

* **HIGH COURT OF DELHI AT NEW DELHI**
+ LPA 1080/2007 and CM Nos. 9586-87/2007
% **Date of decision: 15th February, 2008**

TRIBAL CO-OPERATIVE MARKETING Appellant
DEVELOPMENT FEDERATION OF INDIA
Through: Dr. Jose Verghese, Advocate

versus

SIDDHARTHA KUMAR Respondent
Through : Mr. Sudershan Rajan, Advocate.

CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers be allowed to see the judgment ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether the judgment should be reported in the Digest? Y

DR. MUKUNDAKAM SHARMA, CJ:

1. This appeal is directed against the judgment and order dated 23rd March, 2007 passed by the learned Single Judge whereby the learned Single Judge allowed the writ petition filed by the respondent herein holding that his request for withdrawal was to be accepted and with a direction that the respondent would return the benefits received by him under the Voluntary

Retirement Scheme. A further direction was issued to the effect that the order dated 4th December, 2001 passed by the appellant, whereby the request of the respondent to withdraw himself from the Voluntary Retirement Scheme was turned down, would stand quashed with a further observation that the appellant would take in service the respondent with immediate effect, and treat him to be in service as if no application for voluntary retirement has been preferred by him.

2. The respondent was working with the appellant as Deputy Manager. While he was so serving as Deputy Manager, a Voluntary Retirement Scheme was introduced by the appellant and the same was circulated under Circular No.TFD/HO/P&A/2000-01[VRS]/CIR[03]1692 dated 24th July, 2000. Some of the relevant clauses which would have bearing for rendering a decision in the present case are extracted hereinbelow:

“II. COMMENCEMENT

The Scheme will be in operation with effect from 1.10.2000 and is offered to all employees of the Federation.

IV. PROCEDURE

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2. An employee can be permitted to withdraw his application for Voluntary Retirement, before the Management notifies in writing to him about the decision to accept his request for Voluntary Retirement.

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4. The Competent Authority, within a period of 30 days from the date of receipt of the said application, shall take a decision to accept or reject the said application and shall communicate the decision to the official concerned.

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VI. BENEFITS:

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a. LUMP SUM COMPENSATION

An employee whose request for Voluntary Retirement has been accepted would be entitled to lump sum compensation equivalent to 3 months salary for each completed year of past service and part thereof or the monthly salary at the time of Voluntary Retirement multiplied by the balance months of service left before normal date of retirement, whichever is less. For example, if an employee who has put in 12 years of service and has got only one year of service left for normal retirement, he will get lumpsum compensation of 12 months and not for 36 months.

NOTE: Salary for this purpose include Basic Pay + D.A. Only.

VII SANCTIONING AUTHORITY:

1.
2. Notwithstanding anything contained in these rules, the Managing Director shall be fully empowered either to accept or reject any request by any employee in the overall interest of the Federation, recording the reason in writing.
- 3.....

VIII. INTERPRETATION:

If any doubt or difficulty arises in interpreting the provisions of this Scheme, or in giving effect to them, or if any, lacunae, inconsistency, or anomaly is discovered in their application, it shall be open to the Managing Director to issue general instructions or clarifications for the purpose of removing such doubt, difficulty, lacunae, inconsistency or anomaly.”

3. The aforesaid Scheme, as stated hereinabove, was circulated under Circular dated 24th July, 2000. In the said Circular it was mentioned that the Scheme would be in force for three months ending on 31st December, 2000. Para 3 thereof

envisaged that the employee would be entitled for lumpsum compensation equivalent to 3 months' salary for each completed year of past service and part thereof or the monthly salary at the time of Voluntary Retirement multiplied by the balance months of service left before normal date of retirement, whichever was less, and salary for this purpose would include basic pay plus D.A.

4. On 30th January, 2001 another Circular being Circular No.2/57/90[PERS]/3956 was issued by the appellant wherein it was stated that the Scheme of Voluntary Retirement circulated under Circular dated 24th July, 2000 was extended upto 31st March, 2001. It was also stipulated therein that other terms and conditions of VRS would remain the same as stipulated in Circular No.1692 dated 24th July, 2000. In view of the said letter, a Scheme was also circulated along with a proforma for applying for Voluntary Retirement. In the proforma of the application for Voluntary Retirement, a paragraph was incorporated to the following effect:

“The request for Voluntary Retirement has been made by me after considering the pros and cons of the Scheme and I undertake that I shall lose (sic) my right to withdraw the same once it has

been accepted by the Competent Authority.”

5. The aforesaid Scheme as extended was valid upto 31st March, 2001. A Circular being No.TFD/HO/P&A/2001-02[VRS]/5818 came to be issued on 13th June, 2001 by the appellant with the following contents:

“Sub:- Introduction of Voluntary Retirement Scheme in TRIFED.

In continuation of Circular no.1692 dated 24th July, 2000 and no.2/57/90-[PERS]/3956 dated 30th January, 2001, the Voluntary Retirement Scheme is hereby extended upto 31st August, 2001 with the following condition:-

- 1) Interested and eligible employees may send their VRS application duly filled up latest by 31st July, 2001. Applications received after 31.7.2001 will not be entertained.
- 2) The condition no.12 under application form stands withdrawn pertaining to option for date of relieving under V.R.S.
- 3) The date of relieving of interested and eligible employee for V.R.S. will be on or before 31st August, 2001 and any option for relieving after 31st August, 2001 will not be considered.

This issues with the approval of the Managing Director.”

6. In the proforma also circulated with the said Circular, the following para was incorporated:-

“The request for Voluntary Retirement has been made by me after considering the pros and cons of the Scheme and I undertake that I shall lose (sic) my right to withdraw the same once it has been accepted by the Competent Authority. I may kindly be relieved along with all VRS benefits by 31.08.2001.”

7. A bare perusal of the aforesaid paragraph would indicate that an undertaking was sought for from the respondent/applicant that he would lose his right to withdraw the offer for Voluntary Retirement once the same is accepted by the Competent Authority and that he could be relieved along with all VRS benefits by 31st August, 2001.

8. After the aforesaid Voluntary Retirement Scheme was circulated on extension upto 31st August, 2001, the respondent herein submitted his application on 28th June, 2001, wherein he had also given an undertaking under his clear signature on the proforma appended, seeking voluntary retirement from the services of the appellant. He also undertook that he would lose

the right to withdraw the same once it was accepted by the Competent Authority and that he could be relieved along with all VRS benefits by 31st August, 2001.

9. The aforesaid request of the respondent was accepted by the appellant and a letter was written to that effect to the respondent by the appellant on 17th July, 2001. The relevant paragraph of the said communication is extracted hereinbelow:-

“This has reference to your VRS application dated 28.6.2001 forwarded by the Regional Manager TRIFED Bhopal vide letter no.TFD/ROB/P&A/2001-02/442 dated 3.7.2001. The Competent Authority has accepted your VRS request and you will be relieved from the services of the Federation with effect from 31.08.2001[afternoon].

This issues with the approval of the Managing Director[I/c]”

10. Thereafter on 27th July, 2001, the respondent made a request to cancel his VRS application dated 28th June, 2001. On 4th December, 2001 the appellant passed an order rejecting the request of the respondent for withdrawal of the VRS application

on the ground that the same is contrary to the express provisions of clause no.IV(2) of the Voluntary Retirement Scheme and also in violation of his own undertaking submitted to the appellant. On 15th December, 2001 the appellant relieved the respondent from his service. The respondent also received the benefits under the Voluntary Retirement Scheme from the appellant but on protest. The respondent thereafter filed a writ petition in this Court, registered as C.W.P. No.7748/2001, which was considered and disposed of by the learned Single Judge under the impugned judgment and order dated 23rd March, 2007.

11. Being aggrieved by the said order, the present appeal was filed. Since the said appeal was filed belatedly, an application for condonation of delay was also filed by the appellant. There was a delay of 34 days in filing the present appeal. Reasons therefor were set out in the application. On going through the same and upon hearing the learned counsel appearing for the parties, we are of the considered opinion that the appellant has been able to make out a case of sufficient cause on the reasons given in the application. Therefore, we allow the application bearing CM No.9587/2007 seeking for condonation of delay.

12. So far the appeal is concerned, the counsel appearing for the parties have advanced indepth arguments and have drawn our attention to the various documents on record to which we shall refer to during the course of the discussion of this order. We have already extracted the relevant clauses of the Scheme and also the contents of the Circular and the aforesaid proforma as annexed to the application for Voluntary Retirement. The learned Single Judge has framed the relevant issue for decision in the following manner:-

“This voluntary act of the employee can come into force only when the same is accepted by the employer and till the same is accepted the employee seeking voluntary retirement can always change his decision and withdraw his said voluntary act of seeking retirement. Although in the instant case the petitioner had withdrawn his offer of seeking Voluntary Retirement Scheme after the acceptance is communicated by the respondent to the petitioner, yet the issue which needs consideration is whether the respondent could accept the offer even before the closure of Scheme.”

13. The learned Single Judge has held that the appellant itself is responsible for creating confusion in the minds of its employees desirous of seeking VRS, inasmuch as in the Circular dated 24th July, 2000 in para 4 it was stated that, the application of

voluntary retirement should be processed by the management within one month from the closure of the Scheme, whereas, on the other hand in the body of the Scheme in sub-para 4 of para IV under the heading 'Procedure' it has been mentioned that the competent authority within a period of 30 days from the date of receipt of the said application, shall take a decision to accept or reject the said application and also that under sub-para 2 of para IV it is set out that an employee can be permitted to withdraw his application for voluntary retirement, before the management notifies in writing to him about the decision to accept his request for voluntary retirement. It was held by the learned Single Judge that the competent authority should have processed the application forms as received from the employee seeking voluntary retirement only within 30 days after the closure of the Scheme and not within 30 days from the date of receipt of the application. In terms of the aforesaid findings recorded it was also held that the appellant cannot take advantage of the fact that the respondent was given the benefits under the Voluntary Retirement Scheme, as these benefits were given to the respondent not only after he had withdrawn from the Voluntary

Retirement Scheme vide his communication dated 27th July, 2001, but also after he had sent the legal notice dated 7th December, 2001 and had filed a writ petition on 12th December, 2001. It was held that the relationship of employer and employee continues till the employee is relieved in response to his application within 30 days after the closure of the Scheme and since the offer of the respondent was accepted before the closure of the Scheme, i.e., 31st July, 2001, therefore, declining to accept the request of the respondent to withdraw from the benefit of Voluntary Retirement Scheme was illegal and unjustified.

14. The said findings and conclusions arrived at by the learned Single Judge are assailed before us by the counsel appearing for the appellant by making reference to various clauses of the aforesaid Voluntary Retirement Scheme and also by relying on the decisions of the Supreme Court in HEC Voluntary Retd. Employees Welfare Society and another v. Heavy Engineering Corpn. Ltd. and Ors. (2006) 3 SCC 708; Bank of India & Ors. v. O.P. Swarnakar and Ors. (2003) 2 SCC 721 and the decision of the Supreme Court in Punjab & Sind Bank & Anr. v. S. Ranveer Singh Bawa & Another (2004) 4 SCC 484.

15. It was submitted by the learned counsel appearing for the appellant that the findings recorded by the learned Single Judge are contrary to the express terms of rule IV (2) of the Voluntary Retirement Scheme and also in violation of the undertaking given by the respondent in his application seeking for voluntary retirement. It was further submitted by him that a concluded contract has come into effect after the acceptance of the offer contained in the Voluntary Retirement Scheme by the respondent to go for voluntary retirement and, therefore, there could not have been any withdrawal of such an offer of a stipulation and of a concluded contract, which could have only been in accordance with the provisions of the Indian Contract Act.

16. Counsel appearing for the respondent, however, submitted before us that as per clause 4 of the Circular dated 24th July, 2000, the application of the respondent seeking for voluntary retirement was to be processed by the Management within one month from the closure of this Scheme and a decision to accept or reject the said application was to be communicated to the official concerned only thereafter. The said Scheme was closed on 31st July, 2001 and since the application seeking for

withdrawal of voluntary retirement was sent by the respondent and received by the appellant prior to the said date, the stand taken by the appellant declining to accept the said application was illegal and unjustified and, therefore, the learned Single Judge was justified in setting aside the said order passed by the appellant.

17. In the light of the aforesaid statements made, we now proceed to deal with the issues raised before us and decide the same. The Voluntary Retirement Scheme was introduced in 2000 whereby certain benefits were granted to persons who opted for going on voluntary retirement by filing applications in that regard. In sub-para 2 of clause IV of the Scheme under the heading "Procedure" an employee could be permitted to withdraw his application for Voluntary Retirement, before the Management notified in writing to him about the decision to accept his request for Voluntary Retirement. It was further stipulated in sub-para 4 thereof that the Competent Authority, within a period of 30 days from the date of receipt of the said application, would take a decision to accept or reject the said application and would communicate the decision to the official

concerned.

18. Originally the aforesaid Scheme was circulated under Circular dated 24th July, 2000, which was kept in force initially for three months from 1st October, 2000 to 31st December, 2000, and a stipulation was made therein that the application would be processed by the Management within one month from the closure of this Scheme and that a decision of the Competent Authority about acceptance or rejection of request would be final and binding on the applicant. However, what is relevant for our consideration is the provisions of the Scheme which was circulated under Circular dated 13th June, 2001. It is, no doubt, true that in the said Circular reference was also made to the earlier Circular dated 24th July, 2000. While doing so, it was stated that the Scheme had been extended upto 31st August, 2001 with the condition that interested and eligible employees may send their VRS applications latest by 31st July, 2001. The date of relieving of interested and eligible employees for Voluntary Retirement Scheme would be on or before 31st August, 2001. The aforesaid statement makes it clear that the earlier clause, namely, clause 4 of the Circular dated 24th July,

2000 was superseded by the aforesaid clause 3 stating that the date of relieving of interested and eligible employees for V.R.S. would be on or before 31st August, 2001 and, therefore, the decision to accept or reject the request for voluntary retirement was to be taken prior to the aforesaid date and not after one month from the closure of the Scheme which was valid upto 31st July, 2001. The said argument, therefore, of the learned counsel appearing for the respondent appears to be fallacious. The learned Single Judge appears to have been influenced by the said argument and, therefore, the decision rendered in our considered view is also erroneous. The aforesaid view gets fortified when we consider the very fact that the appellant had also given an undertaking that he would lose his right to withdraw the offer for Voluntary Retirement once the same was accepted by the Competent Authority. The request of the respondent to go on voluntary retirement was accepted by the competent authority under order dated 17th July, 2001, which was also communicated to the respondent and was received by him before he sent the letter dated 27th July, 2001 seeking for withdrawal of his voluntary retirement application. Therefore, a concluded contract

had come into effect and the same was acted upon by making payment of the benefits also on his release from service.

19. In this connection we may also refer to the decision of the Supreme Court in HEC Voluntary Retd. Employees Welfare Society and another(supra) wherein in para 11 of the said judgment the Supreme Court has held thus:-

“An offer for voluntary retirement in terms of a Scheme, when accepted, leads to a concluded contract between the employer and the employee. In terms of such a Scheme, an employee has an option either to accept or not to opt therefore. The Scheme is purely voluntary, in terms whereof the tenure of service is curtailed which is permissible in law. Such a Scheme is ordinarily floated with a purpose of downsizing the employees. It is beneficial both to the employees as well as to the employer. Such a Scheme is issued for effective functioning of the industrial undertakings. Although the Company is a "State" within the meaning of Article [12](#) of the Constitution of India, the terms and conditions of service would be governed by the contract of employment. Thus, unless the terms and conditions of such a contract are governed by a statute or statutory rules, the provisions of Contract Act would be applicable both at the formulation of the contract as also the determination thereof. By reason of such a Scheme only is an invitation of offer floated. When pursuant to or in furtherance of such a Voluntary Retirement Scheme an employee opts therefor, he makes an offer which upon acceptance by the employer gives rise to a contract. Thus, as the matter relating to voluntary retirement is not governed by any statute, the provisions of

Contract Act, 1872, therefore, would be applicable too.{see: Bank of India v. O.P.Swarnakar(supra)}”

20. In para 28 of the said judgment the Supreme Court has held as follows:

“The expression "Special Scheme" used therein must be understood in the context of a general Scheme of employment governing the terms and conditions of service or which is a part of the statutory rules governing the service of the employees. In this sense also the Voluntary Retirement Scheme is a Special Scheme. The Scheme was initially introduced for one year. It might have been extended from time to time. Extension of such Scheme indisputably must have been on the basis of exercises resorted to by the employer as regards the financial implications thereof, availability of funds, average number of employees opting therefor and other relevant factors. Only because the said Scheme remained in force for a total period of 10 years, the same would not mean that it became a part of the general terms and conditions of contract of employment. Furthermore evidently as the Scheme floated in 1987 did not work to the satisfaction of the Company, it was replaced by the year 1990 Scheme upon extending more benefits to the employees.”

21. In the case of O.P. Swarnakar and Ors.(supra), the Supreme Court in para 49, 50, 60,64, 65, 66 and 67 held as under:-

“49. An offer indisputably can be made to a group of persons collectively which is capable of being

accepted individually but the question which has to be posed and answered is as to whether having regard to the service jurisprudence: the principles of Indian Contract Act would be applicable in the instant case. It is the specific case of the 'Banks' that the Schemes had been floated by way of contract. It does not have any statutory flavour. Reference to the pension Scheme framed under the regulations was made for computation of the pension.

50. It is difficult to accept the contention raised in the Bar that a contract of employment would not be governed by the Indian Contract Act. A contract of employment is also a subject matter of contract. Unless governed by a statute or statutory rules the provisions of the Indian Contract Act would be only applicable at the formulation of the contract as also the determination thereof. Subject to certain just exceptions even specific performance of contract by way of a direction for reinstatement of a dismissed employee is also permissible in law.

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60. Acceptance or otherwise of the request of an employee seeking voluntary retirement is required to be communicated to him in writing. This clause is crucial in view of the fact that therein the acceptance or rejection of such request has been provided. The decision of the authority rejecting the request is appealable to the Appellate authority. The application made by an employee as an offer as well as the decision of the bank thereupon would be communicated to the respective General Managers. The decision making process shall take place at various levels of the banks

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64. Once it is held that the provisions of the Indian Contract Act, 1872 would be applicable, the Scheme admittedly being contractual in nature, the provisions of the Act shall apply. The Scheme having regard to its provisions as noticed hereinbefore would merely constitute invitation to treat and not an offer.

65. A proposal is made when one person signifies to another his willingness to do or abstain from doing anything with a view to obtaining the assent of the other to such act or abstinence (See Section [2\(a\)](#)). Herein the banks by reason of the Scheme or otherwise have not expressed their willingness to do or abstain from doing anything with a view to obtaining assent of the employees to such act. It will bear repetition to state that not only the power of the bank to accept or reject such application is absolutely discretionary, it, as noticed hereinbefore, could also amend or rescind the Scheme. The Scheme, therefore, cannot be said to be an offer which, on the acceptance by the employee, would fructify in a concluded contract.

66. The proposal of the employee when accepted by the Bank would constitute a promise within the meaning of Section [2\(b\)](#) of the Act. Only then the promise become an enforceable contract. In the instant case the banks when floating the Scheme did not signify that on the employees assenting thereto a concluded contract would come into being in terms whereof they would be permitted to retire voluntarily and get the benefits thereunder.

67. Furthermore, in terms of the said Scheme no consideration passed so as to constitute an agreement. Once it is found that by giving their option under the Scheme, the employees did not derive an enforceable right, the same in absence of any consideration would be void in terms of

Section [2\(g\)](#) of the Contract Act as opposed to Section [2\(h\)](#) thereof.”

22. The aforesaid ratio of the decision of the O.P. Swarnakar and Ors. case (supra) came to be referred to and relied upon by a three Judges Bench in the decision of S. Ranveer Singh Bawa & Another (supra), wherein the said ratio of the decision has been approved. The said decision, however, is not applicable to the facts of the present case as the facts are somewhat different from the facts of the present case. The same is, however, relevant to the facts of the present case only to the extent that the decision in the case of O.P. Swarnakar and Ors.(supra) was approved by the three Judges Bench of the Supreme Court.

23. In terms of the aforesaid settled position of law, therefore, it is established that the request of the respondent to go on voluntary retirement in terms of the Scheme of the appellant with a stipulation that once the said request is accepted he will forgo his right to withdraw his request was in fact an offer for voluntary retirement in terms of the Scheme. The aforesaid request was accepted by the competent authority on 17th July, 2001, which was also notified and communicated to the respondent. In terms thereof, therefore, there arose a concluded

contract between the employer and the employee. Once a concluded contract has been arrived at, the determination of the said concluded contract could only be done in accordance with the provisions of the Contract Act. It is established from the facts of the present case that, the terms and conditions of the Voluntary Retirement Scheme herein are not governed by any statutory rules but are a matter relating to contract and, therefore, the provisions of the Contract Act would be applicable, both on the formation of the contract and also the determination thereof.

24. Consequently, we hold that the appellant could have taken a decision to decline the request of the respondent to withdraw the offer as the same was accepted and a concluded contract had arisen. The action of the appellant, therefore, cannot be said to be illegal and unjustified. The decision rendered by the learned Single, therefore, cannot be sustained and the same is set aside and quashed. The respondent has already received the benefit under the Voluntary Retirement Scheme, which was deposited in his bank account. If any other amount is found due and payable to the respondent under the Scheme, the same shall

be paid by the appellant within two months from the date of the receipt of a copy of this order.

25. The appeal stands disposed of in terms of the aforesaid order. No costs.

CHIEF JUSTICE

REVA KHETRAPAL, J

FEBRUARY 15th, 2008
Rohtash