no.1 of the year 2003, is being challenged, in the year 2015 i.e after over about 11 years. Clearly therefore the writ petition is barred by gross delay and *laches* more so for the reason that after being given the monetary benefits under the SVRS-2003 pursuant to the impugned order dated 30.12.2003 petitioner derived benefit of the monetary benefits running into lacs of rupees. What is this amount received by the petitioner has deliberately not been stated by the petitioner in the petition, but, on a query put to the counsel for the petitioner, in the course of arguments, it is conceded that around Rs.15 lacs were received by the petitioner from the respondent no.1. Therefore, merely because the respondent no.1 is having an illegal clause in the scheme that the option exercised of voluntary retirement cannot be withdrawn, cannot mean that a cause of action of the year 2003 can be allowed to be challenged by the petitioner in the year 2015.

3(i) Besides the writ petition being barred by gross delay and *laches*, the petitioner is also guilty of concealment of facts besides lacking in *bonafides*.

(ii) The first concealment, as stated above, is that the petitioner has not stated in the writ petition as to what is the amount he received pursuant to the acceptance of his voluntary retirement and which answer is given only

at the time of oral arguments that petitioner has received and taken benefit of around Rs.15 lacs of rupees.

(iii) The second concealment of fact is that counsel for the respondent no.1 has drawn the attention of this Court to a writ petition filed by this very petitioner being W.P.(C) No.185/2012, and in which petition the petitioner had claimed the relief of quashing of the selfsame order dated 30.12.2003 viz the petitioner in that writ petition also claimed the relief that he should not have been held to be voluntarily retired from the respondent no.1 in terms of the order dated 31.12.2003. This writ petition, after arguments, was withdrawn and the following order was passed by a learned Single Judge of this Court on 10.01.2012 :-

“After some arguments Counsel appearing on behalf of the Petitioner seeks leave to withdraw this Writ Petition.

The Writ Petition is dismissed as withdrawn and disposed of accordingly.”

Therefore, even the filing of the present writ petition is barred at the outset because once the writ petition claiming the same relief is filed, and the same is not pressed on merits but withdrawn, another writ petition cannot be filed on basically the same set of facts and seeking the same relief simply by adding other facts and certain other reliefs although in essence the earlier writ petition was, as well as the present writ petition is, basically for

quashing of the order giving voluntary retirement to the petitioner passed on 30.12.2003.

(iv) The third aspect, is both of concealment, and the lack of *bonafides* of the petitioner, and which is that the petitioner mentions very cryptically, that too in the list of dates only and not in the main body of the writ petition, that the claim for reinstatement was made by the petitioner in an earlier writ petition being W.P.(C) No.5198-99/2005 but that relief was declined till the Supreme Court and even the review petition filed by the petitioner before the Supreme Court was dismissed. With regard to this set of facts counsel for the respondent no.1 has filed before this Court a copy of the earlier W.P.(C) No.185/2012, and the reading of various paras in the same talks of the petitioner seeking reinstatement, but being unsuccessful and the SLP thereafter being decided by the Supreme Court on 29.3.2010 and 6.4.2010 and the review petition filed by the petitioner was also dismissed by the Supreme Court on 6.5.2010. Clearly therefore petitioner is guilty of concealment of facts as also is lacking in *bonafides* in approaching the Courts repeatedly by filing litigations essentially seeking the same relief of quashing of the order dated 30.12.2003.

4. Learned counsel for the petitioner argued by relying upon three Supreme Court judgments, as stated below, that a clause in a scheme

whereby a person is not allowed to withdraw his option for voluntary retirement is void and the issue with respect to validity of a clause in the SVRS is a matter of law and a point of law cannot be *res judicata* and therefore it is argued that the present writ petition is maintainable. The judgments which are relied upon are as under:-

(i) ***Bank of India and Ors. Vs. O.P. Swaranakar etc. AIR 2003 SC 858***

which lays down that a person is entitled to withdraw his option of voluntary retirement before a prospective date or before it is accepted and it is also held in this judgment that questions of law cannot be *res judicata* and can be raised in a subsequent case.

(ii) ***Bishwanath Prasad Singh Vs. Rajendra Prasad & Anr. AIR 2006***

SC 2965 which holds that a pure question of law can always be decided and there is no applicability of the principles of *res judicata* qua a pure question of law.

(iii) ***Nand Kishore Vs. State of Punjab (1995) 6 SCC 614*** and which

judgment condones the delay of 31 years in filing of the writ petition and it is further held in the judgment that an issue of constitutionality of a statutory provision cannot be said to have been decided in an earlier judgment once that aspect is not specifically made an issue in the earlier decided case.

5. There is no quarrel to the propositions of law, and nor can there be any, that, an option for voluntary retirement can always be withdrawn before it is accepted or before the prospective date fixed for voluntary retirement which has yet to come, however, that cannot mean that the illegal action can be challenged at a point of time with delay and *laches* of 11 years and that too when an earlier writ petition seeking the same relief being W.P.(C) No.185/2012 was filed but the same after arguments was withdrawn. Therefore, merely because the question is a question of law cannot mean that the same can be raised repeatedly, and the second time after over a decade, and much less because during this entire period till the filing of the earlier W.P.(C) No.185/2012, it is not shown that the petitioner has been continuously representing for setting aside the order of the voluntary retirement passed way back on 30.12.2003. Also, I may note that it is settled law that filing of continuous representations does not change the issue of limitation or the doctrine of delay and *laches* which is applied for the writ petitions, as, a catena of judgments have held that making repeated representations does not extend the period of limitation or condone the doctrine of delay and *laches* in filing of the writ petition. Therefore, the issue is not that there is a question of law, but the issue is that the question of law ought to have been raised within a reasonable period of around three

years and preferably within the period of limitation, but the petitioner has filed this petition challenging an order of the year 2003 in the year 2015 and that too when an identical prayer was made in an earlier writ petition being W.P.(C) No.185/2012 and which writ petition was not pressed. The petition is therefore clearly liable to be dismissed.

6. Petitioner is also guilty of lack of *bonafides* because it is very easy for the petitioner to say that he has not touched the amount of around Rs.15 lacs received pursuant to the acceptance of the voluntary retirement, however, petitioner has deliberately not filed his bank statement to show that the amount received on voluntary retirement lies as it is in his bank account, and that the petitioner has not utilized the same.

7. It is high time that to certain sections of litigants in this country a very strict message is sent that the object of approaching the Court of law is on an issue which would have at least some reasonable case for being heard by the Court. Litigants cannot insist that access to justice is an entitlement to abuse the process of the law by filing repeated litigations claiming the same reliefs and which is impermissible in law, and that too filing after a decade or more of arising of the cause of action which is that the impugned decision of 2003 is challenged in 2015. There are thousands of litigants whose genuine cases remain pending because of lack of hearing,

and one of the reasons for lack of hearing to such cases is that this Court has to devote time to frivolous cases such as the present one filed by the petitioner. This writ petition is therefore dismissed with costs of Rs.50,000/-. Costs can be recovered by the respondent no.1 from any of the monetary emoluments which are payable to the petitioner, of course in accordance with law.

FEBRUARY 06, 2015
Ne

VALMIKI J. MEHTA, J