

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.20876 of 2012

(An application under Article 226 and 227 of the Constitution of India).

Santosh Kumar Rout ***Petitioner***

-versus-

Secy, P.E. Dept. and others ***Opposite Parties***

Advocates appeared in the case through Hybrid Mode:

For Petitioner : ***Mr. S.S. Mohant, Advocate***

-versus-

For Opposite Parties : ***Mr.N.K. Praharaj, ASC***
M/s. S.L. Pattnaik, Advocate

CORAM:

JUSTICE V. NARASINGH

DATE OF HEARING : 23.08.2022

DATE OF JUDGMENT: 23.08.2022

V. Narasingh, J.

1. Heard Mr. Chhotray learned counsel for the petitioner and Miss. Pattnaik for the Opposite Party Nos.2 to 4 and learned Additional Standing Counsel.
2. It is the case of the petitioner that he was appointed as a driver by the managing director of TDCC (Tribal Development

Cooperative Corporation of Orissa Ltd.) (Opposite Party-Corporation) and from the date of his appointment he was discharging his duties sincerely and diligently.

3. On 31.10.2007 a circular was issued by the Managing Director of the Nodal Department that is the Public Enterprises Department of Government of Odisha approving the voluntary retirement scheme of the employees of the Corporation and invited the application by 15.11.2007 from the intending employees to avail such VRS.
4. Copy of such circulars along with Model VR Scheme is on record at Annexure-1 and the benefits of such VR Scheme has been stated in Clause-4 which is extracted hereunder;

x x x x x “4.0. Voluntary Retirement Benefits:

4.1. *A regular employee who is allowed to retire voluntarily by the competent Authority shall be entitled for the following benefits.*

Ex-gratia payment at the rate of twenty-one (21) days of salary (Basic Pay +DA+IR, if any) as on cut-off date or every completed year of service.

This compensation shall be in addition to Gratuity and leave encashment as admissible on the date of retirement. For any period of residual service less than a year, benefit shall be assessed proportionately.

However, in case of regular employees who were eligible under the scheme on the date of application, but have crossed over the cut-off date due to delay in processing of their application and have been allowed to Continue and draw salary till the cut off date, ex-gratia amount calculated on the above basis or the emoluments at the time of retirement multiplied

by the balance months of service left before the normal retirement, whichever is less shall be admissible.

4.2. NMR/DLR employees with 7 (Seven) years of completed and uninterrupted service will be entitled for the following benefits:

For each year of completed service, 15 days of salary payable to the regular employees of equivalent grade (calculated at the initial of the corresponding scale) or at the flat rate of Rs.5000/- per year, whichever is less, subject to a ceiling of Rs.1,00,000.00.” x x x x x

5. And, the procedure envisaged for acceptance of the scheme under Clause-3 germane for adjudication is extracted hereunder for convenience of ready reference;

x x x x x”3.0. Procedure:

3.1. The eligible employees who desire to seek voluntary Retirement may apply to the competent authority through his/her Head of the Dept. in the prescribed format.

3.2. The decision of the competent Authority regarding the acceptance/rejection of the VR application shall be communicated to the employees within 30 (Thirty) days of receipt of the application. In case of acceptance, the employee concerned should be relieved from the organization forthwith.” x x x x x

6. It is submitted by the learned counsel for the petitioner that though admittedly he applied for retirement under the VR Scheme at Annexure-1 under application dated 25.03.2008, but prior to the acceptance of the same under letter dated 02.04.2008 sent under certificate of posting, he had withdrawn his consent

but unfortunately, the authorities acting in a high handed manner have rejected such withdrawal and the petitioner is not being allowed to join back in service.

7. The assertions relating to the submission of withdrawal has been countered in paragraph-8 of the counter affidavit filed by TDCC. Paragraph 8 of the counter affidavit is quoted hereunder which clearly indicates the stand of the Cooperation that withdrawal application of the petitioner was never received at end of the Cooperation;

x x x x x “8. That is reply to the averment made in Paragraph-5 of the writ petition it is humbly submitted that as per Model VR Scheme no liberty has been given to the petitioner to withdraw the application after acceptance by the Competent Authority. Further the petitioner has not withdraw the VRS application and as per the guideline of the P.E. Department. The Competent Authority rightly accepted the VRS application of the petitioner. It reveals from the record that the V.R.S. application of the petitioner along with four others have been accepted by the Competent Authority on 07.04.2008 with effect from 30.04.2008. Further the withdrawal of the petitioner dated 02.04.2008 has not been received by the Opp. Party petitioner constantly stated that he has submitted withdrawal petition dated 02.04.2008 by under certificate of posting which is not a fact. He has not also made any representation dated 26.12.2008 to the Authority for payment of his arrear salary.” x x x x x

The petitioner has filed a rejoinder to such counter affidavit. But has chosen not to advert to such specific stand taken by the corporation in Paragraph-8 hereinabove quoted that the **withdrawal application of the petitioner of VRS was never received.**

8. Learned counsel for the petitioner submits that there is nothing on record to indicate that the acceptance of VRS was ever communicate to the petitioner and it is also further submitted that in the counter affidavit, the authorities have relied on the memorandum of charges dated 24.04.2008 which according to learned counsel for the petitioner establishes beyond any iota of doubt that there is jural relationship of employer and employee continued and hence it is stated that the stand of the Opposite Party Corporation that withdrawal application was not received is of no significance and it has to be considered in view of the charges drawn up under letter dated 26.04.2008.
9. To fortify his stance learned counsel for the petitioner has relied on the judgment of this Court reported in 2006 1 OLR 240 and judgment of this Court in dated 02.02.2012 in W.P.(C) No.1141 of 2009 (Bipin Bihari Sahoo vs. State of Odisha and others). It is submitted that the said Bipin Bihari Sahoo is similarly circumstanced with the petitioner yet the authorities in a vindictive manner have not accepted the withdrawal of the VRS of the petitioner.
10. The learned Standing counsel for the State has supported the stand of the Corporation.
11. As noted above, in the response to the ground taken by the petitioner that he has submitted application for withdrawal from

the option exercised to avail the VRS was sent by way of certificate of posting was denied by the corporation in Paragraph-8 of the counter affidavit extracted hereinabove.

12. No reply to such stand placed on record by the petitioner.
13. Learned counsel for the Opposite Party-Corporation referring to the notice at Annexure-B/2 submits that a notice was published in the news paper informing the petitioner to receive VRS benefit as sanctioned by the P.E. Department and also to deposit outstanding dues of the Corporation to the tune of Rs.1,63,217/- (Rupees One Lakhs Sixty-Three Thousands Two Hundred Seventeen Only) in respect of which the Corporation stood as guarantor.
14. Taking into account the specific stand of the Corporation that the withdrawal of VRS was never received at the end of the Corporation and there being nothing on record to counter such assertions and such factual dispute falling beyond the realm of adjudication, this Court is constrained not to entertain this Writ Application and the same accordingly stands rejected.
15. The VRS dues, if any, of the petitioner due and admissible be paid to him within a period of six weeks, a representation being made in that behalf within a period two weeks.
16. With such observations, the Writ petition stands disposed of.
17. No costs.

(V.Narasingh)
Judge

*Orissa High Court, Cuttack,
Dated the 23rd of August, 2022/Santoshi*