

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P. No.22867 of 2002ORDER:

This writ petition is filed seeking a writ of mandamus declaring the action of the 1st respondent in not paying the notice pay emoluments amounting to Rs.58,902/- as stipulated in the office order No. HRD/ 401, dated 20.03.2001 even after accepting the application for voluntary retirement from service on 29.08.2001, as arbitrary, illegal and against the principles of natural justice, and consequently pass appropriate orders to pay notice pay emoluments amounting to Rs.58,902/- to the petitioner.

2. Heard Sri K.Venugopal Reddy, counsel for the petitioner and Sri A.K.Jayaprakash Rao, Standing Counsel for the respondents.

3. It has been contended by the petitioner that he was employed with the respondents and while he was working as such, the respondents have introduced voluntary retirement scheme on 20.03.2001. Since the petitioner was not keeping good health, he had applied for voluntary retirement under the scheme on 16.08.2001. The salient features of the voluntary retirement scheme are as follows:

“IV. EX-GRATIA BENEFITS:

1. An employee whose application is considered for retirement under the VRS or who has been identified for retirement under VRS would be entitled to an ex-gratia payment equivalent to one and half month's emoluments (Basic Pay + Dearness Allowance (excluding personal and special pay if any and DA applicable on such pay)) for each completed year of service or the

present monthly emoluments multiplied by the balance months of service left before normal date of retirement, whichever is less. For example, an employee who has put in 24 years of service and has got only one year of service for normal retirement, will get ex-gratia payment of only 12 months' emoluments and not 36 months' emoluments. On the other hand, if the said employee has three years of service left, he will get ex-gratia payment of 36 months.

2. In addition, the employee and his family would be reimbursed the amount by the eligible class of travel to their choice of place of settlement within the State of Andhra Pradesh subject to submitting of proof after settlement.
3. one month/three months notice pay (emoluments as mentioned at A above) as per the service conditions applicable to the employee."

4. The application of the petitioner was accepted by the respondents, vide proceedings dated 20.08.2001 and as per the said acceptance of voluntary retirement of the petitioner, the petitioner was supposed to be relieved by 29th August, 2001. At that point of time, the petitioner was working at Kurnool branch. However, the Senior Manager at Kurnool Branch had not relieved the petitioner till November, 2001.

5. The grievance of the petitioner is that as per the voluntary retirement scheme, the petitioner is entitled to one month/three months notice pay (emoluments as mentioned at (a) above) as per the service conditions applicable to the employee, but the same was not paid to the petitioner. The pay of one month/three months pay notice is a pre-requisite condition for accepting the voluntary retirement scheme.

Though the respondents have communicated the acceptance of voluntary retirement of the petitioner, vide proceedings dated 20th August, 2001, the condition of notice pay was not complied with. The petitioner has filed the present writ petition seeking notice pay emoluments.

6. The Standing Counsel appearing for the respondents had contended that the petitioner was paid salary upto November, 2001 and the question of paying notice pay as per the voluntary retirement scheme would not arise, since the application of the petitioner was accepted by the respondents, vide proceedings dated 20th August, 2001, and for the next three months for which the petitioner was continued, he was paid salary, and the payment of notice pay has to be understood as though notice was given in the month of August, 2001 to the petitioner, as he was continued upto November, 2001. It is further contended that the petitioner is not entitled to notice pay, since notice pay in lieu of continuation will be paid only if the employee is not continued in service. It is further contended that in the instant case, the petitioner was continued in service after acceptance of his application for voluntary retirement under the scheme and he was continued upto November, 2001, and the question of paying notice pay would not arise; that there are no merits in the writ petition and the same is liable to be dismissed.

7. This Court, having considered the rival contentions, is of the considered view that payment of one month/ three months notice pay is a pre-requisite condition for accepting the application of the petitioner for voluntary retirement, which would mean that the respondents ought to have complied with the condition of notice pay emoluments by 20th August, 2001. The fact that the petitioner was allowed to continue in service due to exigencies upto November, 2001 would not disentitle him to receive the notice pay emoluments.

8. Therefore, the writ petition is allowed, and the respondents are directed to pay the notice pay emoluments to the petitioner within a period of six weeks from the date of receipt of a copy of this order. No order as to costs. Miscellaneous petitions pending, if any, stand closed.

ABHINAND KUMAR SHAVILI, J

Date: 30.10.2018
DMG

