Meena

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.202 OF 2022

ASHOK U. MANIKOTH ...Petitioner

Versus

THE UNITED INDIA INSURANCE COMPANY LTD., REP. BY ITS CHAIRMAN AND MANAGING DIRECTOR ... Respondent

Ms Christabel Afonso, Advocate for the petitioner.

Mr Pravin Faldessai with Ms Prajali Tari, Advocate for the respondent.

CORAM: S.V. GANGAPURWALA, ACJ & BHARAT P. DESHPANDE, J.

DATED: 22nd FEBRUARY,2023.

P.C.:

1. The deceased petitioner was an employee of the respondent. The last posting of the petitioner with the respondent was as a Divisional Manager. The respondent floated Golden Gate Scheme for Voluntary Separation of Officers. The petitioner opted for the same by filing an application on 07/07/2010. The petitioner had completed 28 years of service. The petitioner thereafter again gave a letter on 06/08/2010 stating that the petitioner should be relieved from services w.e.f. 30/04/2011.

2. It is the case of the petitioner that the petitioner was relieved on 30/09/2010. The petitioner took up proceedings before the Kerala High Court. The learned Single Judge dismissed the same. The petitioner then approached the Division Bench before the Kerala High Court. The same was also dismissed on the ground of lack of territorial jurisdiction. The petitioner has filed an instant petition seeking a declaration that there has been a material breach of VRS contract on the part of the respondent on account of the refusal to pay the amount of ex-gratia within a stipulated period. The petitioner further submits that in view of the consequences of the breach of the condition of VRS contract, the petitioner is entitled to recover the entire ex-gratia payment for the number of months of remaining service i.e. up to 31/05/2020. The petitioner also seeks penal interest at the rate of 18% on the ex-gratia amount due and payable.

3. It is not disputed that the petitioner has been paid the terminal benefits in September,2011 and January,2012.

4. The learned Counsel for the petitioner submits that though the petitioner had given an application for voluntary separation on 07/07/2010 prior to its acceptance the petitioner had given a letter on 06/08/2010 thereby making his application conditional. The request was made in the application to relieve the petitioner on or after 30/04/2011. However, the petitioner was relieved on 30/09/2010. The learned Counsel submits that the petitioner vacated the accommodation provided to him by the respondent in May,2011. The respondent deducted from the general benefits an amount of ₹90,000/- on the ground that the petitioner occupied the official residence provided to the petitioner. The learned Counsel submits that the respondent surreptitiously deposited an amount of ₹9,36,405/- in the account of the deceased petitioner without intimating the head under which the amount is paid. The petitioner did not accept the amount. However, under protest appropriated it preferably on account of damages for the breach of the VRS policy. The learned Advocate further contends that as the respondents are guilty of breach of VRS policy and did not pay ex-gratia amount within time, it is the option of the petitioner to claim ex-gratia amount as per his choice. The petitioner has opted for option 3 i.e. the ex-gratia payment for every month for the remaining period of service. The same is in accordance with the VRS scheme.

5. We have also heard the learned Counsel for the respondent.

6. The factual matrix of the petitioner being in the employment of the respondent, the respondent floating the Golden Gate Scheme for Voluntary Separation of Officers, the petitioner opted for the benefit of the said scheme under his application dated 07/07/2010 is not disputed. The petitioner in his application dated 07/07/2010 specifically agreed to vacate the company owned residential accommodation within two months from the date of being relieved from the company services. It is also not in dispute that the petitioner is relieved by the company on 30/09/2010. The petitioner did gave an application on 06/08/2010 with a request that he may be relieved by the company on any convenient date after 30/04/2011, but the same does not seem to have been accepted by the company. The parties by their conduct accepted that the petitioner stood relieved from the service on 30/09/2010. The retiral benefits were also paid to the petitioner. The pension was paid to the petitioner in September,2011 and other retiral benefits in January,2012. The respondent deposited an amount of

₹9,36,405/- in the account of the petitioner at the State Bank of India, Kozikode, Kerala Branch.

7. It is the case of the petitioner that the said amount is deposited without any intimation to the petitioner with regard to the nature of the payment and without any order from the Court or demand by the petitioner for payment. Be that as it may, the petitioner accepted the said amount and utilised the said amount. It is not the case that the petitioner offered to return the said amount. The petitioner now claims that the said amount is appropriated in view of the damages for the breach of the VRS policy. The same may not be permissible. The petitioner was aware that the petitioner is relieved from the services on 30/09/2010. The petitioner was also in receipt of all the terminal benefits in September,2011 and January,2012. It would be too late in the day now for the petitioner to contend that the petitioner would be entitled to the ex-gratia payment at the rate every month salary till the year of superannuation.

8. In case the petitioner did not want to accept the amount, the petitioner ought to have returned the amount to the respondent so as to contend that the VRS agreement has failed and as such the petitioner is now not bound by the VRS agreement. The petitioner cannot approbate and reprobate.

9. According to the petitioner, if the amount could have been paid to the petitioner as per the terms of the VRS then the petitioner was entitled to the ex-gratia amount of ₹6,37,920/-. The petitioner has received an amount of ₹9,36,405/- in the account. The petitioner has not claimed any amount under any other head as due and payable except the amount of ex-gratia payment. The petitioner is already paid with the ex-gratia amount in the year 2014. The said amount is more than what the petitioner claims towards ex-gratia payment if it would have been paid at the relevant time. The excess amount can be construed to be of interest.

10. In the light of all the aforesaid facts, the prayers made by the petitioner cannot be entertained.

11. Writ Petition as such is disposed of. No costs.

BHARAT P. DESHPANDE, J. **ACTING CHIEF JUSTICE**