

**THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

C.P No. D- 1247 of 2017

Before :
Mr. Justice Nadeem Akhtar
Mr. Justice Adnan-ul-Karim Memon

Petitioner. : Through Mr. Muhammad Yousif Leghari,
Advocate.

Respondent 1 to 7. : Through Mr. Abdul Malik Shaikh, Advocate
along with Ejaz Jamil Qureshi Assistant Vice
President (Pay & Pension)

Date of hearing : 18.12.2019
& decision. : 24.12.2019

ORDER

ADNAN-UL-KARIM MEMON, J: - Through this petition, petitioner is seeking direction to the respondent-House Building Finance Corporation (HBFC) to take him back in service as Manager.

2. The case of petitioner is that he was working as Manager in HBFC Sanghar. He applied for Voluntary Separation Scheme (VSSR) on 31.12 2016 which was accepted by the respondent company, however he was not given the benefits in terms thereof; that he has not been given the benefits, the transaction of VSSR cannot be deemed to have been finalized which fact has been refuted by the respondent-company on the ground that they offered the petitioner to come forward to provide requisite documents for payment of benefits of VSSR but he did not turn up to get the benefits rather he has filed the instant petition, which is not maintainable; that once option of VSSR is accepted the same cannot be rescinded by either party. They relied upon the order dated 8.4.2019 passed by the respondents in compliance with the order dated 21.3.2019 passed by this Court.

3. We have heard learned counsel for the petitioner, Respondent-Company and learned AAG representing the Respondent No.1 and have perused the material available on record minutely.

4. Firstly with regard to the question of maintainability, in view of the dicta laid down in the case of Ramna Pipe and General Mills (Pvt.) Ltd v. Sui Northern Gas Pipe Lines (Pvt.) Ltd.(2004 SCMR 1274), we are of the considered view that the instant petition is maintainable against the Respondent-Company under Article 199 of the Constitution of Pakistan, 1973, and can be heard and decided on merits.

5. The Petitioner's counsel vehemently emphasized that the Respondent-Company has not granted benefits of VSSR and petitioner before its acceptance submitted an application for withdrawal of VSSR option.

6. The matter was heard at length on 21.3.2019 when the Competent Authority of Respondent-Company was directed to take appropriate decision on the representation of the Petitioner in accordance with law. The Respondent-Company has placed on record compliance report dated 8.4.2019 of the aforesaid order, whereby they have declined the request of the petitioner for taking him back on the job and certain reasons have been assigned for such decision. Learned Counsel for the Petitioner has objected to the compliance report and has taken the stance that the aforesaid order is not complied with in its letter and spirit.

7. On the aforesaid issue, we have scanned the record minutely, and we may observe here that, indeed the writ jurisdiction of this Court is not meant to be exercised to compel the competent authority to take him back on the job once he exercised the option of VSSR without any coercion.

8. We have noticed that since the representation of the petitioner has already been decided vide letter dated 08.4.2019 and prima-facie there are findings against him and the said findings are not impugned before this court, thus cannot be dilated upon. An excerpt of the above decision / letter dated 08.4.2019 is reproduced as under: -

"3. In this regard, we have reviewed the relevant record and it is found that the factual position is as under: -

(i) HBFC announced a Voluntary Severance Scheme (VSS)-2016 vide Circular No.(003-76)/P/HR&A/2016/1071 dated 22.12.2016 for interested officers & staff. Last date for submission of option form was 30.12.2016. The Scheme was purely on voluntary basis for those employees who wanted to avail the same. However, it was clearly mentioned in the Scheme that the option once exercised cannot be altered or withdrawn.

(ii) You had submitted the form for VSS on 30.12.2016 attested by two witnesses which was duly recommended by the Regional Head, South. The record does not show that the said form was submitted under any pressure.

(iii) Acceptance letter of VSS bearing No.HBFCL/HOK/HR/P&VSS/VRS-2016/2977 was issued to you on 27-01-2017, confirming therein that your relieving date/last working day will be 31-01-2017. It was also mentioned in the acceptance letter that the payment will be made within 60 days after relieving date with an advice to submit remaining papers.

(iv) As far as your application for withdrawal of VSS is concerned, it is observed that you had submitted the application for withdrawal of VSS only after competent authority had accepted the VSS form and issued your relieving order on 27.01.2017.

(v) Your withdrawal applications were also responded by HBFC informing you that your request for withdrawal of VSS option cannot be acceded to as per policy.

(vi) You were repeatedly advised to furnish required documents for payment of dues vide letters dated 08-03-2017, 17-03-2017, 06-04-2017 & 09-05-2017. However, you did not submit the documents for payment of dues thus the payments under VSS could not be released to you.

4. As far as your claim that you were compelled to file for VSS is concerned, the same is not supported by the relevant record. Pertinently, the VSS form submitted by you was duly attested by two witnesses and forwarded by the then Regional Head to the Head Office. Moreover, your leave application was under process and the same was also approved by the competent authority on 28.12.2016 i.e. prior to submission of VSS form. Even otherwise, submission of VSS has no relevance with the fact of an employee being on leave or on duty. An employee could submit VSS option even while on leave.

5. Furthermore, the cases of M/s Shah Raza, Ahmed A. Zada, Ghulam Mohiuddin and Salman Ahmad referred by you for allowing them to resume the duties after acceptance of their VSS are not relevant. Pertinently, they did not withdraw their VSS forms rather their services were essentially required by the Company for working and therefore, they were retained. The positions and assignments of these employees were also entirely different from your assignment.

6. In view of the above, it is observed that you had submitted the VSS option with your free will and consent that was accepted by the Company before any communication of withdrawal of the same.

In view of above your request "for taking back in service" cannot be acceded to at this stage as the same is not permissible under VSS policy. You are therefore, once again advised to provide the requisite documents for payment of benefits of VSS by HBFC."

9. In view of such state of affairs, we without touching the merits of the case on the issue of taking him back on the said job, hold that, basically the purpose of filing this *lis* is over, thus cannot be stretched further, on the premise that once the Respondent-Company has decided the representation of the Petitioner on 08.4.2019 which provides him fresh cause of action and if he at all feels himself aggrieved of such order on his representation, he may seek his remedy in accordance with law.

10. The upshot of the above discussion is that this petition is disposed of in the above terms.

JUDGE

JUDGE

Karar_hussain/PS*