

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

+ **WPC No. 136/2005**

Judgment reserved on: 25.02.2009
Judgment delivered on: 23.03.2009

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Shiv Ram Verma Petitioner.

Through: Mr. Jagdev Singh, Advocate

versus

Managing Director, Food Corporation of India & Ors.
..... Respondents

Through: Mr. O.P. Singh, Advocate

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

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

KAILASH GAMBHIR, J.

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1. The petitioner has filed the present writ petition assailing the office order dated 30.11.2004, issued by the respondent, whereby the respondents have retired the petitioner from his

services under the Voluntary Retirement Scheme despite the fact that the petitioner himself made an application for withdrawal of his V.R.S. much before the notice period of three months and also prior to the issuance of the impugned office order.

2. The brief facts of the case, relevant for deciding the petition are that the petitioner was working on the post of Asst. Manager (General) and was posted at Distt. Office, Mayapuri, New Delhi prior to the issue of the impugned order dated 30.11.2004. On 28.09.2004, the petitioner applied for voluntary retirement, under the voluntary retirement scheme floated by the respondent, through proper channel giving three months notice to the respondents for voluntary retirement. Thereafter, the petitioner wrote a letter dated 22.11.2004 to the respondents, withdrawing his application for voluntary retirement and the same was received by the respondent's office on 23.11.2004, which is evident from the seal of the respondent's department on the letter of the petitioner. But despite the fact that the petitioner made an application for withdrawal of his V.R.S. much before the

notice period of three months the respondents issued the impugned office order retiring the petitioner from his services.

3. Mr. Jagdev Singh counsel for the petitioner contended that in the application dated 28.09.2004, while applying for voluntary retirement, the petitioner also gave three months notice to the respondent corporation stating that he may be relieved from the services after the expiry of the notice period i.e. on 31.12.2004. The counsel further urged that the petitioner was promoted by the respondent on the post of Dy. Manager (General) vide their office order dated 8.11.2004 and considering the same, on 22.11.2004, much prior to the expiry of the said notice period of three months, the petitioner wrote a letter withdrawing his application for voluntary retirement, which letter was received by the respondent on 23.11.2004, which is evident from the seal of the respondent's department on the letter of the petitioner. The counsel contended that the action of the respondent retiring the petitioner from his services despite the fact that the petitioner himself made an application for withdrawal of his V.R.S. much before the notice period of three months is

illegal, arbitrary and against the well established principles of law, therefore, the same should be quashed. The counsel also averred that on the one hand the respondent promoted the petitioner and on the other hand it issued order retiring the petitioner. Fortifying the said contention, the counsel relied on the decisions of the Hon'ble Apex Court in **J.N. Srivastava vs. UOI – 1998 (9) SCC 559; Balram Gupta vs. UOI – AIR 1987 SC 2354; Shambhu Murari Sinha vs. Project & Development India Ltd. & Anr. – JT 2002 (3) SC 37; FCI vs. Ramesh Kumar – 2007 (2) SCC (L&S) 801** and **Bank of India & ors. Vs. O.P. Swaranakar etc. – AIR 2003 SC 858**. The counsel also relied on the decision of this court in **WPC No. 18479/2004 titled V.K. Nigam vs. FCI** decided on **22.3.2005 (order dated 3.12.2004)**.

4. Per contra, Mr. O.P. Singh, counsel for the respondents while refuting the contentions of counsel for the petitioner contended that the petitioner has not come to this court with clean hands and did not disclose that he had applied for voluntary retirement under a special scheme floated by the respondent launched vide circular no. EP-01-2004-16 dated 29.06.2004,

which was open for the limited period of three months. The counsel averred that the applications received under the said voluntary retirement scheme were processed on the principle of first come first serve basis. The counsel submitted that the scheme provided that once an employee submitted the application for voluntary retirement under the said scheme to the competent authority, it shall be treated as final and it would not be open to the employee to withdraw the same and the regulation 22A of the FCI (staff) Regulation will not be attracted when an employee had applied for voluntary retirement under the said scheme. The counsel urged that the aforesaid judgments cited by the counsel for the petitioner were discussed by the Hon'ble Apex Court in **Vice Chairman and Managing Director, APSIDC Ltd. & Anr. Vs. R. Varaprasad & Ors. – JT 2003 (5) SC 268**, and according to the decision therein, the judgments cited by the counsel for the petitioner will have no bearing in the facts of the present case. The counsel also submitted that an officer/employee of the respondent working in Andhra Pradesh region opted under the said scheme on 9.09.2004 and on

6.10.2004 he made another application to withdraw his option for voluntary retirement, then again on 25.11.2004 he made another application withdrawing from the said scheme and on the apprehension that the Corporation may relieve him from service without considering his withdrawal application he filed a writ petition no. 22350/2004 in the Hon'ble High Court of Andhra Pradesh. Vide order dated 9.12.2004 the Andhra Pradesh High court distinguishing the case from the cases cited by the counsel for the petitioner held that they were not applicable in the facts of the case as under the present scheme, there is a specific clause which disentitles the applicant from withdrawing his application once the application reaches the office of the Corporation, therefore, the judgments cited by the counsel for the petitioner are of no assistance to the petitioner. The counsel also maintained that correctly, the petitioner, along with 18 other employees, was promoted to the post of Dy. Manager vide office order dated 8.11.2004 but purely on ad hoc basis and it was made clear that the persons will be reverted to their substantive post immediately on the joining of a regular incumbent. The

counsel further submitted that the order of promotion was cancelled on 29.12.2004 as the application of the petitioner for voluntary retirement was accepted on 9.11.2004. The counsel also averred that the petitioner also collected part of payment under the voluntary retirement scheme. The counsel also urged that the application for voluntary retirement of the petitioner was accepted on 9.11.2004 at ZM level but at the SRM level where the petitioner was posted, it was ordered that the petitioner would be relieved w.e.f. 31.11.2004.

5. I have heard learned counsel for the parties and perused the record.

6. The short issue arising in the present petition is that whether an employee opting under a scheme floated by the employer for voluntary retirement, wherein there is a stipulation that once an employee opts under the scheme then later he cannot withdraw his application for voluntary retirement, can withdraw the same before the acceptance of the offer by the employer.

7. According to Black's Law Dictionary, sixth edition,

'Retirement' means termination of employment, service, trade or

occupation upon reaching retirement age, or earlier at election of employee, self-employed, or professional.

8. Superannuation alone is not a circumstance when an employee retires. Following are the common types of retirement:

1. **Retirement on Superannuation:** It means retirement of an employee on reaching the maximum prescribed age limit for employment. The retirement age has been set at different age limits for various types of organizations/institutions. For instance the retirement age for employees of public sector undertakings is 60 years of age and that for scientists of the Government of India it is extendable to 64 years of age. For private sector firms the ages of retirement vary.

2. **Voluntary Retirement:** Voluntary retirement is one of the options made available to employees of an organization under the Voluntary Retirement Scheme. Under the scheme employees are given the option to retire earlier than the superannuation age. It is mainly adopted by organizations to trim staff strength by making available monetary or other benefits.

3. **Compulsory Retirement:** Compulsory retirement is resorted to by an organization for the dismissal or discharge of an employee. An employee can be made to compulsarily retire on account of serious misconduct or such other reasons.

9. In this regard, in **State Bank of India v. A.N. Gupta and Ors. (1997) 8 SCC 60** the Hon'ble Apex Court held as under:

“It cannot be said that an employee retires only on superannuating and there is no other circumstance under which an employee can retire. Retirement on superannuating is not the only mode of retirement known to service jurisprudence. There can be other types of retirements like premature retirement, either compulsory or voluntary.”

10. It is not in dispute that the effect of a voluntary retirement scheme is cessation of jural relationship between the employer and the employee. It is also common knowledge that a scheme of voluntary retirement is preceded by a financial planning. Upon floating of such a scheme both the employer as also the employee take into account financial implications in relation thereto. When an invitation to offer is floated by reason of such a scheme, the employer must have carried out exercise as regard the financial implication thereof. If a large number of employees

opt therefore, having regard to the financial constraints an employer may not accept offers of a number of employees and may confine the same to only a section of optees.

11. The Hon'ble Apex Court in **HEC Voluntary Retd. Employees Welfare Society & Anr. Vs. Heavy Engineering Corporation Ltd. & Ors. – (2006) 3 SCC 708**, while explaining voluntary retirement scheme and its purpose, observed as under:

“11. 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 an invitation of offer is floated. When pursuant to or in furtherance of such a voluntary retirement scheme an employee opts therefore, 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 Indian Contract Act, 1872, therefore, would be applicable to. [See **Bank of India and Ors. v. O.P. Swarnakar and Ors.** MANU/SC/1179/2002”

12. In the instant case, the petitioner was working with the respondent as Assistant Manager (General). While he was so

serving as Assistant Manager (General), a Voluntary Retirement Scheme was introduced by the respondent and the same was circulated under Circular No. EP-01-2004-16 dated 29.06.2004, which was open for the limited period of three months. Some of the relevant clauses which would have bearing for rendering a decision in the present case are extracted hereinbelow:

“I TITLE, COMMENCEMENT, JURISDICTION AND DURATION

1.

(a) The Corporation will have the right not to grant voluntary retirement to any of officers/officials for the reasons to be recorded in writing.

(b) The Scheme will be in operation for a period of three months from the date of its notification. The corporation will have the right to accept the requests for voluntary retirement on the principle of “First – come – first – served” basis.

VIII PROCEDURE

(c)

(d)

(e) The scheme does not confer any right on an employee to have his request for voluntary retirement accepted. The Corporation will have full discretion to accept or reject the request for voluntary retirement of any employee, keeping in view the service record, organizational requirement and any other relevant factors in this regard.

(f) Once an employee submits his application for voluntary retirement under this scheme to the competent authority, it shall be treated as final and it is not open to the employee to withdraw the same. The competent

authority within notice period (3 months) shall take a decision to accept or reject the request and shall communicate the same to the official concerned.”

13. Accordingly, on 28.09.2004, the petitioner applied for voluntary retirement, under the voluntary retirement scheme floated by the respondent, through proper channel giving three months notice to the respondents for voluntary retirement. Thereafter, the petitioner wrote a letter dated 22.11.2004 to the respondents, withdrawing his application for voluntary retirement, despite the condition under the scheme in sub-clause (d) of the Clause VIII entitled ‘PROCEDURE’ of the scheme, and the same was received by the respondent’s office on 23.11.2004, which is evident from the seal of the respondent’s department on the letter of the petitioner. The application of the petitioner for voluntary retirement was accepted on 9.11.2004 and the same was intimated to the petitioner on 30.11.2004.

14. It is no more res integra and in view of the decision in **O.P. Swaranakar’s case (Supra)** it is manifest that when an employer floats a voluntary retirement scheme, he actually makes an ‘invitation to offer’ and the request of employee to seek

voluntary retirement under the scheme is the 'offer'. The request of employees seeking voluntary retirement was not to take effect until and unless it was accepted in writing by the competent authority. The Competent Authority had the absolute discretion whether to accept or reject the request of the employee seeking voluntary retirement under the scheme and acceptance or otherwise of the request of an employee seeking voluntary retirement is required to be communicated to him in writing. In this regard the Hon'ble Apex Court in **National Textile Corpn. (M.P.) Ltd. v. M.R. Jadhav,(2008) 7 SCC 29**, observed as under:

20. Subject, of course, to the terms of "invitation to treat" as also those of the offer as envisaged under the Contract Act, an offer has to be accepted. Unless an offer is accepted, a binding contract does not come into being. A voluntary retirement scheme contemplates cessation of the relationship of master and servant. The rights and obligations of the parties thereto shall become enforceable only on completion of the contract. Unless such a stage is reached, no valid contract can be said to have come into force. Acceptance of an offer must, therefore, be communicated.

21. In *Bank of India v. O.P. Swarnakar*⁵ this Court held: (SCC p. 752, para 60)

"60. Acceptance or otherwise of the request of an employee seeking voluntary retirement is required to be communicated to him in writing."

15. In **O.P. Swaranakar's case (supra)** the Hon'ble Apex Court had to deal with the issue as to whether an employee who opts for the voluntary retirement pursuant to or in furtherance of a scheme floated by the Nationalised Banks and the State Bank of India would be precluded from withdrawing the said offer. The Apex Court while drew distinction between the scheme of the SBI and other nationalized banks, which was that in the case of SBI VRS, an opportunity of 15-days was given to the employee - applicant to withdraw from the scheme whereas under the voluntary retirement scheme of nationalized banks no such opportunity was given. In the case of voluntary retirement scheme framed by nationalized banks, Clause 10.5 stipulated that it will not be open for an employee to withdraw his request for voluntary retirement after having exercised such option. The scheme of the nationalized banks was similar to the scheme of the respondent in the instant case to the effect that in both the scheme's the employee upon once opting for the scheme was debarred from withdrawing from it, therefore, the law in this

regard as settled by the Hon'ble Apex Court in this regard would give reply to the query in the case at hand.

16. The law as regards the scheme of the nationalized banks was explained by the Hon'ble Apex Court in **Ramesh Kumar's case (Supra)**, the relevant paras of the said judgment are as under:

“5. Learned counsel submitted that in view of this once the respondent has given an offer for voluntary retirement on 13.9.2004, he cannot revoke the same on 27.9.2004 and in that support learned counsel invited our attention to the decision of this Court in MANU/SC/1179/2002 Bank of India and Ors. v. O.P. Swarnakar and Anr. As against this learned counsel for respondent invited our attention to the decision in State Bank of Patiala v. Romesh Chandra Kanoji and Ors. reported in MANU/SC/0157/2004. Both these decisions are of three Judges Bench and in the earlier decision given in the case of O.P. Swarnakar (supra) Hon'ble Justice Sinha was a party and he was also a party in the subsequent decision in the case of State Bank of Patiala v. Romesh Chandra Kanoji (Supra). We have gone through both the decisions cited by the learned counsel for the parties. In the case of O.P. Swarnakar (supra), two schemes were taken into consideration; namely, one of the State Bank of India Scheme (for short SBIVRS) and the other of Nationalised Banks. There was a stipulation in SBIVRS that the person who offers for voluntary retirement can only revoke the same within 15 days, whereas in other Banking Scheme the provision was different, and is identical to the one in the case before us. In O.P. Swarnakar (supra) a distinction was made between the two schemes. So far as the scheme of State Bank of India i.e SBIVRS is concerned there the condition of 15 days was mentioned i.e. that incumbent can revoke the offer within 15 days. If the person fails to do so the offer is complete. But so far as other cases of other banks it is stipulated only that once the incumbent gives an offer of voluntary retirement he will not be permitted to revoke it. Therefore, there was a distinction between the Schemes which has been properly explained by the subsequent decision in para 6 in State Bank of Patiala v. Romesh Chander Kanoji (Supra) as follows:

It is evident from above that in the case of SBIVRS, where there is a specific provision for withdrawal, the employee must exercise his option within the time specified; and in case of Nationalised Banks where there was no provision to withdraw (and in fact the scheme forbade withdrawal), the withdrawal must be effected prior to acceptance by the Bank. Therefore, in terms of the ratio laid down by this Court, the employee is ensured under SBIVRS the right of withdrawal within the specified period.”

17. Same was also discussed by the Hon’ble Apex Court in **State Bank of Patiala v. Romesh Chandra Kanoji and Ors. - (2004) 2 SCC 651**; the relevant paras of the same are reproduced as under:

“5. In the case of *Bank of India v. O.P. Swarnakar* (*supra*) a similar question arose for determination, namely, whether an employee having once opted for voluntary retirement pursuant to a voluntary retirement scheme is precluded from withdrawing his offer/opting out from the scheme? This Court in the above judgment found that there was difference between the voluntary retirement scheme framed by State Bank of India (hereinafter referred to as 'SBIVRS') on one hand and the voluntary retirement scheme framed by nationalized banks. The difference in the two schemes was that in the case of SBIVRS, an opportunity of 15-days was given to the employee - applicant to withdraw from the scheme whereas under the voluntary retirement scheme of nationalized banks no such opportunity was given. In the case of voluntary retirement scheme framed by nationalized banks, Clause 10.5 stipulated that it will not be open for an employee to withdraw his request for voluntary retirement after having exercised such option. In the circumstances, this Court took the view that the case of State Bank of India stood on different footing *vis-a-vis* schemes framed by other nationalized banks. The reasons for the difference are contained in para 92 of the said decision, which reads as under:--

"However, the case of the State Bank of India stands slightly on a different footing. Firstly, the State Bank of India had not amended the scheme. It, as noticed here before, even permitted withdrawal of the application after

15th February. The scheme floated by the State Bank of India contained a clause (Clause 7) laying down the mode the manner in which the application for voluntary retirement shall be considered. The relevant clause as referred to herein before creates an enforceable right. In the event the State Bank failed to adhere to its preferred policy, the same could have been specifically enforced by a court of law. The same would, therefore, amount to some consideration."

6. It is evident from above that in the case of SBIVRS, where there is a specific provision for withdrawal, the employee must exercise his option within the time specified; and in case of nationalized banks where there was no provision to withdraw (and in fact the scheme forbade withdrawal), the withdrawal must be effected prior to acceptance by the bank. Therefore, in terms of the ratio laid down by this Court the employee is ensured under SBIVRS the right of withdrawal within the specified period."

18. The Apex Court in the said case of **Ramesh Kumar (Supra)** dealt with the Clause VIII (d) of the voluntary retirement scheme of the FCI, respondent herein, which is similar to the scheme in the instant petition and the facts of the instant case are also similar to the factual matrix in the said case before the Apex Court and while dismissing the appeal of the FCI, the Hon'ble Apex Court observed as under:

"6. Therefore, now the position stands settled that in case of a V.R.S. Scheme of State Bank of India where 15 days' time limit for revocation has been laid down in case the incumbent withdraws his offer within 15 days then the offer given by the incumbent cannot be treated against him and it will be deemed that he has revoked his offer. In case of other banks there is a condition that once the offer has been given it shall not be permitted to be revoked but in view of the above decision the incumbent can still withdraw the offer if it has not been accepted by the Management. Now advertng to the present scheme of the Food Corporation, para 8 clearly stipulates that the incumbent has no right to revoke the same and the Management will decide the same within three months. That means the

Management still has three months' time to consider and decide whether to act upon the offer given by the incumbent or not. But if the incumbent revokes his offer before the Corporation accepts it then in that case, the revocation of the offer is complete and the Corporation cannot act upon that offer. In the present Clause there is one more additional factor which is that the Management has to take a decision within three months. Therefore, once the revocation is made by the incumbent before three months then in that case the Corporation cannot act upon the offer of voluntary retirement unless it is accepted prior to its withdrawal. In the present case, it is clear that the incumbent had given an offer for voluntary retirement on the 13.9.2004 and he revoked his offer on 27.9.2007 but the same was accepted on 9.11.2004 i.e. after the revocation of his offer. In view of the law laid down by this Court in the case of State Bank of Patiala (Supra) the incumbent has already revoked his offer before it could be accepted. Therefore, in this view of the matter, the approach of the High Court appears to be correct and does not require any interference. The revocation made by the incumbent on 27.9.2004 of his offer of retirement cannot be acted upon as he has revoked it before the Corporation could act upon it. Hence, we are of the opinion, that the view taken by the High Court is correct. Consequently, all the three appeals are dismissed but without any order as to costs.”

19. Coming back to the instant petition, clause 8 of the Scheme clearly stipulates that the optee has no right to revoke the same and the Management will decide the same within three months. Meaning thereby that the Management still has three month's time to consider and decide whether to act upon the offer given by the optee or not. But if the optee revokes his offer before the Corporation accepts it, then, in that case, the revocation of the offer is complete and the Corporation cannot act upon that offer. Another additional factor in the said Clause worth noting is that the Management has to take a decision within three

months, therefore, once the revocation is made by the optee before three months then in that case the Corporation cannot act upon the offer of voluntary retirement unless it is accepted prior to its withdrawal. In the present case, it is clear that the petitioner applied for VRS on 28.09.2004 by giving three months notice but withdrew his VRS on 23.11.2004 and his VRS was accepted by the respondent after revocation of the offer by the petitioner on 30.11.2004, when the same was intimated to the petitioner. Therefore, in view of the settled position of the law as discussed hereinabove, the petitioner withdrew his proposal for voluntary retirement before the jural relationship of employer and employee came to an end while acting within his locus poenitentiae. The Food Corporation of India is 'State' as per Article 12 of the Constitution of India, therefore, it cannot take recourse to 'hire & fire' for the purpose of terminating the service of the employees. Their action must satisfy the test of Articles 14 and 21 of the Constitution of India. Therefore, the respondent should not have passed the impugned order retiring the petitioner.

20. The judgment relied upon by the counsel for the respondent in **R. Varaprasad (Supra)**, is not applicable in the facts of the present case. In the said case the employees were permitted to continue in service beyond the notice period under the VRS and full salary was given for the said period but they were not given notice pay while settling their claims under the scheme as they had drawn salary during that period and the Apex Court held the same as legal, but during the pendency of the appeal the employees had been superannuated, therefore, due to peculiarity of the situation, the Hon'ble Apex Court did not interfere with the order of the High Court. Therefore, the judgment is of no assistance to the respondents in the facts and circumstances of the case.

21. In view of the foregoing discussion, the respondent could not have refused to accept the letter of withdrawal of voluntary retirement of the petitioner as it was sent before the jural relationship of employee and employer came to an end. Consequently, the impugned order is quashed. The petitioner shall be entitled to rejoin his duty and he shall be paid all his

salaries and other benefits during the period he was out from the service.

22. The petitioner in his application opting for VRS mentioned his date of birth as 20.01.1946, and by this time the petitioner might have retired from service on attaining the age of superannuation, if that be so, he shall be paid full salary and allowances for the entire period he was out of service till the date of his retirement and thereafter, he shall be entitled to get all retiral benefits counting the above period as if he was in service.

23. With the above directions, the petition is allowed.

23rd March, 2009

KAILASH GAMBHIR, J.