

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

+ **W.P.(C) No.1258/2003**

% **8th March, 2017**

SH. SHAILENDER ARORA Petitioner

Through: Dr. N. K. Khetarpal, Advocate.

versus

STEEL AUTHORITY OF INDIA LTD. Respondent

Through: Mr. Siddharth Yadav, Advocate
with Mr. Wasim Ashraf,
Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition under Article 226 of the Constitution of India, the petitioner seeks the relief that the respondent/Steel Authority of India Ltd/employer should accept his request of voluntary retirement made vide letters dated 27.3.2001 and/or 31.12.2002. When petitioner submitted his letter dated 27.3.2001 Voluntary Retirement Scheme (VRS), 2001 was in force, and when petitioner submitted his letter dated 31.12.2002, another VRS Scheme 2002-03 was in force. Through the writ petition, petitioner states that although petitioner was on sabbatical leave and the VRS Scheme excluded applications of VRS

of persons who were on sabbatical leave, yet, petitioner under the VRS schemes should be granted voluntary retirement because the VRS schemes have to be declared as arbitrary because even if sabbatical leave period is excluded, yet persons such as the petitioner fulfils the eligibility criteria of number of years of service being 10 years and having age of above 40 years so as to get VRS under the VRS Schemes of 2001 and 2002-03.

2. The facts of the case are that the petitioner was appointed as an Assistant with the respondent on 22.11.1984 with previous services of the petitioner from 1.10.1984 being with Indian Iron & Steel Co. Ltd., a subsidiary of the respondent. Petitioner during his service tenure got various promotions and petitioner was appointed at the post of Senior Console Operator as per the office order dated 12.7.1990. Petitioner's post was re-designated as Senior Co-ordinator in terms of the order dated 8.10.1991 of the respondent. Respondent introduced a scheme of sabbatical leave as per its circular dated 31.3.1999. Petitioner applied for the sabbatical leave under the scheme vide his letter dated 21.2.2000 whereby sabbatical leave was granted to him for one year. Petitioner requested for extension of the said leave for another two years vide letter dated 22.2.2001 and which sabbatical leave was therefore extended vide letter of the respondent dated

28.2.2001 up to 28.2.2003. Petitioner pleads that as per the applicable sabbatical leave Rules, the sabbatical period was not to be counted as a break in service. Petitioner then pleads that the respondent came out with VRS Schemes in the years 2001 and 2002-03, and that the petitioner applied for voluntary retirement under the said schemes, but the respondent refused to grant voluntary retirement on the ground that each of the VRS Schemes contained a clause that benefit of VRS Schemes would not be available to those employees who were either serving a bond period, or were on study leave or were on sponsorship or were on sabbatical leave etc etc. Petitioner pleads that even if the period of sabbatical leave of the petitioner is excluded for determining the qualifying years of service to become eligible for VRS schemes, the petitioner still fulfils the eligibility criteria for grant of VRS because eligibility criteria for grant of VRS is of 10 years service and employee being above 40 years, and petitioner even if the sabbatical leave period is excluded would have service period of around 16 years and that the petitioner admittedly was over 40 years of age.

3. On behalf of the respondent, counter affidavit is filed stating that petitioner in view of specific terms of the two VRS schemes, and which terms excluded employees who were on sabbatical

leave, was rightly denied voluntary retirement under the VRS schemes of 2001 and 2002-03.

4. The issue before this Court is whether the VRS schemes are arbitrary and hit by Article 14 of the Constitution of India on the ground that it unfairly denies VRS benefits to those employees who would satisfy the eligibility criteria of 10 years of service and being above 40 years, even if the sabbatical leave period is excluded from the total years of qualifying service of such an employee for grant of voluntary retirement under the VRS schemes.

5. Before proceeding further, I may note that petitioner has already resigned from the respondent pursuant to his letters dated 21.2.2003 and 2.5.2003, and petitioner has already received all service benefits payable to an employee who resigns from services, however, since petitioner had written his letters dated 21.2.2003 and 2.5.2003 as being without prejudice to his rights in the present writ petition, hence the present writ petition has to be heard and decided.

6. In my opinion, the contention of the petitioner that petitioner is being discriminated against because petitioner falls in a set of those employees whose sabbatical leave period if is excluded yet these employees still fulfill the eligibility criteria for grant of voluntary

retirement on account of having more than 10 years of service and being above 40 years of age, is a misconceived contention. I cannot agree with the argument urged on behalf of the petitioner, inasmuch as, counsel for the respondent rightly contends that the issue is not of fulfilling the eligibility criteria for grant of voluntary retirement but the issue is that VRS package which is a golden handshake package includes a lump sum severance amount and which lump sum severance amount has to be calculated as per the pay scale of an employee on the date of the application for VRS, i.e even if the employee fulfills the eligibility criteria for grant of VRS by excluding sabbatical leave period, yet these employees are rightly excluded because when an employee who is on sabbatical leave such as the petitioner rejoins the services of the employer, then on the rejoining of such employee after sabbatical leave his pay is at the pay scale which would be prevalent on the date of rejoining of the employee with the employer and on which basis of higher pay the VRS package is calculated. Putting it in other words, since the date of rejoining of an employee after three years of service such as in the case of petitioner would mean that the pay scale which would be payable to such an employee as the petitioner, would be the pay scale after three years of sabbatical leave with annual increments and not that pay scale which was payable when the

employee commenced sabbatical leave, consequently when the voluntary retirement package has to be drawn up, employees on sabbatical leave would get benefit of higher pay scale prevalent on the date of rejoining without having worked in the sabbatical leave period, and hence, such employees have been rightly excluded from the benefits of VRS scheme and hence there is no violation of Article 14 of the Constitution of India when the VRS schemes of the respondent excludes persons on sabbatical leave.

7. As stated above, when a voluntary retirement is taken under a VRS scheme by an employee, such voluntary retirement is not an ordinary voluntary retirement or an ordinary retirement at the age of superannuation, inasmuch as, when an employee retires at the age of superannuation or otherwise seeks voluntary retirement in accordance with the service rules, to such an employee there is no severance package which is paid and which severance package is paid under a VRS scheme because under the VRS scheme it is the employer which seeks to reduce the strength of workforce of the employer by seeking acceptance of VRS schemes by the employee, whereas when voluntary retirement is taken by an employee under the service rules, the action for seeking voluntary retirement is not because of the desire of the employer but it is because of the sole desire of the employee.

8. In the present writ petition, it is seen that it is not the case put forth by the petitioner that petitioner be granted VRS by taking the pay scale of the petitioner as that payable to the petitioner on the date when his sabbatical leave commenced. If that was the case of the petitioner, then petitioner may possibly have a case because in such a scenario it could possibly be held that respondent causes arbitrary prejudice to those set of employees who take VRS as per the pay scale payable on the date of commencement of the sabbatical leave and whose severance package is not as per the pay scale prevalent at the time of rejoining after ending of the sabbatical leave. However, I do not have to go to this theoretical position because the only case pleaded by the petitioner is that if employees satisfy the eligibility criteria of VRS scheme i.e having served for 10 years and being above the age of 40 years, such persons automatically are deemed to be unfairly discriminated and which is not the correct position because such persons will get VRS package as per the pay scale payable on the date of joining after completion of sabbatical leave and not the pay scale which would be prevalent on the date of commencement of the sabbatical leave i.e an employee gets benefit of enhanced pay scale payable due to annual increments without actually serving the employer for periods when increments are granted.

9. Learned counsel for the petitioner also argues that as per the sabbatical leave Rules, an employee who is on sabbatical leave in case he does not join then he would be deemed to have resigned for which no period of notice is required, however, I fail to understand as to how this rule being Rule 6 of the sabbatical leave Rules will help the petitioner because petitioner admittedly has resigned and has got the service benefits as a resigned employee. Rule 6 relied upon nowhere touches upon the issue as to the fact that a person who is on sabbatical leave will be entitled to VRS schemes benefits although the VRS schemes specifically excludes employees such as the petitioner on sabbatical leave.

10. Learned counsel for the petitioner places reliance upon the judgment of the Supreme Court in the case of *Asger Ibrahim Amin Vs. Life Insurance Corporation of India 2015 (10) SCALE 639* to argue that in this case Supreme Court had converted a case of resignation into voluntary retirement and hence petitioner is entitled to the benefit of the ratio, however, the judgment of the Supreme Court relied upon does not help the petitioner because the resignation which was treated as a voluntary retirement in the case of *Asger Ibrahim Amin (supra)* was a case of ordinary voluntary retirement without a severance package being given to an employee under VRS schemes which are

floated by the employer for reducing the workforce of the employer. In the case of *Asger Ibrahim Amin (supra)* resignation was directed to be taken as a case of voluntary retirement instead of resignation, and therefore, facts and ratio of the said case of *Asger Ibrahim Amin (supra)* would have no application in the present case where in case the voluntary retirement application is accepted, petitioner would not have got normal benefits of ordinary retirement/superannuation but in addition to the ordinary benefits of normal superannuation, he would also have been entitled to a golden handshake being an additional lump sum severance package.

11. In view of the above, there is no merit in the petition, and the same is therefore dismissed, leaving the parties to bear their own costs.

MARCH 08, 2017
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VALMIKI J. MEHTA, J