



2024:DHC:1825



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on : 28.02.2024
Judgment delivered on : 06.03.2024

+ W.P.(C) 3460/2008 & CM APPL. 5111/2021

N.R. RADHA

..... Petitioners

versus

ASSAM GOVT MARKETING CORPORATION LTD & ANR

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Ms. K. Pallavi and Mr. Atul T.N., Advocates

For the Respondents : Mr. Rana Ranjit Singh, Mr. Vivek Kumar Singh, Mr. Ravish Singh, Ms. Sweta Singh, Ms. Akanksha Singh and Mr. Abhilash Tripathy, Advocates

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

TUSHAR RAO GEDELA, J.

1. The petitioner has filed the instant writ petition seeking the following prayers:-

“1) A Writ of Mandamus directing the Respondent NO.1 to pay the VRS benefits as mentioned in para 12 in the writ petition;

2) A Writ of Mandamus directing the Respondent NO.1 to take the date of acceptance of VRS of the petitioner as 31-05-2005 and calculate all benefits of VRS as on 31-05-2005 and pay the same to the petitioner;

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3) Order directing the Respondent to pay interest @ 12% p.a. on the amounts payable to the petitioner till date of actual payment;

4) Any other order/direction as may deemed fit in the facts and circumstances case may also be passed;

5) Costs be awarded.”

2. The brief facts which arise in the present case are as under:-

- a. According to the petitioner, the respondents are an undertaking/society/emporium of Government of Assam. The Government of Assam is stated to be exercising pervasive and ultimate control over the affairs of the respondent emporium. The said respondent is stated to have many branches/emporium all over India and one such emporium is at New Delhi. The Pay Commission constituted by the Assam Government recommended revision of Pay Scales in the year 1998. It is stated that the respondent no.2 being the State Emporium had adopted such recommendations of Pay Commission. According to the petitioner, in terms of the recommendations of the Pay Commission, the revised Pay Scales would be applicable w.e.f. 01.01.1996.
- b. The petitioner joined the service of respondent no.2 on 10.11.1974 on the post of an Executive. She submits that the petitioner was promoted as a Manager on 26.06.1995.
- c. On 17.05.1999, the petitioner was sought to be transferred to the Emporium at Patna, Bihar. Petitioner claims to have filed a



petition bearing W.P.(C) 4650/1999 challenging the transfer order. However, the petitioner was suspended on 05.08.1999 on the grounds that she had not joined the Emporium at Patna in violation of the transfer order. The writ petition was dismissed by this Court on 08.03.2000 on the ground that the petitioner was already suspended from services and as such, the question relating to transfer had become infructuous.

- d. The petitioner claims to have filed an application seeking grant of Voluntary Retirement on 15.03.2000 with the Competent Authority at Guwahati, Assam. While the application was pending, the petitioner once again filed a petition bearing W.P.(C) 2450/2000 on 10.05.2000, challenging the transfer order dated 17.05.1999 as also the suspension order dated 05.08.1999. This petition was disposed of on 25.04.2007 by this Court after noting the submissions of the counsel for the respondent that the application for Voluntary Retirement had been accepted on 05.10.2004 in terms of the Voluntary Retirement Scheme approved by the Government of Assam. Simultaneously, this Court had granted liberty to the petitioner to re-agitate in case she disputes the calculations made for the purposes of benefits of VRS. It was also simultaneously made clear that the said order would not have any effect on the other writ petitions pending with regard to pay revision.
- e. Sometime in the year 2003, the petitioner had filed a writ petition bearing W.P.(C) 1122/2003 seeking benefits of revised



pay scales w.e.f. 01.01.1996. The said writ petition was dismissed conditionally *vide* order dated 08.03.2017.

- f. It was submitted therein that the petitioner was paid the subsistence allowance of 50% for the said period on the pre-revised scale whereas the said amount should have been calculated on the revised pay scale.
- g. The petitioner was aggrieved by the fact that the respondents have accepted the Voluntary Retirement of the petitioner w.e.f. 05.10.2004 and calculated the benefits under VRS as on 30.09.2003 whereas in respect of other employees for the same VRS, the calculation has been done as on 30.05.2005.
- h. Under the cover of the letter dated 19.07.2007, the respondent had handed over a demand draft for an amount of Rs.5,19,436/- on account of full and final amount for the VRS. The petitioner claims to have written many letters seeking payment of correct amount as per her entitlement for the VR Scheme as on 30.05.2005. Since the respondents did not respond to such letters/requests, the petitioner was constrained to file the present writ petition claiming the following entitlements apart from others, as per the para 12 of the writ petition:

“12. That the Petitioner is entitled to the following:

(i) VRS benefits and calculation should be made as on 31-5-2005.

(ii) DA should have been calculated @ 64% as on 30-5-2005



(iii) Gratuity should be calculated as per payment of Gratuity Act, 1972 by taking 26 days as month to arrive at one day wage/salary multiplied by number of completed years of service.

(iv) Leave salary for 5 months instead of 4 months

(v) Payment of Subsistence allowance arrears on revised scale w.e.f. 5-8-99 to the date of relieving i.e. June 2007."

i. With such prayers, the present writ petition was filed.

CONTENTIONS OF PETITIONER

3. Ms. Pallavi, learned counsel appearing for the petitioner submits that the respondents have made erroneous calculations on primarily two accounts. The first being the date of calculation of VRS benefits. According to the petitioner, the date for calculation of benefits under VRS should have been as on 31.05.2005 and not 30.09.2003 when it is alleged that the VR Scheme was finally approved by the Assam Government. The second being that the payment of subsistence allowance w.e.f. 05.08.1999 to the date of her relieving i.e. 30.06.2007 ought to have been granted on revised scales which had come into effect from 01.01.1996. The respondents having failed on both the accounts, the petitioner is not only entitled to the arrears of subsistence allowance at the revised pay scales for the period from 1999 when the petitioner was suspended till June, 2007 when she was relieved from the services, but also the arrears of amounts payable under the VR Scheme calculating the same as on 31.05.2005 and not on 30.09.2003.

4. For the aforesaid issues, Ms. Pallavi, learned counsel had referred to the revision of pay scales w.e.f. 01.01.1996, which is the document



placed as Annexure P-8, whereby the existing pay scales of various employees of the Assam Government were notified *vide* the Gazette notification dated 04.07.1998. By referring to the letter dated 11.06.2001, learned counsel had submitted that the Headquarters of the Emporium had also agreed that the employees of the respondent corporation were to be paid as per the revised pay scales, which were not being paid on account of paucity of funds with the respondent. Learned counsel also referred to the letter dated 28.12.2005 issued by the Managing Director of the Assam Government Marketing Corporation Ltd. at Guwahati to the Deputy General Manager, Assam Emporium to take necessary steps in regard to the petitioner's request for release of her subsistence allowance at the revised pay scale and to release such arrears. Despite such letters, learned counsel submits that no action was taken by the respondent to make good the arrears on the aforesaid account.

5. Learned counsel submits that till date, the arrears accruable to the petitioner on account of application requesting for revised pay scales on the subsistence allowance w.e.f. 1999 till June, 2007 when the petitioner was released, have not been paid and are due and payable alongwith interest.

6. So far as the second limb of her argument in regard to the calculation of benefits under the VR Scheme as on 30.05.2005 in place of 30.09.2003 is concerned, learned counsel refers to various letters exchanged between the parties. The petitioner had applied for Voluntary Retirement under the letter dated 15.03.2000 wherein apart from the



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entitlement under the said Scheme, the petitioner also claimed bonus arrears from 1995 onwards; arrears of salary due to implementation of pay revision of the year 1989 as also contributory PF accumulation upto date, with a further request that the said settlement be made on the revised pay scales.

7. Ms. Pallavi, learned counsel strenuously argued that despite the submission of the application for Voluntary Retirement under the VR Scheme, the respondents did not process the said application nor did the respondents inform as to the status of her application. According to learned counsel, this status was not disclosed to the petitioner at all through all these years. It was only on 25.04.2007 that the respondents in W.P.(C) 2450/2000 had disclosed before this Court that the application of the petitioner was accepted on 05.10.2004 in terms of the VR Scheme, as approved by the Government of Assam.

8. In the interregnum, since the respondents had not informed the petitioner of the status of her VR application till 25.04.2007, the petitioner had by the letter dated 16.01.2006 sent a reminder to the Managing Director at Guwahati in furtherance of the petitioner's discussion with the DGM of the Assam Emporium at New Delhi in respect of the entitlement of the petitioner under the VR Scheme. According to learned counsel, in the said letter, the petitioner had sent a reminder regarding her second VRS application dated 11.12.2005 referring to the discussion with DGM who, according to her was willing to offer VRS and settle dues, provided the petitioner withdraws the cases filed by her in various Courts at Delhi. Ms. Pallavi submits that the

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petitioner in the said letter had given details of her rightful claim on account of *ex gratia* payment, gratuity as per the Gratuity Act, 1972, leave salary for ten months, arrears on payment on revised pay scale w.e.f. 1996, bonus dues from 1997 onwards, arrears on payment of salary from 1996 to April, 1999 on account of revision of pay scale, arrears of salary w.e.f. May, 1999 to January, 2006 on revised pay scales less the amount paid as subsistence allowance and also demanded settlement of provident fund dues.

9. By the letter dated 06.03.2006, the Competent Authority at Guwahati had replied point-wise to the letter dated 16.01.2006 of the petitioner. She submits that in the said letter, so far as point I - (i), (ii) and (iii) were concerned, the petitioner was informed that she has been sanctioned Rs.5,19,250/- under the VR Scheme and no further revision or benefit can be granted by the Government. So far as the other points (II), (III) and (IV) were concerned, the Competent Authority had assured that as and when such benefits are released to other employees, she would also be entitled to the same. The same assurance was given in respect of any new legitimate benefit which would accrue to the persons retired/retiring under VRS, stating that the same benefit would also be granted to the petitioner. Regarding Provident Fund, she was directed to approach the Provident Fund Authority for the same.

10. Ms. Pallavi had also referred to the additional affidavit dated 02.08.2006 filed by the respondent in W.P.(C) 2450/2000 wherein even after referring to the sum of Rs.5,19,250/- *vide* the draft no. 032080 dated 13.06.2006 issued in the name of the petitioner, the respondent

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deliberately and willfully concealed as to when her application for Voluntary Retirement was actually approved. On the basis of the aforesaid two factual aspects of concealment, learned counsel submits that the second application of the petitioner styled as a reminder dated 16.01.2006 ought to be considered as the appropriate application and the petitioner's entitlements should be calculated as on 31.05.2005. If so calculated, the petitioner would be entitled to enhanced amounts under the VR Scheme as applicable to the employees and accruable as on 31.05.2005. Ms. Pallavi submits that the petitioner would be entitled to the arrears of the enhanced entitlement alongwith interest @ 12% per annum.

11. Learned counsel also had strenuously argued that apart from the fact that the respondents never informed the petitioner of the status of the VRS application submitted by her, the petitioner was also continuously being paid the subsistence allowance till the month of June, 2006. In fact, her suspension was also never revoked by the respondent and she continued to be in service till June, 2006. According to her, if that were so, the bogey of the respondent having accepted the application for Voluntary Retirement on 05.10.2004 and not at a later date, falls flat on the ground. Developing the said argument, learned counsel had, with vehemence, submitted that the response of the respondent is illogical and contrary to the facts as obtaining on the record.

12. Learned counsel submits that if the application of Voluntary Retirement was accepted by the respondent on 05.10.2004, there was no reason why the same would not have been disclosed in the additional



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affidavit dated 02.08.2006 filed by the respondent in W.P.(C) 2450/2000. That apart, there was no reason why the respondent would wait till 25.04.2007 to disclose for the first time before this Court in the same writ petition that the petitioner's application under VRS was approved on 05.10.2004. Learned counsel also had referred to the reply dated 06.03.2006 of the respondent to the reminder dated 16.01.2006 of the petitioner where too, the respondent though referred to the amount of Rs.5,19,250/- having been sanctioned on account of VRS, did not refer as to when the said application was approved. Coupled with the fact that the petitioner was continuously being paid subsistence allowance from the date of her suspension till June, 2006. These lacunae, according to learned counsel, would demolish the case of the respondent that the petitioner's application was approved on 05.10.2004 and as such, the petitioner having continued to be in service till June, 2006, the entitlement under the VR Scheme as on 31.05.2005 ought to be made applicable to the petitioner on all counts.

13. Thus, according to learned counsel, the petitioner would be entitled to the arrears of subsistence allowance at 50% calculated at the revised pay scales w.e.f. 05.08.1999 through till 30.06.2007 when the petitioner was relieved from service. The petitioner would also be entitled to the arrears of enhanced amounts under the VR Scheme applicable to the employees and accruable as on 31.05.2005.

14. Ms. Pallavi also referred to the detailed calculation placed on record by the petitioner of the arrears of subsistence allowance, filed



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under Index 1532861/2023 and prayed that the petitioner be granted the said benefits alongwith 12% interest.

CONTENTIONS OF RESPONDENTS

15. Mr. Rana Ranjit Singh, learned counsel for the respondent at the outset submits that the petitioner admittedly filed an application for Voluntary Retirement on 15.03.2000, during which period the petitioner was under suspension w.e.f. 05.08.1999. He submits that the application of the petitioner was kept in abeyance, awaiting the approval of VRS and the release of funds accordingly. It was only when the VR Scheme was accorded approval in the year 2003 that the application of the petitioner was processed and accepted finally on 05.10.2004. According to Mr. Singh, for the acceptance of the application of the petitioner after the approval was accorded in September, 2003, the cutoff date for entitlement of the petitioner to VR Scheme was considered as 30.09.2003. As such, the submission of the petitioner that her application should be considered according to the revised VR Scheme as on 30.05.2005 cannot be sustained. The consideration of the application having been finalized before the revision of VRS, the prayer of the petitioner to consider the date of eligibility as 30.05.2005 is contrary to the facts on record. In support of the aforesaid contention, learned counsel referred to the document at page 115 of the petition whereby the entitlement of the petitioner in various heads under the VR Scheme was calculated and a sum of Rs.5,19,436/- was found payable to the petitioner. The said document dated 13.03.2007 took into consideration the cutoff date for calculation of benefit under VR Scheme as 30.09.2003

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and accordingly, a sum of Rs.5,19,436/- was released to the petitioner on 19.07.2007. As against the documentary proof on record, the oral contentions of the petitioner would be of no avail.

16. In regard to the above, Mr. Singh also referred to the letter dated 01.02.2005 issued by the Government of Assam whereby the funds in respect of grant in aid to the respondent no.1 was sanctioned. He submits that the said grant at serial number 2 was in respect of the VR Scheme for 118 employees of the respondent no.1.

17. Learned counsel, while referring to the letter dated 16.01.2006 of the petitioner submits that the petitioner never made a second application for Voluntary Retirement, and in fact, the letter was only in the form of a reminder to process her first and only application for Voluntary Retirement dated 15.03.2000. In any case, learned counsel submits that once the application of the petitioner dated 15.03.2000 was already accepted on 05.10.2004 and the amount released thereon, the question of the second application does not arise. He submits that in any case, the said argument is absurd and contrary to the facts on record. Learned counsel also submits that no such second application in fact has been placed on record. He invites attention of this Court to the prayers sought in the present petition to submit that once the VRS application has been accepted on 05.10.2004, such prayer cannot be granted and as such, the petition be dismissed.

18. So far as the prayer for subsistence allowance on the basis of revised scales w.e.f 05.08.1999 to the alleged date of relieving, i.e., June,

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2007 is concerned, he submits that the same is contrary to law. He submits that once an employee's application seeking Voluntary Retirement under the VR Scheme is accepted, the jural relationship of an employer and employee is over and no dues, if any, can at all be claimed thereafter. Mr. Singh relied upon the ratio laid down by the Supreme Court in *A. K. Bindal & Anr. Vs. Union of India & Ors.* reported in (2003) 5 SCC 163 and also *Maharashtra State Financial Corporation Ex-Employees Association & Ors. Vs. State of Maharashtra and Ors.* reported in 2023 SCC OnLine SC 100.

19. Learned counsel invited attention of this Court to the order dated 07.06.2004 passed by the Disciplinary Authority in the pending inquiry proceedings whereby the Disciplinary Authority awarded the petitioner a penalty of stoppage of two annual increments with cumulative effect from the date of her reinstatement in the post; considered the period w.e.f. 14.05.1999 to 25.05.1999 as if the petitioner remained absent from office unauthorizedly; also considered the period w.e.f. 25.05.1999 to 05.08.1999 as being on unauthorized absence and as such, held the petitioner not entitled to any benefit for the said period. The said order was stated to be subject to the approval of this Court in W.P.(C) 2450/2000.

20. Mr. Singh draws attention of this Court now to the order dated 25.04.2007 at page 47 of the petition to submit that this Court was informed that the application of the petitioner was accepted by the respondent on 05.10.2004 and the calculation with regard to her retiral benefits was made on the basis of the approved VR Scheme. While



pointing out to the said order, Mr. Singh submits that the petitioner at that relevant time never objected to the submission made by the learned counsel for the respondent with regard to the date of acceptance of the application. According to Mr. Singh, the present petition is purely an afterthought and has been filed without any substantive basis. In fact, according to Mr. Singh, after May, 1999, the petitioner never rejoined her services with the respondent. In other words, the petitioner is not entitled to any further claim beyond 05.10.2004.

21. Learned counsel also pertinently mentioned to the fact that the petitioner had sought for enhancement of her subsistence allowance by filing a suit which was dismissed and the appeal thereto was also dismissed against the petitioner *vide* the order 26.07.2007. While referring to the said appellate order, learned counsel submits that the prayer of the petitioner for subsistence allowance @ 75% of her salary after three months of the suspension was dismissed.

22. Learned counsel also referred to the order dated 08.03.2017 in W.P.(C) 1122/2003 whereby the petitioner sought grant of revised pay scale w.e.f. January, 1996. He submits that after hearing the arguments and considering Rule 52 of Chapter IV of the Staff Regulations of the Respondent No.1, this Court had rejected the writ petition on account of the fact that the funds for such revision of pay scale were not available with the respondent no.1. This Court had also considered the assertion of respondent no.1 that it was unable to even pay the old pay scale salaries to its employees for the last many months. In that view of the matter, the writ petition of the petitioner was rejected. On this basis,



learned counsel submits that the petitioner is precluded from seeking any relief regarding revision of pay scales at all. Mr. Singh submits that the ground now raised by the petitioner seeking grant of arrears of subsistence allowance on revised pay scales w.e.f. 05.08.1999 till June, 2007 is hit by the principles of Order II Rule 2 CPC, 1908. Thus, the petitioner would not be entitled to such arrears either on facts or on law.

23. So far as the argument of Ms. Pallavi, learned counsel on the issue of the petitioner having been paid subsistence allowance continuously from the year 1999 till June, 2006 is concerned, Mr. Singh, learned counsel submits that it appears to be an error on the part of the respondent to have paid any subsistence allowance at all to the petitioner, after the acceptance of her application for Voluntary Retirement. He prays that the present petition is devoid of any merits and ought to be dismissed.

ANALYSIS AND CONCLUSION

24. This Court has heard the arguments of Ms. Pallavi and Mr. Rana Ranjit Singh, learned counsel for the parties and minutely perused the records.

25. On the facts which arise before this Court and in view of the arguments addressed, this Court is of the considered opinion that it would be appropriate to consider the claim of the petitioner *vis-à-vis* the arrears of subsistence allowance calculated on the revised pay scales with effect from the year 1999 till June 2007 when she claims to have been relieved from services.



26. In this regard, Ms. Pallavi, learned counsel had taken this Court through the Gazette notification issued by the Assam Government regarding revision in pay scales for various grades in respect of its employees published on 04.07.1998 and claimed to be with effect from 01.01.1996. Learned counsel had submitted that the said revised pay scales were also made applicable to the employees of respondent no.2. In support thereof, she referred to the letter dated 11.06.2001 of the Competent Authority at Guwahati which made it clear that the pay revision is applicable to it, however, due to lack of funds, the same was not being given effect to at that point in time. She pointed out to serial no.16 to specify that as on the date of publication of the Gazette notification, the petitioner was receiving her subsistence allowance on the pre-revised scales which ought to be given on the corresponding revised pay scale. On this basis, learned counsel submits that since the petitioner was admittedly under suspension from 05.08.1999 and continued till she was relived from service, that is, June, 2007, the petitioner is entitled to be given the subsistence allowance at the revised pay scales. As such, it is submitted that the petitioner would automatically become entitled to the arrears of difference in subsistence allowance during that period, apart from the interest that accrued thereon till the date of payment.

27. The argument of the learned counsel for the petitioner appears to be attractive and quite logical, however, is contrary to the law of the land. Though there is no doubt that the petitioner had been agitating the said issue from a long time, however, it is not in dispute that the



petitioner had submitted her Voluntary Retirement application on 15.03.2000. Though in the said application too, the petitioner sought many claims, however, what the petitioner could be entitled to would strictly be within the confines of the said Voluntary Retirement Scheme. Thus, no claim beyond the entitlements stipulated in the VRS would be claimable at all. This Court is fortified in its view by the ratio laid down by Supreme Court in **A.K. Bindal (supra)** wherein it was categorically observed that once an employee opts to retire under VRS and accepts the “golden handshake” and the benefits thereunder, all previous claims or entitlements are subsumed therein and no such previous claim can or should be entertained. It appears to this Court that the ratio seeks to put an end to all *lis* between the parties, else the said disputes, despite the “golden handshake”, would continue endlessly, defeating the very purpose of such Scheme. The relevant paras of the **A.K. Bindal (supra)** are extracted hereunder:-

“34. This shows that a considerable amount is to be paid to an employee ex gratia besides the terminal benefits in case he opts for voluntary retirement under the Scheme and his option is accepted. The amount is paid not for doing any work or rendering any service. It is paid in lieu of the employee himself leaving the services of the company or the industrial establishment and foregoing all his claims or rights in the same. It is a package deal of give and take. That is why in the business world it is known as “golden handshake”. The main purpose of paying this amount is to bring about a complete cessation of the jural relationship between the employer and the employee. After the amount is paid and the employee ceases to be under the employment of the company or the undertaking, he leaves with all his rights and there is no question of his again agitating for any kind of his past rights with his erstwhile employer including making any claim with regard to enhancement of pay scale for an earlier period. If the employee is still permitted to raise a grievance regarding enhancement of pay



scale from a retrospective date, even after he has opted for Voluntary Retirement Scheme and has accepted the amount paid to him, the whole purpose of introducing the Scheme would be totally frustrated.

35. The contention that the employees opted for VRS under any kind of compulsion is not worthy of acceptance. The petitioners are officers of the two Companies and are mature enough to weigh the pros and cons of the options which were available to them. They could have waited and pursued their claim for revision of pay scale without opting for VRS. However, they in their wisdom thought that in the fact situation VRS was a better option available and chose the same. After having applied for VRS and taken the money it is not open to them to contend that they exercised the option under any kind of compulsion....”

28. The submission of Ms Pallavi on the issue that the petitioner was never informed as to when her application was accepted, which would automatically entitle her to all the claims available on the revised pay scales would be erroneous and contrary to the aforesaid law. Equally erroneous is the argument that she would be entitled to subsistence allowance on revised pay scales till June, 2007 since the arrears of subsistence allowance w.e.f. 05.08.1999 on account of revised pay scales till June, 2007 arose at the time when the petitioner was in service and she was only informed of such acceptance of her VR application on 25.04.2007 before this Court. This is for the reason that the entitlements get subsumed in the ultimate act of acceptance of the Voluntary Retirement application of the petitioner. So far as this issue is concerned, it is irrelevant as to when such application was accepted by the respondent. Moreover, the claim of the petitioner regarding implementation of revised scales of pay w.e.f. 01.01.1996 sought in the petition bearing W.P.(C) No. 1122/2003 was dismissed *vide* order dated 08.03.2017. No further appeal was sought by the petitioner. The



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petitioner had also filed a suit bearing C.S. No. 28 of 2002 seeking 75% subsistence allowance for the period of suspension. However, the said suit was dismissed and the challenge thereto was also rejected by the Appellate Court *vide* its judgement dated 26.07.2007. The aforesaid issues have become final and binding upon the petitioner. Thus, this claim of the petitioner is rejected.

29. That so far as the issue regarding the petitioner being entitled to enhancement of the entitlements under the Voluntary Retirement Scheme as on 30.05.2005 instead of 30.09.2003 is concerned, this Court proceeds to deal with the same.

30. In this regard, Ms. Pallavi had taken this Court through many documents, correspondences and orders passed by this Court in previous petitions filed by the petitioner.

31. It is undisputed that the petitioner was put under suspension on 05.08.1999 and had submitted the application under VRS on 15.03.2000. From a perusal of the records, it appears that the said proposed VR Scheme was finally approved by the Competent Authority of the Government of Assam in September, 2003. The respondent claims to have accepted the petitioner's application on 05.10.2004. However, there is neither anything on record nor was any document or correspondence pointed out by the learned counsel for the respondent which established that the petitioner was ever informed of such acceptance of her application. It is also intriguing to note that despite the respondent taking a stand that the petitioner's application was accepted on 05.10.2004, yet



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the petitioner continued in service of the respondent till June, 2006 on suspension and was undeniably paid subsistence allowance till then. This circumstance has been completely left unexplained.

32. Equally intriguing is the fact that if the application was approved on 05.10.2004 as claimed, then there was no reason as to why the same would not be mentioned in the additional affidavit filed on 02.08.2006 in W.P.(C) 2450/2000, or even later. It would be of great significance to note that in the said affidavit, though the demand draft issued in favour of the petitioner alongwith all details of payment etc. were mentioned, yet, the same was bereft of the date of the acceptance of application for Voluntary Retirement. This fact was mentioned orally for the first time on 25.04.2007 by the counsel for the respondent before this Court in the aforesaid Writ Petition on the basis of which, the said petition was disposed of granting liberty to the petitioner to re-agitate the issue in case the calculation of dues etc. are incorrect.

33. It is disturbing to note that the petitioner after having waited for a long time for the approval of her VR application issued a reminder dated 16.01.2006 to the Dy. General Manager, Assam Emporium requesting that her application be processed in terms of her second VRS application dated 11.12.2005, apart from other claims. Even to this letter, the respondent issued a reply dated 06.03.2006 wherein too, the date of acceptance/approval of her VR application was not mentioned. In fact, the due amount as calculated with other assurances was informed to the petitioner.



34. In this regard, Mr. Singh, learned counsel for the respondent had argued that the VR Scheme was approved by the Competent Authority only in the month of September, 2003. Accordingly, the petitioner's first application dated 15.03.2000 was processed and was finally approved on 05.10.2004. Based on the above, he submitted that the calculation of all the entitlements of the petitioner under the approved VR Scheme as on 30.09.2003 was correctly made. He submitted that the non-mentioning of the date of acceptance/approval of the petitioner's application would not be of much relevance inasmuch as the entitlement of the petitioner as per the VR Scheme as on 30.09.2003 is not in dispute. Moreover, he argued that the petitioner's application was submitted prior to the approval of the Scheme and it was only after the whole Scheme got approved and funds were released by the Assam Government pursuant to such approval alone that her application was processed. As such, it was submitted that the respondent cannot be found at fault with on mere non disclosure of the date of acceptance.

35. Another aspect which Mr. Singh referred to was the culmination of the disciplinary proceedings against the petitioner. He submitted that the disciplinary proceedings culminated in penalty of stoppage of two annual increments with cumulative effect from the date of her reinstatement in service, as well as no benefits for the absence period from 14.05.1999 to 05.08.1999, as against the petitioner on 06.06.2004 itself which the petitioner did not disclose in her petition. This by itself would disentitle the petitioner from seeking the reliefs prayed for in the present petition.



36. The aforesaid argument of learned counsel for the respondent appears very attractive, however suffers from an incurable fallacy. What has not been answered by the respondent is the dichotomy of the status of the petitioner post the alleged acceptance of her VR application. In case if this Court were to accept the simple proposition that the application seeking Voluntary Retirement was accepted actually on 05.10.2004, then there is no answer or a reasonable explanation as to why the petitioner kept receiving her subsistence allowance post the said date, that too till June, 2006.

37. Yet another confounding aspect would be that if really the application of the petitioner under the VR Scheme was accepted on 05.10.2004, why the petitioner was being continued in service even thereafter has not been explained at all, inasmuch as the jural relationship of employer and employee would have come to an end on 05.10.2004. The aforesaid two factual aspects have not been explained nor were any arguments addressed in that regard.

38. In view of the above, this Court is of the considered opinion that there being no document nor any explanation as to when the VR application was accepted nor anything available on record for this Court to ascertain such date and the petitioner having continued in service admittedly beyond 05.10.2004, the entitlements/benefits accruing to the petitioner as on 30.05.2005 would be payable with appropriate interest thereon for delayed payment. This issue gets support from the undeniable fact that neither in the reply dated 06.03.2006 nor in the additional affidavit dated 02.08.2006 did the respondent at all mention



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the date of acceptance of the VR application of the petitioner. Thus, there is nothing on record to remotely suggest as to when the application of the petitioner was accepted by the respondent.

39. In that view of the matter, the 1st issue regarding payment of arrears of subsistence allowance for the period 05.08.1999 till June, 2007 on application of revised pay scales being contrary to law, is rejected. However, with regard to the issue of claims under the VR Scheme is concerned, the payment of entitlements under the Voluntary Retirement Scheme as on 30.05.2005 shall be granted to the petitioner by the respondent. The amounts already paid to the petitioner shall be adjusted and the balance amounts shall be paid to the petitioner within 6 weeks from today. Since there has been a substantial delay in such payments, the same shall be remitted to the petitioner with interest at 6% per annum from the date when due, till the date of realisation.

40. The petition alongwith pending applications, if any, is disposed of in the above terms with no order as to costs.

TUSHAR RAO GEDELA, J

MARCH 06, 2024/rl

Signature Not Verified

Digitally Signed
By: MADHU KARDANA
Signing Date: 07.03.2024
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