

(2002) 07 AP CK 0035

Andhra Pradesh High Court

Case No: Writ Petition No. 11128 of 2002

S. Swamynatha Reddy

APPELLANT

Vs

Hindustan Shipyard Limited and
Another

RESPONDENT

Date of Decision: July 30, 2002

Citation: (2002) 5 ALD 827

Hon'ble Judges: T. Meena Kumari, J

Bench: Single Bench

Advocate: K. Venkataramaiah, for V. Meenakshi, for the Appellant; P. Nageswara Sree, SC, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

T. Meena Kumari, J.

This writ petition has been filed to declare the impugned letter No. PD/EC/0114/38/2001 dated 30-6-2001 of the second respondent withholding VRS Compensation, gratuity and other benefits of the petitioner as illegal, improper, unjust, arbitrary.

2. The brief facts of the case are as follows:

3. The petitioner joined as Probationary Officer in the respondents-Shipyard in 1968 and he worked in various cadres and departments. Later, he was transferred to Ship Repairs Department in November, 1988 as Manager. Thereafter, he worked in the same department in various capacities as Manager (Officer on Special Duty), Chief Manager, Deputy General Manager and General Manager from November, 1998 to December 2000. Later, he was transferred to production department in November, 2000 as General Manager. While working as such, he took voluntary retirement scheme on 31-3-2001.

4. It is stated that in the month of September/October, 2000 he fell sick due to heavy workload. When the respondents Shipyard introduced Voluntary Retirement Scheme for its eligible employees, it is stated in the affidavit that pursuant to the said scheme, he submitted his application on 27-3-2001 and sought retirement with effect from 31-3-2001. It is stated that pursuant to his application for Voluntary Retirement Scheme, the respondents organisation issued a letter on 3.4.2001 stipulating certain conditions inter alia that voluntary retirement compensation including Gratuity, Leave Encashment etc., will be paid by 30-6-2001 due to some finance crunch of the Hindustan shipyard. The petitioner submitted his application accepting the said conditions on 7-4-2001 and later the respondent Corporation accepted the Voluntary Retirement Scheme and issued a common office order on 10-4-2001 by accepting the Voluntary Retirement Scheme applications and also by relieving the petitioner and others with effect from 31-3-2001.

5. It is also stated that on 30-6-2001, the second respondent herein sent a letter vide No. PD/EC/0114/38/2001 stating that it came to light now that during his tenure as Chief Manager (Ship repairs), Officer on Special Duty," Ship repairs Department, GM (ship repairs) certain irregularities said to have been committed by him which prima facie appeared to have caused pecuniary loss of more than Rs. 30 lakhs and the matter is still under investigation by the Vigilance Department and hence it has been decided to withhold the VRS compensation, gratuity and other benefits payable to him till the completion of the investigation.

6. It is stated that the respondents have no right to withhold his retiral benefits when they have relieved him with effect from 31-3-2001 by accepting his Voluntary retirement unconditionally. Though the respondents have no right to withhold his voluntary retirement benefits, they have withheld the same and hence the action of the respondents in withholding the voluntary retirement benefits is illegal, improper, unjust.

7. The respondents filed counter stating that the writ petition is not maintainable as the petitioner is alleging violation of terms and conditions of Voluntary Retirement Scheme. It is stated that after retirement from service voluntarily on 31-3-2001 and after his retirement, the Vigilance Department reported various grave and serious irregularities said to have been committed by him in collusion with the other officers of the company. In the counter it has been stated that he did so many commissions and omissions and thereby he caused loss to an amount of Rs. 30 lakhs and in that regard, investigation is in progress. It is also stated in the counter that the Payment of Gratuity Act as well as the Conduct of Disciplinary Appeal Rules of the Company for withholding of payment of gratuity to the extent of loss and damage caused to the employer by the employee and also the forfeiture of Gratuity on certain contingencies and hence the respondents rightly withheld the retiral benefits payable to the petitioner. Under the above circumstances, the writ petition may be dismissed.

8. Heard both sides.

9. The learned senior Counsel Sri Venkataramaiah appearing for the petitioner submits that the petitioner made an application on 27-3-2001 seeking retirement under Voluntary Retirement Scheme and the same has been accepted by the respondents on 10-4-2001 and they have also relieved the petitioner with effect from 31-3-2001. Therefore the respondents have no right to withhold the retiral benefits.

10. The learned senior Counsel also submits that the retiral benefits cannot be adjusted or appropriated towards any duties outstanding against a retired employee and hence the action of the respondents withholding the retiral benefits is also illegal.

11. The learned senior Counsel also submits that the jural relationship between the petitioner and respondents would come to an end by accepting the request of the petitioner to retire under voluntary retirement. After acceptance of the retirement, the respondents have no right to withhold the retiral benefits and hence the action of the respondents withholding the retiral benefits is illegal and hence the respondents may be directed to release all the retiral benefits due to the petitioner.

12. It is to be seen that pension and other retiral benefits cannot be adjusted or appropriated for satisfaction of any other dues outstanding against a retired employee. The Supreme Court in the case of Gorakhpur University and Others Vs. Dr. Shitla Prasad Nagendra and Others, has taken the above view. The Supreme Court in the said case held as follows:

""This Court has been repeatedly emphasizing the position that pension and gratuity are no longer matters of any bounty to be distributed by Government but are valuable rights acquired and property in their hands and any delay in settlement and disbursement whereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest."

13. The Supreme Court in the case of Dr. Baljit Singh Vs. State of Haryana, has held that jural relationship of employer and employee ceases on acceptance of request for voluntary retirement. The Supreme Court in the above case i.e., Baljit Singh while dealing with the contention of the petitioner therein that merely because giving three months" notice of voluntary retirement and handing over charge after expiry of the said three months does not cease the jural relationship between the employer and employee. But, the said jural relationship comes to an end only on acceptance of request for voluntary retirement by the concerned authority.

14. In this case, the respondents have accepted the application of the petitioner seeking voluntary retirement and he was relieved from duty from 31-3-2001 by a common order. Thus, it has to be held that, there is no jural relationship between the petitioner and respondents as employee and employer.

15. The learned Counsel for the petitioner submits that no provision is made in their rules for deduction of provident fund or for continuing enquiry after retirement and hence withholding retiral benefits in the absence of such rules is illegal.

16. The Supreme Court in the case of *Bhagirathi Jena v. Board of Directors, OSFC and others* JT 1999 (3) SC 52, has held as follows:

"No specific provision was made for deducting any amount from the provident fond consequent to any misconduct determined in the departmental enquiry nor was any provision made for continuance of departmental enquiry after superannuation.

In view of the absence of such provision in the above said regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30-6-1995, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant in the absence of such authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement."

17. In this case, the petitioner questions the action of the respondents withholding the retira! benefits payable to him. The respondents did not produce rules and regulations which permits them to withhold the rental benefits and in the absence of such rules, the action of the respondents withholding the retiral benefits has to be termed as illegal. Since the petitioner did not question in this writ petition with regard to continuance of enquiry after his retirement, the same has not been decided in this writ petition.

18. Under the above circumstances and following me judgments of the Supreme Court (supra), the respondents are directed to release all the retrial benefits due to the petitioner forthwith.

19. With the above directions, this writ petition is allowed at the admission stage.