

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION Nos.39580 AND 39582 OF 2017

COMMON ORDER:

These two writ petitions are being disposed of by this common order as they arise out of the proceedings in I.D.No.20 of 2015 on the file of the 1st respondent.

2. The petitioner along with eighty employees filed the above I.D.No.20 of 2015 before the 1st respondent challenging the order of termination by filing application under Section 2-(A) (2) of the Industrial Disputes Act and they were numbered as I.D.No.20 of 2015 and batch. The case of the applicants before the Labour Court was that their resignation letters were obtained by fraud, force and coercion and it amounts to termination under the provisions of Industrial Disputes Act, consequently amounts to retrenchment under Section 2(oo) of the Industrial Disputes Act. The applicants are still left with nearly 15 to 20 years of service and they have signed the letters of resignation under the threat of orders of transfer to a far off place. It is also their case that there is no union in the 2nd respondent company. When their resignations were obtained, they submitted representation to the Commissioner of Labour on 04.09.2014 and the Commissioner of Labour sent notices of meetings to the 2nd respondent and in spite of the said notice, the 2nd respondent went ahead with the implementation of VRS/VHS. The petitioners state that they adduced evidence before the 1st respondent and rebuttal evidence was produced

by the 2nd respondent by deposition of one Chief Manager (HR) as MW1. After completion of evidence of MW1, the petitioner filed four applications in I.A.Nos.258/2017, 475/2017, 292/2017 and 309/2017 on 23.10.2017. Counter affidavits were filed in the respective applications and the 1st respondent, by order dated 16.11.2017, allowed I.A.Nos.258 of 2017 and 275 of 2017 with costs of Rs.500/- and dismissed I.A.Nos.292 of 2017 and 309 of 2017 with costs. Challenging the orders dismissing I.A.No.292 of 2017, W.P.No.39580 of 2017 was filed and challenging the dismissal of I.A.No.309 of 2017, W.P.No.39582 of 2017 was filed. This Court, by order dated 23.11.2017, granted interim stay for a period of four weeks and now, applications are filed vide W.V.M.P.Nos.4871 and 4869 of 2017 respectively, seeking vacation of the said order.

3. The 2nd respondent filed a counter affidavit stating that the petitioners shifted their stand and made incorrect statements in the affidavit filed in support of the writ petition. It is further stated that in the entire cross-examination of MW.1, there was no whisper about the relevancy or otherwise of the documents sought in I.A.No.292 of 2017 and further submitted that the applications are beyond the scope of the enquiry before the Labour Court. These writ petitions were filed in order to drag on the proceedings before the Labour Court as the evidence was completed. It is also brought to the notice of this Court that the 1st respondent passed an order on 21.11.2017 stating that costs were not paid in both

the applications and the conditional order was not complied with. The counsel for the petitioner requested for two months time for arguing the matter and file written arguments and such long adjournment was declined and ultimately the counsel undertook to advance oral argument by 18.12.2017.

4. IA.No.292 of 2017 was filed seeking production of the following documents:

- “1. Payment of Wages Register maintained under Section 17-A of Working Journalists and other Newspaper employees (Conditions of Service) Miscellaneous Provisions Act, 1955.
2. Wages Register for the period from 11.11.2011 to 31.12.2015.
3. Telex messages exchanged between various Centres and Hyderabad.
4. Discussions held with unions or Workmen before VRS/VSS Scheme was introduced.
5. Standing orders of the Respondent Company.”

5. Whereas, I.A.No.309 of 2017 was filed for summoning the Director of the Company who has accepted the letters of resignation.

6. With regard to the above two applications, the Labour Court observed as follows:

“The petitioner contended that payment of wages register maintained under Sec.17/A of the I.D.Act 1955, wage register for the period from 11-11-2011 to 31-12-2015, Telex messages from central office to various centers discussions held with units and workmen pertaining to VRS, Standing orders of the respondent company are required to be produced by the respondent. The payment of wages to the

petitioner or other employees under Sec.17-A of working journalists and other newspapers employees (Conditions of service) miscellaneous provisions Act 1955 is not in dispute. It is not the case of the petitioner and others that they were not paid wages in pursuance of the provisions of the above Act. The other documents is wage register and it is also not relevant document as the payment of wages for the period specified in the affidavit of the petitioner is not in dispute. So far as Telex messages are concerned those are being used for the convenience of the management at Central office to contact their representatives in the unit office. The very validity of the VRS is not in dispute and no declaration for VRS as not enforceable is a prayer in the petition.

Therefore the discussions or otherwise in between the management and workmen with regard to the scheme are irrelevant. The initiation of VRS/VSS by the management is admitted by the petitioner and the only contest by the petitioner is that he was forced to submit application for VRS/VSS and on the threat of transfer and these documents do not establish the alleged threat of transfer. It is the evidence of the petitioner that is to be taken into consideration whether the petitioner opted VRS/VSS voluntarily or not. The employees were given option to exercise the benefits of VRS/VSS schemes and accordingly some of them opted the same and they were paid benefits by way of package of compensation and relieved from service by issuing service certificates. The other documents asked by the petitioner is standing orders of the respondent company, and it is the public document and the affidavit of the petitioner is silent how all these documents are relevant for the sake of just decision in the present case. A party may ask for several documents from the other side. The affidavit shall

reveal how those documents are relevant for just decision of the case in dispute.

The present case on hand is with regard to the submission of application for VRS/VSS launched by the respondent. The petitioner alleged that he opted when alternative employment was assured by way of contract employment and also a threat was made for transfer of employees who have not opted the scheme. The petitioner instead of establishing those two circumstances going on dealing with Majithia Commission (Wage board benefits) etc., which are not at all relevant and more over the present dispute is not raised for implementation of Majithia Committee Wage Board report.

Therefore the application filed for production of documents by the respondent is misconceived one and more over when a document which is in possession of other parties is not produced and the court found it to be relevant, the court has to draw adverse inference against the case of the party who have not produced the document. Therefore even if any of the document found necessary during the course of the hearing and the party intentionally retained it, this court can draw adverse inference against him. Accordingly, the petition for production of documents is devoid of merits and liable to be dismissed.

The other application filed by the petition is to summon Mr.Kiran to depose evidence in this matter as a witness. A party is at liberty to adduce evidence as he like. Other party to the suit cannot compel the other side to give evidence. In the present batch of cases, M/s Ushodaya Enterprises Pvt. Ltd., is a party and on behalf of party the HR-Manager deposed evidence before the court. During the course of cross examination several irrelevant questions were put to the witness and however he answered to the extent of possible. The petitioner alleged that the so called Kiran

is an Architect of VRS and therefore his presence is required for giving evidence before this court. Mr.Kiran is M.D. of the respondent company. When application is submitted by the party under VRS, naturally it will be accepted by the person competent to accept and it may be by the Board or by the managing director or any other officer to whom the power is delegated. Because Mr.Kiran being M.D., accepted the VRS applications his presence need not be insisted for giving evidence. The reason is that the very accepting of VRS applications is not in dispute and at the same time the payment of compensation package is also not in dispute. The only dispute is with regard to the voluntary or otherwise of the submission of VRS applications and alleged assurances by the respondent for providing employment on contract basis as is relevant. It is not the case of the petitioner or other workmen that the so called Kiran called them and made all efforts so as to put their VRS application. There is no change of conditions of service to the workman as they opted for VRS from service at their own accord and the petitioner instead of establishing the facts with regard to the threat of transfer, providing alternative employment and such other circumstances which leads to filing of the VRS application going behind his pleading and they targeted the Managing Director of the respondent to make him to depose evidence and same will not serve any purpose and as such this application is liable to be dismissed as devoid of merits.”

7. The learned counsel for the petitioner submits that the Labour Court committed an error in commenting about the relevancy or otherwise of the documents sought and also observing that the evidence of the Director is not going to serve any purpose.

8. As pointed out above, the main application relates to the order of termination (forceful resignation), dated 26.09.2014 and for setting aside the same, the applications were filed. It is their case that the payment of amount towards VRS/VSS/VHS was not calculated according to the salary determined under Justice Majithia Wage Board and when the payment was not properly made, the order of termination would be *void ab initio*. There are other averments made on legal points and there is no much controversy with regard to the facts. Now, the evidence is completed on both sides and the matter is coming up for arguments. When the matter is coming up for arguments, it is open to the parties to take respective stands and argue the matter on the basis of evidence already available on record. After going through the order passed by the 1st respondent, as extracted above, I am of the opinion that the 1st respondent's reasoning is, *prima facie*, correct, but said reasoning should not influence the final decision in the matter. The arguments are yet to be heard and the final order has to be passed. The petitioners did not comply with conditional order passed while allowing I.A.Nos.258 of 2017 and 275 of 2017. It shows that the petitioners are not very serious about the applications. In view of the same, this Court seems no reason to entertain the present writ petitions, but directs the 1st respondent to hear the parties on the basis of the evidence available on record and pass appropriate orders in accordance with law, without being influenced by the

observations already made, while passing the order by the 1st respondent on 16.11.2017, as they are tentative in nature. It is stated by the learned counsel for the parties that the batch of cases are posted to 22.12.2017 and it is not possible to advance arguments on that day. In view of the order passed today, the 1st respondent is directed to adjourn the cases to 08.01.2017 and the learned counsel for the parties undertake to advance arguments on that day. Subject to the above observations, these writ petitions are disposed of.

Miscellaneous petitions pending consideration, if any, in this writ petition shall stand closed in consequence.

20.12.2017
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Note: Despatch copy within three (03) days.

(B/o.)
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A.RAMALINGESWARA RAO, J

