

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Raja Basu Chowdhury

**WPA 23970 of 2012
&
WPA 853 of 2010**

Asoke Kumar Chanda
Vs.
Union of India & Ors.

For the petitioner : Mr. Mohan Kumar Sanyal, Advocate
Mr. Dwaipayan Sanyal, Advocate
Mr. Arunesh Pathak, Advocate

For the respondent/UoI : Mr. N.L. Singhanian, Advocate
Ms. Sanchari Chakraborty, Advocate

Heard on : 31st January, 2024

Judgment on : **31st January, 2024.**

Raja Basu Chowdhury, J:

1. The instant writ-petition has been filed *inter alia* not only questioning the order of rejection dated 06.08.2012 for grant of Voluntary Retirement Scheme (VRS) benefits but also for a direction upon the respondents to release VRS benefits in favour of the

petitioner under the said Scheme along with an interest at the rate of 18% per annum.

2. The petitioner at the material point of time was working as an Assistant Manager (Administration) with the National Jute Manufacturers Corporation Limited (NJMC). According to the petitioner, since 2002 by reasons of financial crisis, NJMC could not pay the salaries for its staff on regular basis and the manufacturing process also came to a standstill. The NJMC was declared sick within the meaning of Sick Industrial Companies (Special Provisions) Act, 1985, sometimes in the year 2002 and later it was decided to prematurely retire the employees by introducing Voluntary Retirement Scheme. From time to time, several Voluntary Retirement Schemes were introduced by NJMC for the willing employees. Unfortunately all such V.R. Schemes were limited to clerical and office staff and were not extended to the Executives.
3. The petitioner, however, expressing his despair at the state of affairs by an application dated 28th July, 2006, had claimed that despite the fact that the petitioner was expecting the VRS notice to be served on the Officers, the same having not been served, made a request for his immediate release from his assignment at NJMC. The said application was followed by a subsequent communication dated 28th August, 2006 wherein it was, *inter alia*, claimed that his mother was extremely ill who was residing at Dinhata, Cooch Behar

and required the petitioner's support. As such, he had requested the authorities to accede to his prayer and arrange to issue a formal order for acceptance of his premature retirement on VRS.

4. Record reveals that by a communication in writing dated 11th September, 2006, the petitioner was informed that in terms of his applications dated 28th July, 2006 and 28th August, 2006; the competent authority had acceded to his request for immediate premature retirement from the services of NJMC and accordingly, had released him with effect from 11th September, 2006 (A.N.).
5. The petitioner contends that although, he was disbursed the retiral dues on his premature release, however, no benefits accruing out of the V.R. Scheme was released in his favour. It is contended, in the circumstances as aforesaid, the petitioner was compelled to move a writ-petition before this Hon'ble Court which was registered as WP 853 (w) of 2010. Before affidavits could be exchanged, the same was dismissed as withdrawn. Such fact would corroborate from the order dated 28th September, 2011 passed by a Coordinate Bench of this Court.
6. Since then, the petitioner had once again by letter dated 12th December, 2011 had made a detailed representation addressed to the Chairman-cum-Managing Director of NJMC, *inter alia*, praying for settlement of his VRS dues.
7. In response to such application, by communication in writing dated 6th August, 2012, the competent authority had informed the

petitioner that he is not entitled to VRS dues after acceptance of premature retirement from NJMC.

8. Being aggrieved, the instant writ-petition has been filed.
9. Mr. Sanyal, learned Advocate representing the petitioner submits that the petitioner at no point of time had accepted premature retirement rather, applied for grant of VRS. When the petitioner was offered premature retirement from service with effect from 11th September, 2006, he had categorically recorded a protest that such separation was subject to his claim for voluntary retirement.
10. By drawing attention of this Court to an internal communication dated 7th August, 2005, exchanged between the Deputy Secretary to the Government of India and the Jute Commissioner & CMD, the petitioner submits that the Deputy Secretary had conveyed the Cabinet decision dated 24th March, 2005 and its approval for reducing manpower of NJMC, by affording VRS to all its employees. Unfortunately, the same was not implemented in so far as the petitioner is concerned. Notwithstanding introduction of several V.R. Schemes for the office staff from time to time, no such V.R. Scheme was offered to the petitioner at least, until 2006. The petitioner had applied for premature retirement on VRS under compelling circumstances.
11. Acceptance of premature retirement cannot stand in the way of the petitioner's legitimate right to get VRS benefits. By placing reliance on paragraph 27 of the writ-petition, it is submitted that inasmuch

as the competent authority of the respondents had verbally informed the petitioner that in the event, he withdraws the writ-petition, his case shall be considered, the petitioner withdrew the previous writ-petition. The same cannot impinge upon the petitioner's legitimate rights to get the benefits of the V.R. Schemes.

12. Per contra, Mr. Singhania, learned Advocate representing the respondents, submits that the petitioner himself had sought for premature retirement. The Service Rule of the Company do not provide for premature retirement. Considering the plight of the petitioner, as detailed in his letter dated 28th August, 2006, as a special case the authorities had acceded to his request and afforded him with premature retirement. Admittedly, at that stage, the petitioner was taken into confidence and was also apprised in that regard.

13. In this context, he placed reliance on the letter dated 28th August, 2006 along with the endorsement made thereon by the Chairman-cum-Managing Director of the NJMC, which forms part of the previous writ petition. He submitted that once, the master-servant relationship stood served, the petitioner could not be entitled any benefits of Voluntary Retirement Scheme, even if the same was subsequently extended to the officer's of NJMC. Once, the petitioner had opted for premature retirement, he is estopped from claiming the benefits of the Voluntary Retirement Scheme.

14. Having regard to the aforesaid, he submits that the instant writ-petition cannot be sustained and should be dismissed. In any event and without prejudice to the aforesaid, he submits that the previous writ-petition had been withdrawn without any leave to file afresh and on such ground as well the instant writ petition requires to be dismissed with costs.
15. Heard the learned advocates for the respective parties and considered the materials-on-record. Although, it has been contended by Mr. Singhanian that by reasons of withdrawal of the previous writ-petition, the present writ-petition should not be entertained, I am not in agreement with such view. I find that the cause of action for this petition is the letter of rejection dated 6th August, 2012. The petitioner being aggrieved with the rejection of his representation claiming benefits of VRS has filed the present writ-petition. Having regard to the aforesaid, I find the present writ-petition is maintainable.
16. In the instant case, it may be noted that the petitioner had himself applied for premature retirement. From the petitioner's application dated 28th August, 2006, it would be apparent and clear that at the point of time when such application was made admittedly, no notice of any VRS has been served on the Officers. The petitioner was conscious with regard to the aforesaid. Notwithstanding the same, he had applied for premature retirement. Subsequently, the competent authority while acceding to the request of the petitioner,

as contained in his letter dated 28th August, 2006; as a special case had permitted the petitioner to be retired prematurely. From the endorsement made on the petitioner's application dated 28th August, 2006 which forms part of the record of WP 853 (w) of 2010, it would be apparent and clear that not only the petitioner's request was treated as a special case but he was taken into confidence prior to taking such a decision.

17. Admittedly, the petitioner's relation was severed with the NJMC on the basis of the communication dated 11th September, 2006. Once, the relationship was severed in the circumstances as noted here-on-above, I am afraid that the petitioner cannot be entitled to the benefits of voluntary retirement even if the same had been subsequently extended to the officers/executives of NJMC.

18. The writ petition fails. **WPA 23970 of 2012** is accordingly **dismissed**. No order as to costs.

19. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Raja Basu Chowdhury, J.)