

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.7513 OF 2002

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WRIT PETITION No.10544 OF 2002

COMMON ORDER:

For the sake of convenience, the parties are referred to as 'workman' and 'Management'.

2. These two writ petitions, one filed by the workman and another filed by the Management against the order of the appellate authority under Section 53 of the Andhra Pradesh Shops & Establishments Act, 1988 (for short 'the Act, 1988')-cum-the Assistant Commissioner of Labour-III, Hyderabad/2nd respondent passed in S.A.No.33 of 2001 in SE.No.22 of 1998 dated 20.03.2002, wherein the appellate authority partly allowed the appeal in S.A.No.33 of 2001 and rejecting the order of the 3rd respondent authority under Section 50 of the Act, 1988-cum-the Labour Officer-II in S.E.No.22 of 1998. Hence, these writ petitions are disposed of by a common order as the same have arisen against the impugned order of the appellate authority/2nd respondent.

3. The workman was appointed as a Trainee Medical Representative on 12.12.1983 in the Management Company and subsequently made permanent in the year 1984. The workman abstained from duty unauthorisedly without attending to his field work from 15.04.1997. The workman was neither applied for leave nor intimated to his superiors.

The workman continued to be absent unauthorisedly and he applied for sick leave on 05.05.1997 seeking leave till 17.05.1997. The said leave was granted and after expiry of the said sick leave period, the workman failed to attend to duty and continued to be absent from duties unauthorisedly. Though the workman was asked to report for duty, he failed to attend the duty. Then, a show-cause notice dated 31.07.1997 was issued to him stating that why he should not be terminated from service. Thereafter, he submitted his resignation on 07.08.1997 and requested for payment of terminal benefits including *ex gratia* of Rs.50,000/-, reserving his right to claim benefits under Voluntary Retirement Scheme, 1997 (hereinafter called as 'VRS scheme'). While accepting the resignation of the workman on 07.08.1997, the Management vide letter dated 07.10.1997 made it clear to the workman that VRS scheme was not in operation on the date when the workman had submitted his resignation, and hence, the question of giving benefit under VRS scheme did not arise. The company vide letter dated 02.01.1998 had revoked the letter of acceptance of resignation, as the resignation was a conditional resignation wherein the workman reserved his right to the benefits of VRS scheme and the same was rejected since the workman was not entitled to the benefits of VRS scheme. The workman did not resume his duties.

Later, the workman submitted a representation dated 06.05.1998 to the 3rd respondent to register the dispute

under the provisions of the Industrial Disputes Act, 1947 and to resolve the same. The said representation was treated as an application under Section 50 of the Act, 1988 and registered the same as SE.No.22 of 1998 for grant of terminal benefits under the Early Retirement Incentive (ERI) Scheme and VRS scheme. The application was dismissed on 29th January, 2000 for want of jurisdiction of the authority on the ground that the services of the workman were governed by the provisions of Sales Promotion Employees (Conditions of Service) Act, 1976. The services of the medical representatives are also governed by the provisions of the said Act. Thereupon, the workman preferred an appeal to the appellate authority under Section 53 of the Act, 1988. The appellate authority, passed order on 22.09.2001, overruling the decision of the authority dated 29.01.2000 holding that workman was an employee under Section 2(g) of the Act, 1988 and remanded the matter to the 3rd respondent authority to dispose of the matter on merits. But, on an erroneous appreciation of facts and law, the 3rd respondent authority under Section 50 of the Act, 1988 allowed the application vide S.E.No.22 of 1998 on 20.10.2001 holding that the workman was entitled for the benefit under VRS scheme and directed the Management under Section 51(2) of the Act, 1988 to pay a sum of Rs.12,05,344.62 Ps. to the workman by demand draft on any nationalised bank in favour of the workman which shall be deposited with the

3rd respondent authority for payment to the workman. The Management filed S.A.No.33 of 2001 under Section 53 of the Act, 1988 against the order dated 20.10.2001 in S.E.No.22 of 1998 of the 3rd respondent authority. The 2nd respondent – appellate authority, on re-appreciation of evidence on record, had come to the conclusion that the workman was not applied for VRS scheme during the operation of the scheme between 19.02.1997 to 17.03.1997. The VRS scheme is for a limited period and the employees who are willing to be opted the VRS scheme have to submit their applications during the said period only but not after expiry of the operation of the scheme. Neither the workman had submitted application seeking benefits under VRS scheme nor the same was accepted by the Management. However, it is the prerogative and discretion of the Management to accept the VRS application. The 2nd respondent partly allowed the appeal by proceedings dated 20.03.2002, while setting aside the order of the 3rd respondent-lower authority dated 20.10.2001 and directed the Management to settle the benefits treating the resignation of the workman dated 07.08.1997 as accepted and pay the amounts towards leave encashment if any leave to the credit of the workman, unpaid bonus, salary, incentive, gratuity, provident fund, if any as in the case of resignation in the usual course and the finding of the authority does not preclude the Management to recover the excess amount if any paid and equally it does not curtail the right of the workman

to claim the deficit amount if any payable by the Management. Being aggrieved by the order of the 2nd respondent-appellate authority passed under Section 53 of the Act, 1988, the present writ petitions are came to be filed.

3. Sri M.Radha Krishna Murthy, learned counsel appearing for the Management, would contend that the Management introduced VRS and IRV schemes under which an amount of Rs.5 lakhs tax free benefit was offered to the workman with the prior approval of the Income Tax Department. The scheme was submitted for approval on 02.12.1996 and the same was approved by the Commissioner of Income Tax on 24.12.1996. While granting approval of the scheme, the Chief Commissioner of Income Tax had granted approval for the period between 24.02.1997 to 31.03.1997. The Management introduced the VRS scheme between 19.02.1997 to 17.03.1997. In the scheme, Clause V, Point I of the terms and conditions made it clear that the Management reserves the right to accept or reject application received under the scheme without assigning any reason whatsoever. The decision of the Management is final and binding on all concerned. The acceptance of the VRS application should be communicated within 15 days from the date of receipt of the application and the workman will be relieved from the service of the company within 30 days from the date of such communication. The workman abstained

from duty unauthorisedly from 15.04.1997. The workman applied for sick leave from 05.05.1997 to 17.05.1997. After expiry of the said leave period, the workman has not joined to duty. A show-cause notice dated 31.07.1997 was issued to the workman for unauthorised absence stating that why he should not be removed from service. While the matter stood thus, on 07.08.1997, the workman submitted his resignation without prejudice to his right to avail benefits under VRS scheme. The Management through letter informed to the workman to specify the effective date of resignation from which date he wanted to resign from the Management Company, otherwise he would be relieved from the services of the company within one month from the date of receipt of the letter. As on the date of submission of resignation letter reserving his right for VRS benefits is not acceptable since the VRS scheme of 1997 was in operation from 19.02.1997 and closed on 17.03.1997. Nothing prevented the workman to avail the benefits under VRS scheme as the workman was attending the duties during the period of VRS scheme. However, for the reasons best known to him, he was not opted for VRS scheme by submitting application. When the workman was insisting for the benefits of VRS scheme repeatedly, acceptance of his resignation letter dated 07.08.1997 was cancelled on 02.01.1998.

Being aggrieved by the non-payment of VRS benefits, the workman submitted representation to the 3rd respondent

for settlement of dispute. The workman's representation was registered as S.E.No.22 of 1998 under Section 50 of the Act, 1988 before the 3rd respondent for adjudication. Initially, the 3rd respondent had rightly rejected the same stating that the authority has no power to decide the payment of VRS benefits under the provisions of the Act, 1988 as there is no employee and employer relationship exists between the Management and the workman as the workman is working as a Medical Representative and the service conditions are governed by the provisions of the Sales Promotion Employees (Conditions of Service) Act, 1976. However, on appeal, the matter was remanded for fresh consideration on merits by the 2nd respondent-appellate authority under Section 53 of the Act. The same was reconsidered by the 3rd respondent authority under Section 50 of the Act, 1988 and on an erroneous appreciation of fact and law came to the conclusion that the workman is entitled for VRS benefits and the Management was directed under Section 51(2) of the Act, 1988 to pay an amount of Rs.12,05,344.62 Ps. to the workman and deposit the same by way of demand draft drawn on any nationalised bank, with the authority by order dated 20.10.2001.

Being aggrieved by the order of the 3rd respondent authority passed in S.E.No.22 of 1998 dated 20.10.2001, the Management preferred an appeal in S.A.No.33 of 2001 before the appellate authority under Section 53 of the Act, 1988 and

the same was partly allowed by order dated 20.03.2002, holding that the workman is entitled for the usual benefits, treating the resignation as accepted, such as leave encashment if any leave to the credit of the workman, unpaid bonus, salary, incentive, gratuity and provident fund, treating the workman's resignation letter dated 07.08.1997 deemed to be accepted.

The learned counsel for the Management would further contend that treating the workman's representation as an application under Section 50 of the Act, 1988 is erroneous and such an application itself is not maintainable and deciding the same on merits is illegal, arbitrary and contrary to law. The application under Section 50 of the Act, 1988 is maintainable only for payment of all claims arising out of deductions from the wages or delay in payment of the wages or service compensation payable under the Act to the employees. The claim of the workman is only for the benefits under VRS scheme, which is not accepted by the Management as there is no such application by the Workman to the Management under the VRS scheme. The 2nd respondent having accepted that no application was filed by the workman under VRS scheme much less within the closing of VRS scheme as the VRS scheme was closed on 17.03.1997. His earlier acceptance of the resignation was revoked by letter dated 02.01.1988 and hence his resignation letter was not accepted pending disciplinary proceedings. Thereafter, the

workman submitted representation to the 3rd respondent authority and the same was registered as S.E.No.22 of 1998 under Section 50 of the Act, 1988. The 3rd respondent committed an error of law and fact in directing the Management to pay the retirement benefits to the workman by order dated 20.03.2002, which is illegal and arbitrary and the same is without jurisdiction under Section 53 of the Act, 1988.

The learned counsel for the Management relied on a decision reported in *C.V.Francies Vs. Union of India and others*¹ to the effect that it is well settled that a Voluntary Retirement Scheme introduced by a company, does not entitle an employee as a matter of right to the benefits of the Scheme. The acceptance of the VRS scheme which wholly vests with the Management. The discretion solely vests with the Management to accept or not to accept the application under VRS scheme.

4. Per contra, Sri Resu Mahender Reddy, learned counsel for the workman, would contend that the workman submitted his resignation letter on 07.08.1997 reserving his right under VRS scheme, 1997 and his resignation was accepted. Subsequently, said acceptance of resignation was cancelled on the ground that it is a conditional resignation as the workman has reserved his right for VRS benefits, which is illegal. But the Management has not paid the benefits under

¹ 2013 LLR 785

VRS scheme. The workman's representation to the 3rd respondent was rightly registered as S.E.No.22 of 1998 under Section 50 of the Act, 1988. The 3rd respondent had rightly allowed the application under Section 50 of the Act, 1988 on remand to decide the issue on merits and directed the Management to pay Rs.12,05.344.62 Ps. and deposit the same with the authority. The Management preferred an appeal against the order of the 3rd respondent dated 20.10.2001, the 2nd respondent-appellate authority under Section 53 of the Act, 1988, on an erroneous appreciation of facts and law, partly allowed the appeal of the Management and directed the Management to pay the amounts payable under usual course of resignation, such as leave encashment if any leave to the credit of the workman, unpaid bonus, salary, incentive, gratuity and provident fund.

The learned counsel further contended that the VRS scheme was not personally communicated to the workman to submit his application under VRS scheme within time, due to that he could not able to submit the same in time. The 2nd respondent authority, on an erroneous appreciation of evidence, held that the VRS scheme was displayed on the notice board of the company and also in the Head office where the petitioner was working during that period and hence rejected the contention of the workman that the workman was not informed of the VRS scheme personally and he was not aware of the same to submit his application within time.

However, the workman had submitted his resignation letter, wherein it is specifically mentioned that he was reserving his right for VRS benefits. The 3rd respondent had rightly directed the Management to pay an amount of Rs.12,05,344.62 Ps. and that the finding of the 2nd respondent authority is contrary to the evidence on record and liable to be set aside and seeks confirmation of the order of the 3rd respondent-authority.

5. In the facts and circumstances of the case and in considered view of this Court, the workman was appointed as a Medical Representative on 13.12.1983 in the Management Company and subsequently he was made permanent in the year 1984. The workman was abstained from duty from 15.04.1997 without any permission. The workman applied for sick leave on 05.05.1997 till 17.05.1997 and accordingly the leave was granted. Thereafter, he was not attended to duties in spite of asking him to join duty, but he met Sri S.K.Sardar, Regional Sales Manager on 30.05.1997 informed that for personal reasons he was going to submit his resignation letter. However, on 31.07.1997, the Management sent a show-cause notice asking the workman to report to duty otherwise why his services should not be terminated. Subsequently, on 07.08.1997, the workman submitted his resignation stating that the said resignation is without prejudice to his rights under VRS scheme, 1997. Initially, the Management has accepted his resignation vide letter dated

07.10.1997 while rejecting the contention of the workman that he is entitled for VRS scheme as the scheme was not in operation as on the date of resignation letter dated 07.08.1997.

6. The VRS scheme was introduced on 19.02.1997 and closed on 17.03.1997. The workman had not submitted any application under VRS scheme to accept his application and to pay the benefits under VRS scheme, 1997. The Management cancelled its acceptance of earlier resignation as the resignation was a conditional one wherein the workman has reserved his right for VRS benefits, and communicated the same. The Management rightly rejected the claim of the workman for payment of VRS benefits, but the workman submitted representation on 06.05.1998 to the 3rd respondent for settlement of the dispute, but the same was registered as S.E.No.22 of 1998 under Section 50 of the Act, 1988. The third respondent at the first instance after adjudicating the claim of the workman under Section 50 of the Act, 1988, rejected the same on the ground that there was no employee and employer relationship between the parties. On appeal, the 2nd respondent allowed the appeal holding that on technical grounds, the amounts payable to the workman should not be rejected as already five years period was elapsed and remanded the matter to decide the same on merits. On remand, the third respondent on an erroneous appreciation of fact and law, allowed the application under

Section 50 of the Act and directed the Management under Section 51(2) of the Act to pay the amount of Rs.12,05,344.62 Ps. treating that the workman was entitled for benefits under VRS scheme, 1997 and when there was no such application submitted by the workman under VRS scheme, 1997, which is highly illegal and arbitrary. Accordingly, the Management preferred appeal under Section 53 of the Act against the order of the 3rd respondent dated 20.10.2001. The 2nd respondent authority under Section 53 of the Act, 1988, on appreciation of evidence before it, rightly came to the conclusion that the workman had not submitted any application under VRS scheme, 1997. The question of treating the workman retired under the provisions of VRS scheme does not arise. However, the 2nd respondent authority holding that the workman was resigned from service by resignation letter dated 07.08.1997 and the same was accepted by the Management on 07.10.1997 and the Management could not have been cancelled the earlier acceptance of the resignation and that the cancellation is illegal, partly allowed the appeal by impugned order dated 20.03.2002 holding that the workman's resignation was deemed to be accepted and he is entitled for service benefits as usual under resignation and directed to pay the amounts towards leave encashment, unpaid benefits, salary, incentives, gratuity, provident fund, if any to the petitioner.

7. For the reasons stated supra, this Court found that there is no illegality or irregularity in the impugned order of the 2nd respondent authority which warrants interference of this Court under Article 226 of the Constitution of India and to set aside the same.

8. For the aforesaid reasons, both the Writ Petitions are liable to be dismissed and are accordingly dismissed. No order as to costs.

9. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE M.GANGA RAO

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