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

\+ **W.P.(C) Nos.7431/2013, 7432/2013, 7435/2013, 7438/2013 & 7442/2013**

% **9th December, 2013**

1. **W.P.(C) No.7431/2013**

C.S. GERA ..... Petitioner
Through: Mr. Vimal Wadhawan, Advocate.

Versus

B.S.E.S RAJDHANI POWR LIMITED …Respondent
Through: Mr. Sandeep Prabhakar, Advocate with Mr. Amit Kumar, Advocate.

2. **W.P.(C) No.7432/2013**

K.K. MOHLA ..... Petitioner
Through: Mr. Vimal Wadhawan, Advocate.

Versus

B.S.E.S RAJDHANI POWR LIMITED …Respondent
Through: Mr. Sandeep Prabhakar, Advocate with Mr. Amit Kumar, Advocate.

3. **W.P.(C) No.7435/2013**

R. K. BHASIN ..... Petitioner
Through: Mr. Vimal Wadhawan, Advocate.

Versus

B.S.E.S RAJDHANI POWR LIMITED …Respondent
Through: Mr. Sandeep Prabhakar, Advocate with Mr. Amit Kumar, Advocate.

4. **W.P.(C) No.7438/2013**

AMAR NATH SACHDEVA ..... Petitioner
Through: Mr. Vimal Wadhawan, Advocate.

Versus

B.S.E.S RAJDHANI POWR LIMITED …Respondent
Through: Mr. Sandeep Prabhakar, Advocate with Mr. Amit Kumar, Advocate.

5. **W.P.(C) No.7442/2013**

P.S. BHATIA ..... Petitioner
Through: Mr. Vimal Wadhawan, Advocate.

Versus

B.S.E.S RAJDHANI POWR LIMITED …Respondent
Through: Mr. Sandeep Prabhakar, Advocate with Mr. Amit Kumar, Advocate.

**CORAM:**
**HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

To be referred to the Reporter or not?

**VALMIKI J. MEHTA, J (ORAL)**

1. This common judgment is being passed in this bunch of cases

because the issues involved in all the cases is the same. Petitioners, in these writ petitions, seek benefits of Time-Bound Promotion Scale of Executive Engineer w.e.f 17.10.1992 and the scale of Superintendent Engineer w.e.f 17.10.2000. Though the applicable dates with respect to each petitioner would be different as per the service record, however, petitioners pray for grant of monetary emoluments on the basis of a claim/circular which according to the petitioners entitle them to specific monetary emoluments.

2. For the sake of convenience, prayer clause in W.P.(C) No.7431/2013 is reproduced as under:-

> "(i) To issue a writ of Mandamus directing the respondent to allow the Time Bound Promotion Scale of Executive Engineer to the petitioner w.e.f. 17.10.1992 and the Scales of Superintending Engineer w.e.f. 17.10.2000 and other consequential benefits and interest as per law.
> (ii) To allow the cost of this Writ Petition to the Petitioner and against the respondent.
> (iii) To pass any other order(s) as deemed fit by this Hon'ble Court in the facts of the case."

3. This bunch of cases came up for hearing on 27.11.2013 when I passed the following order:-

> "1. Counsel for the petitioners admits that petitioners retired on receiving the VRS on 31.12.2003. In case the petitioners have received the VRS benefits, then these petitioners will not lie as has been held by me in the cases of ***Sh. Ram Dass Vs. BSES Yamuna Power Ltd. & Anr***. in WP(C) 7638/2005 decided on 22.8 2013 and ***Sandesh Verma Vs. Govt. of NCT of Delhi & Anr.*** in W.P.(C) 4597/2012 decided on 7.11.2013.

2. Though the petitioners have not mentioned the aspect of VRS in their writ petitions, and which in my opinion ought to have been mentioned, in any case, opportunity of five days is granted to the petitioners to file affidavits with respect to their receiving VRS benefits. These affidavits will mention the date of receiving the VRS benefits, the amounts towards the VRS benefits, and be supported by the documents including the correspondence and the receipt etc signed with respect to VRS benefits.

3. List on 9th December, 2013."

4. The aforesaid order was passed because similar writ petitions were dismissed by me as per the judgments passed in the cases of ***Sh. Ram Dass (supra)*** and ***Sandesh Verma (supra)*** on the principle that those employees who have taken VRS benefits cannot after voluntarily taking VRS benefits seek monetary benefits on account of earlier services rendered in view of direct ratio of the judgment of the Supreme Court in the case of ***A.K. Bindal and Anr. Vs. Union of India and Ors. (2003) 5 SCC 163*** which holds that on the SVRS being accepted by an employee there is a golden handshake and after taking VRS benefits there does not remain relationship of employer and employee for the employee to contend after many years that he ought to have been granted certain monetary emoluments/benefits which were to be granted during the period of services but which were denied to him.

5. The judgment in the case of ***Sandesh Verma (supra)*** is reproduced as under:-

"1. Counter affidavit in this case has been filed way back in August, 2013. There is no reason to grant adjournment to file rejoinder affidavit as the facts of the present case show that the petition is clearly barred by the principle of estoppel as also the direct ratio of the judgment of the Supreme Court in the case of ***A.K.Bindal Vs. Union of India (2003) 5 SCC 163.***

2. Petitioner was an employee of respondent No.2. Petitioner took voluntary retirement under a 2009 SVRS Scheme. Petitioner received amounts pursuant to acceptance of his VRS application. Petitioner has utilized all the amounts which were received by him on his VRS application being accepted which will include the ex gratia payment. Petitioner stood voluntarily retired w.e.f 31.12.2009.

3. By this writ petition, the petitioner prays for grant of pension by stating that he has completed 18 years and 3 months of service and therefore his service has to be taken as 20 years or more and therefore he was entitled to pension on the date his application for voluntary retirement was accepted. The pension claimed is thus in addition to VRS benefits already received by the petitioner.

4. The Supreme Court in the case of ***A.K. Bindal (supra)*** has held that taking of a voluntary retirement is a golden handshake. The effect of this golden handshake is to sever the relationship of employer and employee. After the relationship is severed, no employee can claim any alleged past dues from his employer. Para 34 of the judgment in the case of ***A.K. Bindal (supra)*** which holds accordingly reads as under:-

"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 business world it is known as 'Golden Handshake'. <u>The main purpose of paying this amount is to bring about a compete 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</u>

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." (underlining added)

5. If the petitioner did not want the SVRS the petitioner need not have taken SVRS. Reliance placed by the petitioner upon the circulars of the respondent No.2 including the circular dated 13.10.2009 is misconceived for the reason that neither the petitioner nor any other employee of the respondent No.2 was ever declared surplus.

6. Petitioner has utilized the amounts received by him pursuant to his taking voluntary retirement and therefore in addition to the ratio in the case of ***A.K. Bindal (supra)*** petitioner is estopped from filing the present petition as I have so held in the case titled as ***R. Kothandaraman Vs. Speaker, Lok Sabha Secretariat and Anr.*** in W.P.(C) No.7132/2009 decided on 10.1.2013. Relevant paras of the judgment in the case of ***R.Kothandaraman (supra)*** reads as under:-

"12. In my opinion, the respondents must succeed on the principle of estoppel inasmuch as it makes no difference whether the retirement is pursuant to a contractual voluntary scheme or pursuant to a statutory Rule inasmuch as if Rule 48A is statutory, the provision of Section 115 of the Evidence Act which deals with the principle of estoppel is also a statutory provision. The principle of estoppel is based on the ground of equity that no one can take advantage of a fact and thereafter turn around to say that the situation should be reversed. Equity does not permit such an action of blowing hot and cold by a person. In the present case, since entitlement pursuant to Rule 48A of seeking voluntary retirement is personal to the petitioner there is no element of public policy involved and therefore the petitioner was entitled to waive the rights under Rule 48A of seeking the withdrawal of his request of voluntary retirement by accepting and utilizing the terminal lumpsum benefits given pursuant to the retirement. I am

unable to agree with the judgment in the case of ***Vishnu Vardhan Reddy (supra)*** of Andhra Pradesh High Court inasmuch as the cited judgment does not refer to judgments in the case of ***Punjab National Bank*** and ***Pale Ram Dhania (supra)*** wherein the issue of estoppel has squarely been dealt with. In para 11 of the ***Punjab National Bank's*** case it has been held that on taking benefits pursuant to a voluntary retirement a person is estopped from withdrawing from the voluntary retirement. Paras 10 and 11 of the judgment in the case of ***Punjab National Bank (supra)*** are relevant and they read as under:-

"10. In our view this contention would be of no assistance to the respondent. He knew very well that the money deposited in his account was part of the benefits under the Scheme. He also knew it very well that his request for VRS was accepted after the Scheme had expired, yet he had withdrawn the amount deposited and utilized the same. The fact that the respondent had withdrawn a part of the benefit under the Scheme is not disputed and it could not be. To substantiate the contention, the applicant has submitted a photocopy of the respondent's Bank Account No.27980 (Annexure R-1). It clearly appears from Annexure R-1 that a part of the retirement benefit was deposited in the respondent's Bank Account on 12-1-2001 and on 15-1-2001 he had withdrawn rupees three lakhs. Again on 28-2-2001 he had withdrawn rupees fifty thousand.

11. This fact, however, was not brought to the notice of this Court at the time of the hearing. However, the fact remains that the incumbent had accepted the benefits under the Scheme and utilization thereof would squarely be covered by Direction 1 as notice above. Therefore, the judgment dated 17-12-2002 is reviewed to the extent that he appeal arising out of the judgment and order of the Uttaranchal High Court is dismissed and the judgment of the High Court is upheld."
(underlining added)

13. In ***Pale Ram Dhania's (supra)*** case, the Supreme Court has observed as under:-

1. It is not disputed that the appellant Bank introduced a Voluntary Retirement Scheme, 2000 (herein referred to as "the Scheme") for its employees which had the approval of its Board of Directors. The Scheme was operative w.e.f. November 15, 2000 to December 14,

2000 for the employees who sought voluntary retirement. It is not disputed that the respondent herein who was an employee of the appellant Bank sought voluntary retirement under the Scheme on November 30, 2000. It is also not disputed that on December 2, 2000 he wrote to the Bank for withdrawal of his application for voluntary retirement. On January 22, 2001, the appellant Bank accepted the request for voluntary retirement of the respondent. Further, on January 25, 2001, the respondent withdrew the retiral benefits deposited in the Bank in his name as per voluntary retirement. It appears that the respondent changed his mind after the respondent was relieved from the employment and he filed a petition under Article 226 of the Constitution challenging the acceptance of his request for voluntary retirement. A learned Single Judge of the High Court allowed the petition and set aside the acceptance of the application for voluntary retirement submitted by the respondent. Aggrieved, the appellants preferred a letters patent appeal which was dismissed. It is against the said judgment, the appellants are in appeal before us.

2. A Bench of three Judges of this Court in Punjab National Bank v. Virender Kumar Goel (2004)ILLJ1057SC , has held that an employee who sought voluntary retirement and subsequently wrote for its withdrawal but has withdrawn the amount of retiral benefits as per the Voluntary Retirement Scheme, is not entitled to the withdrawal of his application for voluntary retirement. It is not disputed that in the present case the respondent herein withdrew the amount of retiral benefits on January 25, 2001.

3. For the aforesaid reason, this appeal deserves to be allowed. We order accordingly. The order and judgment under challenge is set aside. There shall be no order as to costs.

C.A. Nos. 4099, 4100 of 2002 and 8833 of 2003

4. In view of the above order passed in C.A. No. 4098 of 2002, these appeals arc also allowed. The orders and judgments under challenge are set aside. There shall be no order as to costs." (underlining added)

14. In view of the aforesaid discussion, I hold that though the petitioner had validly revoked his request for voluntary retirement and which withdrawal was valid in view of the judgments of the Supreme

Court in the case of ***Balram Gupta (supra), Shambu Murari Sinha (supra)*** and ***J.N.Srivastava (supra)*** cited on behalf of the petitioner, however the petitioner is estopped in view of the sub para 1 of para 130 of the judgment in ***Bank of India's (supra)*** case and paras 10 and 11of the judgment in ***Punjab National Bank's (supra)*** case and ***Pale Ram Dhania's case*** to withdraw from his request seeking voluntary retirement. At the cost of repetition it is necessary to be stated that the petitioner does not dispute the fact that the lumpsum amounts credited in his bank account including towards provident fund, gratuity and commutation of pay have been withdrawn and utilized by the petitioner. If the petitioner had only utilized the amounts credited in his account for withdrawing monthly salary which was due to the petitioner from time to time then in such a case possibly it could have been argued that the principle of estoppel cannot apply, however, in the present case the issue is not of withdrawal of amounts every month (whether as pension or as salary) but the issue is of utilizing and taking benefit of lumpsum amounts which were deposited in the account of the petitioner on account of provident fund, gratuity and commutation of pay."

7. In view of the above, there is no merit in the petition and the same is barred not only by the ratio of the judgment of the Supreme Court in the case of ***A.K. Bindal (supra)*** but also by the principle of estoppel. Writ petition is accordingly dismissed, leaving the parties to bear their own costs."

6. The judgment in the case of ***Ram Dass (supra)*** is reproduced as under:-

"1. In this writ petition, petitioner seeks promotion in terms of office order dated 19.7.2003 of the employer. Petitioner also seeks his time bound promotion in terms of the Resolution 216 dated 16.7.1997 and office order dated 23.7.1997.

2. Petitioner admittedly took voluntary retirement under a VRS Scheme. Petitioner on taking voluntary retirement which was effective from 30.12.2003, received all his dues from the employer. When the dues were received by the petitoner on taking voluntary retirement, petitioner did not reserve any rights for taking any further dues.

Petitioner therefore took all his dues in full and final settlement of his being an employee of the respondent no.1-employer.

3. Once an employee seeks and gets voluntary retirement, the jural relationship of employer and employee ceases and the employee forgoes all his claims and rights for any past dues. This is so held by the Supreme Court in the case of ***A.K.Bindal Vs. Union of India (2003) 5 SCC 163*** and para 34 of which reads as under:-

"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 business world it is known as 'Golden Handshake'. The main purpose of paying this amount is to bring about a compete 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." (underlining added)

4. Petitioner is therefore estopped from filing this present petition and claiming the reliefs which are claimed.

5. I have had an occasion to consider this aspect of estoppel against employees who have received benefits under a VRS scheme in various judgments and one such judgment is in the case of ***Shri P.P.Vaidya & Ors. Vs. IFCI Ltd. and Ors.*** in WP(C) 1319/2011 decided on 18.7.2013 wherein I have held that no reliefs for past dues or salary enhancements can be given to employees who have unconditionally taken VRS benefits.

6. In view of the admitted fact that the petitioner had unconditionally taken voluntary retirement, and accepted all his dues payable under the Voluntary Retirement Scheme, the petitioner is therefore estopped from filing the present petition.

7. The petition is therefore dismissed, leaving the parties to bear their own costs."

7. In the present cases, facts are identical that each of the petitioners took voluntary retirement under an SVRS scheme way back in the year 2003. Today we are in the year 2013. It is not the case of the petitioners that they were forced to accept the monetary benefits and emoluments under the VRS scheme, and petitioners admittedly voluntarily and without any force took the necessary monetary emoluments under the VRS scheme. Once that is done the writ petitions will clearly be barred by the ratio of the judgment of the Supreme Court in the case of ***A.K. Bindal (supra)*** and para 34 of which have been reproduced in the judgments in the cases of ***Ram Dass (supra)*** and ***Sandesh Verma (supra).*** Also, as held in the case of ***Sandesh Verma (supra)*** that petitioners such as the present are also estopped because they have utilized the benefits which they received under the SVRS scheme and today reliefs cannot be claimed effectively by reopening the voluntary retirements which have been taken by the petitioners about 10 years back.

8. Learned counsel for the petitioners sought to distinguish the ratio of the judgment of the Supreme Court in the case of ***A.K. Bindal (supra)*** as also the judgments delivered by me in the cases of ***Ram Dass (supra)*** and ***Sandesh Verma (supra)*** by placing reliance upon the judgment of the Division Bench of the Karnataka High Court reported as ***ITI Limited Vs. ITI EX/VR Employees/Officers Welfare Association, Bangalore 2001 LawSuit (Kar) 501*** by contending that as per para 12 of this judgment even after voluntary retirement, employees can seek to reopen the finality of taking monetary benefits under an SVRS scheme. Para 12, which is relied upon of the Karnataka High Court judgment, reads as under:-

> "12. Per contra, learned Counsel Mr. Harikrishna Holla relying upon the judgment of the Supreme Court in Prantiya Vidhyut Mandal Mazdoor Federation V. Rajasthan State Electricity Board and Ors., contends that the facts and circumstances involved in Hindustan Machine Tools Limited's case, supra, are entirely different from the facts and circumstances involved in the present case. He further contends that in the office order of the Hindustan Machine Tools Limited's case, supra, a note was put up and such a note is not available in the present case. He contends that the words used in Annexure-B, namely, 'Clause 4.2 of the scheme' is altogether different from the note that was added in Hindustan Machine Tools Limited's case, supra. In this case, according to him the ex gratia has to be calculated based on the monthly emoluments on the date of retirement. According to him, the words 'on the date of retirement' were not there in the case of Hindustan Machine Tools Limited, supra. In Clause 4.2 of the VRS dated 12-8-1991, it is clearly stated that the ex gratia has to be calculated, namely, basic pay plus DA as

on the date of retirement. It is not in dispute that ITI, pursuant to Annexure-R1, has revised the scale of pay even to the retired employees and the same has been recalculated and settled in favour of the officers who have opted for VRS. Considering the very fact that the salary has been revised and has been paid to such employees, we have to hold that the Basic Pay plus DA as on the date of retirement has to be considered for the purpose of calculation of ex gratia payment. Though ITI has introduced five different VRS, the benefit covered in favour of the employees under the Scheme is stated in Clause 4 of the said Scheme. Clause 4.2 is similar in all the five schemes introduced by the ITI. Therefore, the question before us is, what was the Basic Pay plus DA on the date of retirement of each employee. It is not the case of the ITI that for the purpose of calculation of ex gratia payment, this Basic Pay plus DA has to be calculated on the date of retirement excluding the revision of pay scale. Such a clause has not been introduced by the ITI while framing these five schemes. In the absence of it, when the employees have been paid revised scale of pay with retrospective effect, it goes without saying that at the same rate, the ITI has to recalculate the amount and settle the same in favour of the officers for the purpose of ex gratia."

9. It may be noted that Division Bench of Karnataka High Court has relied upon the judgment of the Supreme Court reported as ***Prantiya Vidhyut Mandal Mazdoor Federation Vs. Rajasthan State Electricity Board AIR 1992 SC 1737*** to give the relief to retired employees in the said case. I have gone through the ratio in the case of ***ITI Limited (supra)*** and the ratio of the said judgment cannot help the petitioners because the binding judgment is the ration in the case of ***A.K. Bindal (supra)*** which has been referred by me in the cases of ***Ram Dass (supra)*** and ***Sandesh Verma (supra)*** and

para 34 of which judgment squarely deals with the issue in question that employees who take SVRS cannot after termination of their relationship with the employer after many years again seek to claim service benefits/monetary benefits from the employer. I have also gone through the ratio of the judgment of the Supreme Court in the case of ***Prantiya Vidhyut Mandal Mazdoor Federation (supra)*** and the same does not deal with the issue of those employees who have taken voluntary retirement coming to the Court again after many years and seeking service benefits of past service rendered with the employer. This issue is in fact, as already stated above, dealt with squarely in the case of ***A.K. Bindal (supra).***

10. Learned counsel for the petitioners also sought to argue that the respondent has not complied with the terms of SVRS scheme by giving requisite benefits and therefore there is denial of monetary benefits to the petitioners, and for that purpose reliance is placed upon clause 2.1.1 of the SVRS scheme. This argument urged on behalf of the petitioner is misconceived for the reason that not only this argument has absolutely no foundation by any pleadings in this regard but also even if I allow such a plea to be taken up, this plea is misconceived not only because of the ratio of ***A.K. Bindal (supra)*** case but also for the fact that if the petitioners were of the opinion that they were not paid the correct amounts under the SVRS

scheme way back in the year 2003, then within a period of limitation three years for claiming of the balance emoluments, petitioner ought to have approached the Court. In the present cases, petitioners have come to the Court claiming alleged balance amounts around 10 years after they took the necessary SVRS benefits. Therefore, it is quite clear that the petitioners, assuming that they have a case on merits, are not entitled to the reliefs on the ground of delay and laches. At no point of time prior to filing these petitions, the petitioners had ever represented that SVRS benefits received are less than as provided for in the SVRS.

11. A resume of the above shows the following:-

(i) Petitioners with open eyes took voluntary retirements and voluntary retirement benefits way back in the year 2003.

(ii) Petitioners not only took voluntary retirement benefits but also have utilized those benefits and therefore effectively cannot seek to reopen their voluntary retirement issues by urging that complete amounts have not been paid to them.

(iii) Even assuming petitioners have a case on merits that certain amounts have not been paid, however, that claim assuming it to be valid, had to be filed within three years of taking voluntary retirements in the

year 2003 and such monetary benefits cannot be claimed much after the limitation period which expired after three years in the year 2003 and definitely not after around 10 years in the year 2013.

(iv) The judgment of the Supreme Court in the case of ***A.K. Bindal (supra)*** in specific terms holds that employees who have taken voluntary retirement from their employers and have received monetary benefits accordingly, then in such cases, the umbilical cord between the employer and employee snaps when the voluntary retirement benefits are taken, and such employees after many years cannot seek to claim alleged service benefits on the ground that they have not been paid the service/monetary benefits.

12. In view of the above, writ petitions are misconceived, and following the judgments delivered by me in the cases of ***Ram Dass (supra)*** and ***Sandesh Verma (supra)*** the writ petitions are dismissed. The petitioners when the writ petitions were filed concealed the facts that they had taken voluntary retirement way back in 2003 and which was done to avoid dismissal of the petitions as per the ratio of ***A.K. Bindal's case (supra).*** Petitioners were forced to admit their having taken voluntary retirements during the hearing on 27.11.2013 when the orders reproduced

above was passed. Even the order dated 27.11.2013 has not been fully complied with as no documents have been filed showing the full and final receipts which would have been signed while taking entire monetary benefits without any protest. The writ petitions thus being abuse of the process of law are dismissed with costs of Rs.25,000/- qua each petition. Respondent can recover the costs in accordance with law.

**DECEMBER 09 , 2013** **VALMIKI J. MEHTA, J.**
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