

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

% Reserved on : 20th March, 2014
Date of decision : 6th May, 2014

+ LPA 308/2013

DEEPAK MOHAN SETHI Appellant
Through Mr. Vimal Wadhawan,
Advocate
versus

BSES RAJDHANI POWER LTD. & ANR..... Respondents
Through Mr. S.N. Choudhri, Mr.
Anjan Sinha & Ms. Shruti
Choudhri, Advocates for
BSES/R-1.
Ms.Anjana Gosain &
Mr.Pradeep Desodya,
Advocates for R-2.

+ LPA 309/2013

S.P. CHAWLA Appellant
Through Mr. Vimal Wadhawan,
Advocate
versus

BSES RAJDHANI POWER LTD. & ANR..... Respondents
Through Mr. S.N. Choudhri, Mr.
Anjan Sinha & Ms. Shruti
Choudhri, Advocates for
BSES/R-1.

+ LPA 310/2013

BANWARI LAL Appellant
Through Mr. Vimal Wadhawan,
Advocate
versus

NORTH DELHI POWER LTD. & ANR..... Respondents
Through Mr. Sudhir Nandrajog, Sr.
Advocate with Mr.Abhay
Kumar, Advocate for
NDPL/R-1.
Mr. D. Rajeshwar Rao,
Mr.Charanjeet Singh &
Mr.Vikran Kaushik,
Advocates for R-2.

+ LPA 312/2013

CHANDER BHAN SHARMA Appellant
Through Mr. Vimal Wadhawan,
Advocate
versus

NORTH DELHI POWER LTD. & ANR..... Respondents
Through Mr. Sudhir Nandrajog, Sr.
Advocate with Mr.Abhay
Kumar, Advocate for
NDPL/R-1.
Mr. D. Rajeshwar Rao,
Mr.Charanjeet Singh &
Mr.Vikran Kaushik,
Advocates for R-2.

+ LPA 313/2013 & CM 7843/2013

ANIL MOHAN Appellant
Through Mr. Vimal Wadhawan,
Advocate
versus

BSES RAJDHANI POWER LTD. & ANR..... Respondents
Through Mr. S.N. Choudhri, Mr.
Anjan Sinha & Ms. Shruti
Choudhri, Advocates for

- BSES/R-1.
Ms.Sonia Sharma &
Mr.Neeraj Nischal,
Advocates for R-2
- + **LPA 318/2013**
- SADHU RAM VERMA Appellant
Through Mr. Vimal Wadhawan,
Advocate
- versus
- BSES RAJDHANI POWER LTD. & ANR..... Respondents
Through Mr. S.N. Choudhri, Mr.
Anjan Sinha & Ms. Shruti
Choudhri, Advocates for
BSES/R-1.
Ms.Anjana Gosain &
Mr.Pradeep Desodya,
Advocates for R-2.
- + **LPA 319/2013**
- SURESH GARG Appellant
Through Mr. Vimal Wadhawan,
Advocate
- versus
- NORTH DELHI POWER LTD. & ANR..... Respondents
Through Mr. Sudhir Nandrajog, Sr.
Advocate with Mr. Abhay
Kumar, Advocate for
NDPL/R-1.
Mr. H.S. Sachdeva,
Advocate for R-2.
- + **LPA 320/2013**
- K.L. SHARMA Appellant
Through Mr. Vimal Wadhawan,
Advocate

versus

NORTH DELHI POWER LTD. & ANR..... Respondents

Through Mr. Sudhir Nandrajog, Sr.
Advocate with Mr. Abhay
Kumar, Advocate for
NDPL/R-1.
Mr. H.S. Sachdeva,
Advocate for R-2.

+ **LPA 321/2013**

BRAHM DUTT SHARMA Appellant

Through Mr. Vimal Wadhawan,
Advocate

versus

BSES RAJDHANI POWER LTD. & ANR..... Respondents

Through Mr. S.N. Choudhri, Mr.
Anjan Sinha & Ms. Shruti
Choudhri, Advocates for
BSES/R-1.

+ **LPA 326/2013 & CM 7899/2013**

BALJIT SINGH DAHIYA Appellant

Through Mr. Vimal Wadhawan,
Advocate

versus

BSES RAJDHANI POWER LTD. & ANR..... Respondents

Through Mr. S.N. Choudhri, Mr.
Anjan Sinha & Ms. Shruti
Choudhri, Advocates for
BSES/R-1.

+ **LPA 328/2013**

DALEEP KUMAR GUGLANI Appellant

Through Mr. Vimal Wadhawan,
Advocate

versus

NORTH DELHI POWER LTD. & ANR..... Respondents

Through Mr. Sudhir Nandrajog, Sr.
Advocate with Mr. Abhay
Kumar, Advocate for
NDPL/R-1.
Ms. Sonia Sharma &
Mr. Neeraj Nischal,
Advocates for R-2

CORAM:

HON'BLE MR. JUSTICE P.K. BHASIN

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT

J.R. MIDHA, J.

1. The appellants have challenged the dismissal of their writ petitions by the learned Single Judge on the ground of delay and laches.

Factual matrix

2. The appellants are the erstwhile employees of the respondent who took voluntary retirement under the Voluntary Retirement Scheme of the respondent during the period 2003 to 2006.

3. At the time of opting for VRS, the appellants submitted an application form in which they declared all the relevant particulars including their designation and basic pay on the basis of which the amount paid to them was calculated. The relevant portion of the application form of the appellant in LPA 319/2013 is reproduced here:

“With reference to Office Order No. NDPL/HR/03-04/VSS/01 dt. 29.11.2003, I hereby apply for voluntary

separation under the NDPL Voluntary Separation Scheme, 2003. My personal & service particulars are as under:

1. *Name* : *Suresh Garg*
2. ***Designation*** : ***S.E.***
3. *Employee No.* : *8925*
4. *Department & Section:* *H.O.G. Enforcement (Spl. Cell)*
5. *Location* : *'D'Block Saraswati Vihar*
6. *Date of Birth* : *27.12.1949*
7. *Age* : *54 years*
8. *Date of Appointment:* *10.2.1973*
9. *Experience* : *30 yrs.*
10. ***Basic Pay*** : ***12,100/-***
11. ***DA*** : ***7139/-***

Declaration / Undertaking

- I. *I hereby declare that I have gone through and fully understood the NDPL Voluntary Separation Scheme and undertake to abide by all terms & conditions of the said Scheme.*
- II. *I also understand that I shall not be eligible for re-employment / re-engagement either in NDPL or any other company or concern belonging to the same management as that of NDPL.*
- III. *I hereby undertake that I shall not withdraw my application for the Voluntary Separation without the approval of competent authority.*

*I request that my application for voluntary separation may be considered favourably and on acceptance of same, **my dues may be settled at the earliest, as per the scheme.***

(Emphasis supplied)

4. The respondent accepted the applications of the appellants and paid them the dues on the basis of the designation and pay declared by them.

5. The appellants filed the writ petitions in February, 2013, in which they made a claim with respect to Time Bound Promotion Scale (hereinafter referred to as 'TBPS') during the period 1992 to

2000.

6. The appellants are claiming the TBPS on the basis of the office orders dated 23rd July, 1997 and 21st December, 1999. However, no claim was made by the appellants at the relevant time when the TBPS became due according to the appellants.

7. All the appellants took voluntary retirement under the Voluntary Retirement Scheme (in short hereinafter referred to as 'VRS') on various dates during 2003 to 2006. However, no claim or demand was made even at the time of accepting the voluntary retirement.

8. From the date of taking VRS upto April/May 2012 also, no claim or demand was made by the appellants to the respondent. The first representation to claim the TBPS was made by the appellants in April/May 2012. The writ petitions were filed in February, 2013.

9. The appellants have not given any explanation whatsoever, either in the writ petition or in the appeal, for the delay in filing the writ petitions. The appellants do not dispute that no claim was made at the relevant time when the TBPS became due; no claim/demand was made at the time of taking VRS; no claim/demand was made from the date of VRS upto April, 2012 and the first representation was made in April, 2012.

10. There is delay of more than 12 years in filing the writ petitions. The computation of the period of delay is as under:

LPA No.	Date from which TBPS claimed	Date of taking VRS	Date of filing writ petition	Delay in filing the writ petition

308/2013	25.8.1999	31.12.2003	6/13.2.2013	13 yrs 5 months 12 days
309/2013	24.9.2000	31.12.2003	7/13.2.2013	12 yrs 4 months 14 days
310/2013	4.7.1996	1.1.2004	6/14.2.2013	15 yrs 6 months 14 days (from the date of circular dated 23.7.1997)
312/2013	5.9.1998	31.1.2004	6/14.2.2013	14 yrs 5 months 1 day
313/2013	15.11.1997	31.12.2003	6/13.2.2013	15 yrs 2 months 22 days
318/2013	11.10.1992	31.12.2003	13.2.2013	15 yrs 6 months 21 days (from the date of circular dated 23.7.1997)
319/2013	13.9.1997	31.1.2004	6/14.2.2013	15 yrs 4 months 24 days
320/2013	28.1.1999	31.1.2004	6/14.2.2013	14 yrs 9 days
321/2013	19.10.2000	31.12.2003	6/13.2.2013	12 yrs 3 months 18 days
326/2013	2 nd TBPS w.e.f. 7.10.1992 and 3 rd TBPS w.e.f. 7.10.2000	30.11.2006	6/13.2.2013	15 yrs 6 months 14 days (from the date of circular dated 23.7.1997)
328/2013	16.5.1998	31.1.2004	6/14.2.2013	14 yrs 8 months 21 days

Delay and laches

11. The issue which has arisen for consideration in this matter is

whether the writ petitions filed by the appellants have been rightly dismissed as being barred by delay and laches.

12. Learned counsel for the appellants submitted that the dismissal of a writ petition on the ground of delay and laches is not an absolute rule of law and the Court can entertain the writ petition in spite of delay and laches. The learned counsel for the appellants referred to and relied upon the *Ramanlal Keshavlal Soni v. State of Gujarat*, AIR 1977 Gujarat 76, *Lt. Governor of Delhi v. Dharampal*, (1990) 4 SCC 13, *H.D. Vora v. State of Maharashtra*, (1984) 2 SCC 337 and *K. Prasad v. Union of India*, 1988 Supp SCC 269.

13. We agree that the dismissal of a writ petition on the ground of delay and laches is not an absolute rule of law and the Court can, upon sufficient cause being shown, entertain the writ petition in spite of delay and laches. However, the Court has to take into consideration the principles laid down by the Supreme Court with respect to belated service related claims and stale claims.

Belated service related claim

14. In *Union of India v. Tarsem Singh*, (2008) 8 SCC 648, the Supreme Court held that a belated service related claim is to be rejected on the ground of delay and laches except in the case of a continuing wrong. The Supreme Court further carved out an exception to the above exception by holding that if the grievance is in respect of any order or administrative decision which related to or affected several others also and if the opening of the issue would affect the settled rights of the third party, then the claim would not

be entertained. The relevant portion of the said judgment is reproduced hereunder:

“7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

(Emphasis supplied)

Stale Claims

15. It has been held in a number of cases by the Supreme Court as also this Court that stale claims of failure to make out grounds

for condonation of delay in seeking remedy in law should not be entertained by the Courts.

16. In ***K.V. Rajalakshmiah Setty v. State of Mysore***, AIR 1967 SC 993, the Supreme Court held the delay of 13 years in filing the writ petition on the ground that the petitioner had been writing letters from time to time was not sufficient to condone the delay.

17. In ***Jagdish Narain Maltiar v. The State of Bihar***, AIR 1973 SC 1343, the Supreme Court held the delay of three years in filing the writ petition to challenge the order of removal to be fatal. The relevant portion of the judgment is reproduced hereunder:

“8. Thus it was in August, 1963 that the appellant discovered that his services were really determined for gross misconduct. **For nearly 3 years thereafter he kept on submitting one memorandum after another to the Government and it was not until late in 1966 that he filed a writ petition in High Court to challenge the order of removal.** The memorials presented by him to the Government were in the nature of mercy petitions and he should have realised that in pursuing a remedy which was not duly appointed under the law he was putting in peril a right of high value and significance. By his conduct he disabled the High Court from exercising its extraordinary powers in his favour. **We are therefore of the opinion that the High Court was justified in refusing to entertain the petition.**”

(Emphasis supplied)

18. In ***CBSE v. B.R. Uppal***, 129 (2006) DLT 660 (DB), the Division Bench of this Court held that the writ petition to challenge the seniority list after six years to be a stale claim. This Court further held that merely making representations is not a good

ground for condoning the delay unless it is a statutory representation.

19. In ***Savitri Sahni v. Lt. Governor, NCT of Delhi***, 130 (2006) DLT 287 (DB), the Division Bench of this Court again held the delay of eight years in filing the writ petition to claim the parity in emoluments to be a stale claim. This Court rejected the ground that the appellant had been making representations. The relevant portion of the said judgment is reproduced hereunder:

“11. *Equally untenable is the contention urged by Mr.Datar that since the appellant had been making representations, the delay of nearly 8 years between the date when the appellant first had the cause of action to file the petition and the date when the petition was filed stood explained. Just because successive representations are made for years on end does not necessarily mean that the aggrieved person is acting diligently. The aggrieved person cannot keep hoping against hope and delay approaching the court indefinitely. A writ court is not bound to entertain a stale claim for adjudication. Due diligence on the part of the petitioner is a condition precedent for the exercise of the extra ordinary writ jurisdiction of the court. If the appellant indeed was wronged on account of refusal of salary for nearly 9 years during which she served the school, there was no reason why she should have waited for another 7 years thereafter before coming to the Court to seek redress. The learned Single Judge could have, in that view, passed no order other than the one passed by him in the present case. This appeal accordingly fails and is hereby dismissed but in the circumstances without any orders as to costs.*”

(Emphasis supplied)

Whether the appellants can maintain a claim after accepting the voluntary retirement under the VR Scheme and receiving payment under it?

20. In **A.K. Bindal v. UOI, (2003) 5 SCC 163**, the erstwhile employees of Fertilizer Corporation of India and Hindustan Fertilizer Corporation filed writ petitions before this Court for revision of pay scale, after opting the Voluntary Retirement Scheme. The writ petitions were later transferred to the Supreme Court. The Supreme Court dismissed the petitions holding that the VRS resulted in complete cessation of jural relationship between the employer and the employees, and the employees cannot thereafter agitate for any kind of their past rights including any claim with respect to the enhancement of the pay scale. The Supreme Court further held that the whole purpose of the VRS would be frustrated if the employee is permitted to raise a grievance regarding enhancement of the pay scale after opting for VRS. The relevant portion of the said judgment is reproduced hereunder:-

“28. ... Learned counsel has submitted that the employees of both the Companies having taken advantage of VRS and having taken the amount without any demur, the relationship of employer and employee had ceased to exist. They cannot therefore raise any grievance regarding the non-revision of pay scale at this stage and consequently the writ petitions have become infructuous. Even Shri A.K. Bindal who filed the writ petition in his capacity as the President of the Federation of Officers' Association had also taken voluntary retirement and after acceptance of the amount had left the Company and had gone out.”

“32. ...The employees accepted VRS with their eyes open without making any kind of protest regarding their past rights...”

33. The Voluntary Retirement Scheme (VRS) which is sometimes called Voluntary Separation Scheme (VSS) is introduced by companies and industrial establishments in order to reduce the surplus staff and to bring in financial efficiency...

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 the business world it is known as “golden handshake”. The main purpose of paying this amount is to bring about a complete 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.

35. The contention that the employees opted for VRS under any kind of compulsion is not worthy of acceptance. The petitioners are officers of the two Companies and are mature enough to weigh the pros

and cons of the options which were available to them. They could have waited and pursued their claim for revision of pay scale without opting for VRS. However, they in their wisdom thought that in the fact situation VRS was a better option available and chose the same. After having applied for VRS and taken the money it is not open to them to contend that they exercised the option under any kind of compulsion. In view of the fact that nearly ninety-nine per cent of employees have availed of the VRS Scheme and have left the Companies (FCI and HFC), the writ petition no longer survives and has become infructuous.”

(Emphasis supplied)

21. In ***HEC Voluntary Retired Employees Welfare Society v. Heavy Engineering Corpn. Ltd.***, (2006) 3 SCC 708, the employees of Heavy Engineering Corporation Ltd. (HEC Ltd.) opted for VRS and retired during the period 1st January, 1992 to 31st December, 1996. Vide circular dated 9th October, 1997, HEC Ltd. revised the pay scale of the employees on the rolls of the company with retrospective effect from 1992. The erstwhile employees who had taken VRS, filed the writ petition before Patna High Court to seek the revision of their pay scale which was dismissed. The Division Bench in appeal upheld the dismissal of the writ petition. The Supreme Court, relying upon ***A.K. Bindal*** (supra), dismissed the Special Leave Petition holding that an employee after taking the VRS cannot raise claim for higher salary unless by reason of a statute he becomes entitled thereto. The relevant portion of the said judgment is reproduced hereunder:-

“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 "State" within the meaning of Article 12 of the Constitution, 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 the 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 the Contract Act, 1872, therefore, would be applicable too. (See Bank of India v. O.P. Swarnakar [(2003) 2 SCC 721 : 2003 SCC (L&S) 200] .)

12. It is also common knowledge that a scheme of voluntary retirement is preceded by financial planning. Finances for such purpose, either in full or in part, might have been provided for by the Central Government. Thus financial implications arising out of implementation of a scheme must have been borne in mind by the Company, particularly when it is a sick industrial undertaking. Offers of such number of employees for voluntary retirement, in that view of

the matter, were to be accepted by the Company only to the extent of finances available therefor.

13. We have noticed hereinbefore the benefits admissible under the Scheme. The employee offering to opt for such voluntary retirement not only gets his salary for the period mentioned therein but also gets compensation calculated in the manner specified therein, apart from other benefits enumerated thereunder.

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16. The question which arises for our consideration is whether in view of the fact that the employees who had opted for voluntary retirement having not been excluded from the purview of the said Circular No. 5/97 by clause 3.3, would be treated to be included or the benefits thereof would be available to only such employees who come within the purview of clause 3.2 thereof?

17. Construction of the aforementioned provisions undoubtedly would depend upon the purport and object of the Voluntary Retirement Scheme vis-à-vis the retrospective effect given to the revision of pay in terms of the aforementioned circular dated 9-10-1997.

18. The Voluntary Retirement Scheme speaks of a package. One either takes it or rejects it. While offering to opt for the same, presumably the employee takes into consideration the future implication also.

19. It is not in dispute that the effect of such Voluntary Retirement Scheme is cessation of jural relationship between the employer and the employee. Once an employee opts to retire voluntarily, in terms of the contract he cannot raise a claim for a higher salary unless by reason of a statute he becomes entitled thereto. He may also become entitled thereto even if a policy in that behalf is formulated by the Company.

20. We have indicated hereinbefore that before floating such a scheme both the employer as also the employee take into account the financial implications in relation thereto. When an invitation to offer is floated by reason of such a scheme, the employer must have carried out exercises as regards the financial implication thereof. If a large number of employees opt therefor, 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. Similarly when an employer accepts the recommendations of a Pay Revision Committee, having regard to the financial implications thereof it may accept or reject the whole or a part of it. The question of inclusion of employees who form a special class by themselves, would, thus, depend upon the object and purport thereof. The appellants herein do not fall either in clause 3.2 or 3.3 expressly. They would be treated to be included in clause 3.2, provided they are considered on a par with superannuated employees. They would be excluded if they are treated to be discharged employees.

21. We have noticed that admittedly thousands of employees had opted for voluntary retirement during the period in question. They indisputably form a distinct and different class. Having given our anxious consideration thereto, we are of the opinion that neither are they discharged employees nor are they superannuated employees. The expression “superannuation” connotes a distinct meaning. It ordinarily means, unless otherwise provided for in the statute, that not only he reaches the age of superannuation prescribed therefor, but also becomes entitled to the retiral benefits thereof including pension. “Voluntary retirement” could have fallen within the aforementioned expression, provided it was so stated expressly in the Scheme.

*22. Financial considerations are, thus, a relevant factor both for floating a scheme of voluntary retirement as well as for revision of pay. **Those employees who opted for voluntary retirement, make a planning for the future. At the time of giving option, they know where they stand. At that point of time they did not anticipate that they would get the benefit of revision in the scales of pay. They prepared themselves to contract out of the jural relationship by resorting to “golden handshake”. They are bound by their own act. The parties are bound by the terms of contract of voluntary retirement.** We have noticed hereinbefore that unless a statute or statutory provision interdicts, the relationship between the parties to act pursuant to or in furtherance of the Voluntary Retirement Scheme is governed by contract. By such contract, they can opt out of such other terms and conditions as may be agreed upon. In this case the terms and conditions of the contract are not governed by a statute or statutory rules.*

*23. The question came up for consideration before the Division Bench of this Court in A.K. Bindal v. Union of India [(2003) 5 SCC 163 : 2003 SCC (L&S) 620] wherein this Court took notice of the fact that **in implementation of such a scheme a considerable amount has been paid to the employee ex gratia besides the terminal benefits in case he opts therefor.** It has further been noticed that **the payment of compensation is granted not for doing any work or rendition of service and in lieu of his leaving the services of the Company.** (See also *Officers & Supervisors of I.D.P.L. v. Chairman & M.D., I.D.P.L.* [(2003) 6 SCC 490 : 2003 SCC (L&S) 916])*

24. In State of A.P. v. A.P. Pensioners Assn. [(2005) 13 SCC 161 : JT (2005) 10 SC 115] this Court categorically held that the financial implication is a relevant criterion for the State Government to

determine as to what benefits can be granted pursuant to or in furtherance of the recommendations of a Pay Revision Committee. A fortiori while taking that factor into account, an employer indisputably would also take into consideration the number of employees to whom such benefit can be extended.

25. It will also be germane for such a purpose to take into consideration the question as to whether those who are no longer on the rolls of the Company should be given the benefit thereof.

26. Considering the matter from that context, we are of the opinion that it cannot be said that the Company intended to extend the said benefits to those who had opted for voluntary retirement. Clause 3.2 of the circular includes only those who were on the rolls of the Corporation as on 1-1-1992, as also those who ceased to be in service on that date on account of superannuation or death. The appellants do not come in the said category. In view of the fact that they have not been expressly included within the purview thereof, we are of the opinion that although they have not been excluded by clause 3.3, they would be deemed to be automatically excluded.”

(Emphasis Supplied)

22. In *ITI Ltd. v. ITI Ex/VR Employees/Officers Welfare Assn.*, (2010) 12 SCC 347, the erstwhile employees of ITI Ltd. filed a writ petition before the Karnataka High Court to seek wage revision after opting for VRS. The High Court allowed the wage revision which was challenged before the Supreme Court. The Supreme Court allowed the appeal holding that the employees, after opting for VRS, cannot seek revision in wages retrospectively. The Supreme Court referred to and relied upon

HEC Voluntary Retired Employees Welfare Society (supra). The relevant portion of the said judgment is reproduced hereunder:-

“4. The short question involved in these appeals is “whether after an employee has accepted the VRS Scheme and received payment under it, can he subsequently claim a higher amount because of subsequent wage revision with retrospective effect by the employer”.

5. This Court in HEC Voluntary Retd. Employees Welfare Society v. Heavy Engg. Corpn. Ltd. [(2006) 3 SCC 708 : 2006 SCC (L&S) 602 : (2006) 2 LLJ 245] , vide paras 11 and 12, observed as under at p. 248 of LLJ: (SCC p. 715, paras 11-12).

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6. Learned counsel for the appellant hence, submitted that the High Court was in error in granting the amounts over and above the amounts which were paid to the employee under the VRS Scheme.

7. Learned counsel for the respondents, however, relied on Circular No. 409 dated 6-9-1995, a copy of which is annexed as Annexure P-2 to these appeals. The relevant Clause 1.2 reads as under:

“1.2. Officers who have ceased to be in service on or after 1-1-1992 due to resignation, superannuation, voluntary retirement or death, will be eligible to arrears on a pro-rata basis wherever due.”

8. Per contra, learned counsel for the appellant has invited our attention to another clause of the same circular viz. Clause 23.1 which states as follows:

“23.1. ... Calculations related to compensation paid under the Voluntary Retirement Scheme, incentive for not availing house building advance/interest subsidy for housing loan and/or vehicle advance shall not be reopened.”

9. On a plain reading of both the clauses together, quoted above, it is evident that the expression “voluntary retirement” in Clause 1.2 of the said

circular does not refer to voluntary retirement under the VRS Scheme but it refers to voluntary retirement independent of such scheme. This is evident if we read the said clause along with the subsequent clause i.e. Clause 23.1 which states that calculations related to compensation paid under the Voluntary Retirement Scheme shall not be reopened.

10. Learned counsel for the respondents submitted that wages had subsequently been revised with retrospective effect and hence in the eye of the law it has to be deemed that at the time when an employee got the benefits under the VRS Scheme, the calculation was done wrongly and the amount should have been calculated on the higher pay.

11. We do not find substance in this submission. In our opinion, at the most it can be said that a wrong calculation was done when the benefits were paid to an employee under the VRS Scheme. This will not benefit the employees because Clause 23.1 of the circular, quoted above, does not speak of only valid calculations but it refers to all calculations under the VRS Scheme, irrespective of whether they are valid or invalid calculations, and they shall not be reopened. In other words, if an employee has got the benefits under the VRS Scheme, whether right or wrong, it cannot be reopened and an employee cannot claim any higher amount on account of subsequent revision in the wages retrospectively. ”

(Emphasis supplied)

23. The learned counsel for the appellants submitted that the jural relationship between the employer and employee does not cease upon taking VRS as held by the Supreme Court in *A.K. Bindal* (supra) and *HEC Voluntary Retired Employees Welfare Society* (supra). The learned counsel strongly referred to and relied upon para 9 of *UCO Bank v. Sanwar Mal*, (2004) 4 SCC 412 in

which it has been observed that the voluntary retirement maintains the relationship for the purposes of grant of retiral benefits.

We have carefully gone through *UCO Bank v. Sanwar Mal* (supra), in which the employee, after resignation, filed a suit for declaration that he was entitled to the pension under the regulations. His suit was decreed and the first as well as second appeals of the bank against the decree were dismissed. The bank approached the Supreme Court by special leave. The Supreme Court held that resignation, dismissal, removal as well as termination results in forfeiture of entire past service and consequently disqualifies the employee for pensionary benefits under Regulation 22. The Supreme Court therefore allowed the appeal and set aside the decree, holding that the resigned employee was not entitled to the pension after resignation.

The issue of voluntary retirement under VRS did not at all arise for consideration in the above case and the judgment does not lay down any law with respect to the rights of the employees after taking VRS. Secondly, the voluntary retirement mentioned in para 9 of the judgment is the voluntary retirement under the rules and not under any Voluntary Retirement Scheme. It is well settled that voluntary retirement under the Rules is different from the voluntary retirement under a Voluntary Retirement Scheme. This judgment does not help the appellants and reliance placed by the learned counsel for the appellants is clearly misconceived.

It may be noted that this very argument was raised in *ITI Ltd. v. ITI Ex/VR Employees/Officers Welfare Assn.* (supra) and

the Supreme Court in para 9 observed that the voluntary retirement in Clause 1.2 of the circular therein does not refer to voluntary retirement under the Voluntary Retirement Scheme but referred to voluntary retirement independent of such schemes. Para 9 of **ITI Ltd.** (supra) is again reproduced hereunder:-

“9. On a plain reading of both the clauses together, quoted above, it is evident that the expression “voluntary retirement” in Clause 1.2 of the said circular does not refer to voluntary retirement under the VRS Scheme but it refers to voluntary retirement independent of such scheme. This is evident if we read the said clause along with the subsequent clause i.e. Clause 23.1 which states that calculations related to compensation paid under the Voluntary Retirement Scheme shall not be reopened.”

We may also note that in **Repakula Vidya Sagar v. State Bank of Hyderabad Head Office, (2002) 3 LLN 143**, the Andhra Pradesh High Court summarised the general principles pertaining to voluntary retirement and held that the voluntary retirement under the rules is different from the voluntary retirement under the Voluntary Retirement Scheme. The relevant portion of the judgment is as under:-

“7. In the field of public services, once a person joins any public service, he is required to serve such service till he attains the age of superannuation in normal course and he cannot claim that he is entitled to retire from service at any time according to his wish and will before he attains the age of superannuation. However, the rules governing such public service may provide for voluntary retirement of an employee before he attains the age of

superannuation. If such rules exist, then, voluntary retirement becomes a condition of service. For example, rule 56(k) of the Fundamental Rules provides that any Government servant may, by giving notice of not less than 3 months in writing to the appropriate authority, retire from service after he has attained a particular age (ranging from 52 to 55 years depending upon the group to which he belongs) and subject to various other stipulations contained in the proviso to that rule. The provision for voluntary retirement, being a condition of service, gives an option in absolute terms to a public servant to voluntarily retire after giving the requisite notice and after he has reached the qualifying age or rendered qualifying service, as the case may be. In such a case, when the employee makes a request for voluntary retirement, there is no question of acceptance of the request by the employer. In the absence of rules providing for voluntary retirement, however, no employee could insist, as a matter of course or as a matter of right, that the employer should permit him to retire voluntarily before attaining the age of superannuation keeping the service benefits and conditions intact. The rules providing for voluntary retirement may be of two kinds, namely:

(i) a rule providing an option in absolute terms to a public servant to voluntarily retire on attaining a particular age or after putting in a specified number of years of service and after giving notice; or

(ii) a rule merely prescribing eligibilities to seek voluntary retirement and not providing for voluntary retirement as such.

In the former case, an employee, on fulfilling the prescribed conditions, can claim voluntary retirement as a matter of right, whereas in the latter case he cannot, because, despite the fact that he fulfils the prescribed eligibilities to apply for voluntary retirement, the discretion to accept such offer of

retirement is vested in the employer, and the employer may or may not accept such an offer of the employee having regard to the needs and exigencies of service and other relevant considerations. In addition to the aforementioned two kinds of rules that may exist in a public service organization providing for voluntary retirement, a particular service organization may also evolve and introduce a special scheme in its discretion de hors the rules providing for voluntary retirement. If an employee seeks voluntary retirement under such Special Scheme, he can seek voluntary retirement strictly in terms of such Special Scheme and not de hors the Special Scheme, because, as already pointed out supra, no employee, after joining a public service, can claim voluntary retirement as a matter of right or course unless the rules governing terms and conditions of his service provide for such retirement.”

(Emphasis supplied)

24. The learned counsel for the appellants next relied upon ***Bank of India v. K. Mohandas*, (2009) 5 SCC 313** in which Bank of India floated a Voluntary Retirement Scheme. The salient features of the Voluntary Retirement Scheme are given in para 8 of the judgment. The employees opting for VRS were entitled to gratuity, provident fund, leave encashment and pension in terms of Employees Pension Regulations, 1995. However, the optees for VRS were denied the pension whereupon petitions were filed before different High Courts to seek the pension. The bank contended that the employees cannot be allowed to resile from the VRS. The Supreme Court rejected the argument and held that the employees were not seeking to resile from the Scheme. The

Supreme Court further held that the employees are actually seeking for enforcement of the clause of the Voluntary Retirement Scheme that provides that the optees will be eligible for pension under the Pension Regulations, 1995 and therefore, the plea of estoppel does not at all arise in the facts and circumstances of this case. The Supreme Court further held that the optees of VRS are entitled to the pension under the Pension Regulations, 1995. The relevant portion of the said judgment is as under:-

“24. The principal question that falls for our determination is: whether the employees (having completed 20 years of service) of these banks (Bank of India, Punjab National Bank, Punjab and Sind Bank, Union Bank of India and United Bank of India) who had opted for voluntary retirement under VRS 2000 are entitled to addition of five years of notional service in calculating the length of service for the purpose of the said Scheme as per Regulation 29(5) of the Pension Regulations, 1995?”

“27. In view of the admitted position that VRS 2000 was a contractual scheme; that it was an invitation to offer containing a term that the optee will also be eligible for pension as per the Pension Regulations; that an application by an employee for voluntary retirement was a proposal or offer and that upon acceptance of the application for voluntary retirement made by the employee and a communication of acceptance to him, the concluded contract came into existence and the offeree was relieved from the employment. For consideration of the question posed herein, the Court needs to examine the contract and the circumstances in which it was made in order to see whether or not from the nature of it, the parties must have made their bargain on the footing that a particular thing or state of things would continue to

exist.”

“64. On behalf of banks it was submitted that the employees, having taken benefits under the Scheme (VRS 2000), are estopped from raising any issue that their entitlement to pension would not be covered by amended Regulation 28. It was suggested that the employees having taken benefit of the Scheme cannot insist for pension under Regulation 29(5). O.P. Swarnakar [(2003) 2 SCC 721 : 2003 SCC (L&S) 200] was relied upon in this regard wherein it has been held that an employee, having taken the ex gratia payment, or any other benefit under the Scheme cannot be allowed to resile from the Scheme.

*65. Insofar as the present group of appeals is concerned, **the employees are not seeking to resile from the Scheme. They are actually seeking enforcement of the clause in the Scheme that provides that the optees will be eligible for pension under the Pension Regulations, 1995.** According to them, they are entitled to the benefits of Regulation 29(5). In our considered view, plea of estoppel is devoid of any substance; as a matter of fact it does not arise at all in the facts and circumstances of the case.”*

(Emphasis supplied)

This judgment deals with the specific enforcement of the terms of the Voluntary Retirement Scheme, and the Supreme Court held that the optees of VRS were entitled to the pension under the Pension Regulations which was specifically mentioned in the Voluntary Retirement Scheme. This judgment does not apply to the present case as the appellants are seeking a benefit which has not been mentioned in the Voluntary Retirement Scheme.

25. The learned counsel for the appellants next relied upon **A. Satyanarayana Reddy v. Labour Court, (2008) 5 SCC 280** in which the optees of Voluntary Retirement Scheme filed the writ petition to seek lay-off compensation under Section 33-C(2) of the Industrial Dispute Act, 1947 on the ground that the lay-off compensation under Section 33-C(2) is a statutory right. The Supreme Court, in para 17 of the judgment, held that there cannot be any doubt whatsoever that ordinarily upon opting for a voluntary retirement under a scheme framed in that behalf, the workman would cease to have any claim against the management. However, the position with respect to the statutory right of opting for lay-off compensation may be different. The Supreme Court further observed that in *NBCC v. Pritam Singh Gill*, (1972) 1 SCC 1, it was held that the proceedings under Section 33-C(2) would be maintainable after discharge and the case was therefore referred to a larger Bench. The relevant portion of the said judgment is reproduced hereunder:-

“17. There cannot be any doubt whatsoever that ordinarily upon opting for a voluntary retirement under a scheme framed in that behalf, the workmen would cease to have any claim against the management. However, the same prima facie in our opinion would not mean that a statutory right of opting for lay-off compensation, unless expressly waived, may continue to remain within the realm of legal right, so as to enforce the same before a forum constituted under the Act. The Bombay High Court in Premier Automobiles Ltd. [(2002) 1 LLJ 527] as also this Court in A.K. Bindal [(2003) 5 SCC 163 : 2003 SCC (L&S) 620] proceeded on the basis that an

employee having received the amount of compensation without any demur whatsoever would be estopped and precluded from raising any other or further claim stating: (A.K. Bindal case [(2003) 5 SCC 163 : 2003 SCC (L&S) 620] , SCC p. 186, para 32)

“32. ... The employees accepted VRS with their eyes open without making any kind of protest regarding their past rights based upon revision of pay scale from 1-1-1992.”

18. The said decision moreover proceeded on the basis that when the parties enter into a transaction known as “golden handshake”, the jural relationship between the employer and the employee comes to an end. It was opined: (A.K. Bindal case [(2003) 5 SCC 163 : 2003 SCC (L&S) 620] , SCC pp. 186-87, para 34)

“34. ... 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.”

19. The claim of the appellants in A.K. Bindal [(2003) 5 SCC 163 : 2003 SCC (L&S) 620] was based on the revision in the scale of pay. It was in that context, the aforementioned observations were made.”

“23. The decision of this Court in National Buildings Construction Corpn. [(1972) 2 SCC 1 : (1973) 1 SCR 40] was not noticed in the aforementioned decision. The question which arose for consideration therein

was as to whether a workman even after an order of discharge could maintain an application under Section 33-C(2) of the Act claiming lay-off compensation, in response where to this Court held: (SCC p. 7, para 9)

“9. In U.P. Electric Supply Co. Ltd. v. R.K. Shukla [(1969) 2 SCC 400 : AIR 1970 SC 237] this Court approvingly referred to a passage from the judgment in Chief Mining Engineer, East India Coal Co. Ltd. [Chief Mining Engineer, East India Coal Co. Ltd. v. Rameshwar, AIR 1968 SC 218] already reproduced by us, in which, inter alia, it was emphasised that Labour Court had jurisdiction to entertain a claim in respect of an existing right arising from the relationship of an industrial workman and his employer. Again in R.B. Bansilal Abirchand Mills Co. Ltd. v. Labour Court [(1972) 1 SCC 154 : AIR 1972 SC 451], this Court, after a review of its previous decisions, upheld the jurisdiction of the Labour Court to entertain application for lay-off compensation under Section 33-C observing that such jurisdiction could not be ousted by a mere plea denying the workman's claim to computation of the benefit in terms of money, adding that the Labour Court had to go into the question and determine whether on the facts it had jurisdiction to make the computation.”

24. *Noticing a large number of decisions of the High Courts on the said subject, this Court held: (National Buildings Construction case [(1972) 2 SCC 1 : (1973) 1 SCR 40], SCC p. 10, para 12)*

“12. ... In order to remove this repugnancy Section 33-C(2) must be so construed as to take within its fold a workman, who was employed during the period in respect of which he claims relief, even though he is no longer employed at the time of the application. In other words the term ‘workman’ as used in Section 33-C(2) includes all persons whose claim, requiring

computation under this sub-section, is in respect of an existing right arising from his relationship as an industrial workman with his employer. By adopting this construction alone can we advance the remedy and suppress the mischief in accordance with the purpose and object of inserting Section 33-C in the Act.”

25. The right of the workman to claim payment of lay-off compensation is not denied or disputed. If the said claim has no nexus with the voluntary retirement scheme, in our opinion, in a given case, like the present one, it is possible to hold that a proceeding under Section 33-C(2) of the Act would be maintainable. We are, therefore, of the opinion that the question being one of some importance should be considered by the larger Bench as there exists an apparent conflict in the said decisions of National Buildings Construction Corpn. [(1972) 2 SCC 1 : (1973) 1 SCR 40] and A.K. Bindal [(2003) 5 SCC 163 : 2003 SCC (L&S) 620].”

(Emphasis supplied)

The issue referred to the larger Bench specifically relates to the maintainability of a statutory right of a workman under Section 33-C(2) of the Industrial Disputes Act which has not been waived. This judgment does not help the appellants in the present case who are not claiming any statutory right. With respect to the claims other than Section 33-C(2), the Supreme Court has clearly observed in para 17 that there cannot be any doubt whatsoever that ordinarily upon opting for a voluntary retirement under a Voluntary Retirement Scheme, the workmen would cease to have any claim against the management. As such, this judgment does not deviate from the law laid down in ***HEC Voluntary Retired Employees***

Welfare Society (supra) that an employee after taking the VRS, cannot raise a claim unless by reason of a statute he is entitled thereto.

Judicial precedents

26. It is well settled that judicial precedent cannot be followed as a statute and has to be applied with reference to the facts of the case involved in it. The ratio of any decision has to be understood in the background of the facts of that case. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It has to be remembered that a decision is only an authority for what it actually decides. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The ratio of one case cannot be mechanically applied to another case without regard to the factual situation and circumstances of the two cases. In ***Bharat Petroleum Corporation Ltd v. N.R. Vairamani*, (2004) 8 SCC 579**, the Supreme Court had held that a decision cannot be relied on without considering the factual situation. The Supreme Court observed as under:-

“9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a

statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton [1951 AC 737: (1951) 2 All ER 1 (HL)] (AC at p. 761) Lord Mac Dermott observed: (All ER p. 14 C-D)

“The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge...”

This extract is taken from Bharat Petroleum Corpn. Ltd. v. N.R. Vairamani, (2004) 8 SCC 579 at page 585

10. In Home Office v. Dorset Yacht Co. [(1970) 2 All ER 294 : 1970 AC 1004 : (1970) 2 WLR 1140 (HL)] (All ER p. 297g-h) Lord Reid said, “Lord Atkin's speech ... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances”. Megarry, J. in Shepherd Homes Ltd. v. Sandham (No. 2) [(1971) 1 WLR 1062 : (1971) 2 All ER 1267] observed: “One must not, of course, construe even a reserved judgment of Russell, L.J. as if it were an Act of Parliament.” And, in Herrington v. British Railways Board [(1972) 2 WLR 537 : (1972) 1 All ER 749 (HL)] Lord Morris said: (All ER p. 761c)

“There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case.”

This extract is taken from Bharat Petroleum Corpn. Ltd. v. N.R. Vairamani, (2004) 8 SCC 579 at page 585

11. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions

in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

This extract is taken from Bharat Petroleum Corpn. Ltd. v. N.R. Vairamani, (2004) 8 SCC 579 at page 585

12. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

“Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

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Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.”

Other contentions

27. Learned counsel for the appellants referred to and relied upon the judgment passed by the learned Single Judge on 24th August, 2008 in W.P.(C)2237/2002 filed by M.K. Saini against which the appeal was dismissed on 30th August, 2010. However, M.K. Saini had not taken VRS and he continued the work with the respondent. We are of the view that since M.K. Saini did not take VRS, the appellant cannot claim any parity with him. Secondly, the writ petition of M.K. Saini did not suffer from delay and laches whereas there is an unexplained delay of more than twelve years in the present cases. Thirdly, there is no explanation for delay of

more than four years after the judgment in the case of M.K. Saini on 24th August, 2008.

28. Learned counsel for the appellants submitted that the VR Scheme provides that the appellants are entitled to all benefits as applicable in the case of normal retirement as per rules. Learned counsel further submitted that the TBPS is one of the benefits which was applicable to all the employees in case of normal retirement as per rules. We are of the view that the appellants were entitled to all benefits on the basis of the designation and pay declared in the application for VRS, which they have received. Secondly, the appellants having taken VRS, their claim is barred by estoppel/waiver.

29. Learned counsel for the appellants submitted that S.P. Chawla took VRS on 31st December, 2003 and the respondent granted first TBPS to him after VRS on 10th February, 2004 to which learned Senior Counsel for the respondent pointed out that the first TBPS of S.P. Chawla was approved by the DPC prior to the date of taking VRS and, therefore, the appellants cannot draw assistance from grant of first TBPS to him. We agree with the respondent.

30. Learned counsel for the appellants further submitted that K.L. Sharma in his VRS application had mentioned that his VRS may be accepted subject to fixation of his pay after granting him TBPS as per decision of Court as per rule. However, since K.L. Sharma did not thereafter make any claim/demand and continued

his silence upto 13th April, 2012 and filed the writ petition as late as in February, 2013, the mere mentioning of the claim in the VSS application would not cure the unexplained delay and laches.

31. Learned counsel for the appellants further submitted that the association had given representations on 6th July, 2009 and 19th July, 2012 to the respondent. Representations of the association are not sufficient to condone the inordinate and unexplained delay.

32. The learned counsel for the appellants referred to and relied upon the office order dated 16th February, 2008 of BSES Yamuna Power Ltd. The concerned respondent in the present cases are not bound by the office order of BSES Yamuna Power Ltd.

Similar writ petitions have been dismissed

33. We note that five similar writ petitions bearing W.P. (C) 7431/2013, 7432/2013, 7435/2013, 7438/2013 and 7442/2013 have been dismissed by the learned Single Judge vide judgment dated 9th December, 2013 on the ground of delay and laches as well as being barred by the principles laid down in **A.K. Bindal** (supra). The learned Single Judge also imposed cost of Rs.25,000/- against the petitioners therein for abuse of process of law. The relevant portion of the said judgment is reproduced below:

“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.

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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. ”

(Emphasis supplied)

34. The aforesaid judgment was challenged in LPA Nos.55/2014, 57-58/2014 and 61-62/2014 in which after lengthy hearing, the appellants therein sought permission to withdraw the appeals. Consequently, LPA No. 55/2014 was dismissed on 3rd February, 2014 and LPA Nos.57-58/2014 and 61-62/2014 were dismissed on 11th February, 2014. As such, the dismissal of the five similar writ petitions have attained finality.

The appellants cannot claim parity with officers who have not taken VRS

35. It may also be noted that twenty one more writ petitions were filed by the officers of the respondent who had not taken VRS in which the writ Court issued notice limited to benefits for last three years in sixteen cases. However, five petitions were dismissed which was challenged in LPA Nos.311/2013, 314/2013, 322/2013, 324/2013 and 327/2013. These LPAs have been allowed by a separate judgment on the ground that their cases are not barred by the principles laid down in *A.K. Bindal* (supra), *HEC Voluntary Retired Employees Welfare Society* (supra) and *ITI Ltd. v. ITI Ex/VR Employees/Officers Welfare Assn.* (supra). Applying the principles laid down in *UOI v. Tarsem Singh, (2008) 8 SCC 648*, the belated claims based on continuing wrong restricted to a period of three years can be agitated as had been done by the writ Court in sixteen other pending writ petitions.

36. The appellants herein are not entitled to parity with sixteen pending writ petitions or LPA Nos 311/2013, 314/2013, 322/2013, 324/2013 and 327/2013 which are barred by the principles laid down in *A.K. Bindal* (supra), *HEC Voluntary Retired Employees Welfare Society* (supra) and *ITI Ltd. v. ITI Ex/VR Employees/Officers Welfare Assn.* (supra).

Concealment of relevant facts

37. The appellants are also guilty of concealment of most relevant fact of having taken VRS in the writ petition. The learned counsel for the appellants submitted that the factum of taking VRS

has been mentioned in the letter dated 18th May, 2012 filed along with the writ petition. This by itself is not sufficient. In the entire writ petition as well as in the list of dates and events filed along with the writ petition, the appellants have not disclosed having taken VRS before filing of the writ petition. The reading of the writ petition gives an impression to the Court that the appellants were still working with the respondent. It is for this reason that the writ Court may not have taken note of the concealment in the impugned orders. Since this concealment appears to have escaped the notice of the learned Single Judge, no cost was imposed in these cases. However, the fact of VRS having been taken before filing of the writ petition came to the notice of the writ Court in the subsequent writ petitions in which the learned Single Judge imposed a cost of Rs.25,000/- for concealment of material fact. The relevant portion of the judgment dated 9th December, 2013 of the learned Single Judge in W.P.(C)Nos.7431/2013, 7432/2013, 7435/2013, 7438/2013 and 7442/2013 is reproduced hereunder:-

“12...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.”

38. **Summary of principles**

37.1 **Voluntary Retirement Schemes** – Voluntary Retirement Schemes (VR Scheme) are ordinarily floated with a purpose of downsizing the employees. A considerable voluntary retirement amount is offered to the employees for voluntary retirement, not for doing any work or rendering any service but in lieu of their leaving the service and foregoing all their claims or rights in the same. It is a package deal of give and take. It is beneficial both to the employees as well as the employers and, therefore, known as ‘Golden Handshake’. The main purpose of paying this amount is to bring about a complete cessation of the jural relationship between the employer and the employee.

37.2 **Voluntary Retirement Schemes are not negotiable** – The VR Schemes are purely voluntary and not negotiable.

37.3 **Voluntary Retirement Schemes are contractual in nature** – The VR Scheme is an invitation to offer. If the employee opts for VRS, it amounts to an offer which when accepted by the employer, results in a concluded contract. Both the parties are bound by the terms of the VR Scheme. It is not for the Court to rewrite the terms of the VR Scheme. The relationship between the parties to the VR Scheme is governed by the Contract Act, 1872 and not by any statute.

37.4 **Cessation of jural relationship** – Acceptance of the VRS application results in complete cessation of jural relationship between the employer and the employee, and the employee cannot agitate for any kind of his past rights or enhancement of pay scale for an earlier period, unless by reason of a statute, he becomes entitled thereto.

37.5 **Full and final settlement** –The employees opting for

voluntary retirement under the VR Scheme are paid compensation calculated in the manner specified in the Scheme in full and final settlement.

37.6 **Estoppel** – The employees who accept the VRS with open eyes without making any kind of protest regarding their past rights, are estopped from making a claim in the Court of Law. If a person makes a representation to another, on the faith of which the latter acts to his prejudice, the former cannot resile from the representation made by him. The doctrine of estoppel is a branch of the rule against assumption of inconsistent positions. One who knowingly accepts the benefit of a contract is estopped from denying the binding effect of such contract on him. This rule has to be applied to do equity.

37.7 **Waiver** – Having taken advantage of VRS and having taken the amount without any demur, the employees cannot raise a claim for past rights or non-revision of pay scale. Such claims are also barred by the principle of waiver. The plea of waiver is closely connected with the plea of estoppel, the object of both being to ensure bona fides in day to day transactions.

37.8 The employees who opt for voluntary retirement make a planning for future and take into consideration all its implications. At the time of giving the option, they know where they stand and they cannot get additional benefits other than mentioned in the Scheme. They prepare themselves to contract out of the jural relationship and are bound by their own acts.

37.9 The employees who are not satisfied with the amount offered in the VR Scheme should wait and pursue their claims without opting for VRS. However, the employees who in their wisdom thought that in the factual situation, VRS was a better option available and apply for VRS and accept the money, it is not open to them to contend that they exercised the option under any kind of compulsion.

37.10 If the employee is permitted to raise a grievance regarding his past rights or the enhancement of a pay scale from retrospective date even after opting for VRS and accepting the amount thereunder, the whole purpose of the VR Scheme would be frustrated.

37.11 **Belated service related claims** - A belated service related claim is liable to be rejected on the ground of delay and laches except in the case of a continuing wrong. However, there is an exception to the above exception namely if the grievance in respect of any order or administrative decision related to or affected several others also and if the opening on the issue would affect the settled rights of third parties, then the claim would not be entertained. The VRS results in cessation of jural relationship and therefore falls in the last category of exception to an exception.

37.12 **Stale Claims** – Stale claims of failure to make out grounds for condonation of delay in seeking remedy should not be entertained by the Courts.

37.13 The delay in filing the writ petition cannot be condoned on the ground that the employee had been making representations. Merely making representations is not a good ground for condoning the delay unless it is a statutory representation.

Findings

39. All the writ petitions suffer from gross and unexplained delay and laches of more than 12 years.

40. No claim or demand was made at the relevant time when the TBPS became due according to the appellants.

41. No claim or demand was made even at the time of accepting the voluntary retirement under the Voluntary Retirement Scheme.

42. No claim or demand was made by the appellants to the respondent even after taking VRS upto April/May 2012. The first representation to claim the TBPS was made by the appellants in April/May 2012 and the writ petitions were filed in February, 2013.

43. The appellants have not given any explanation whatsoever, either in the writ petition or in the appeal, for the delay in filing the writ petitions.

44. The appellants could not dispute that no claim was made at the relevant time when the TBPS became due; no claim/demand was made at the time of taking VRS; no claim/demand was made from the date of VRS upto April, 2012 and the first representation was made in April, 2012. In that view of the matter, the claims of the appellants are clearly stale claims.

45. The appellants having taken VRS, their claim falls within the exception to the exception in terms of principles laid down in *Tarsem Singh* (supra).

46. Notwithstanding the inordinate and unexplained delay, the appellants' writ petitions were not maintainable as the appellants voluntarily opted for VRS which resulted in complete cessation of the jural relationship between the appellants and the respondent.

47. The appellants declared their designation and income in the application form for VRS on the basis of which they accepted the dues without any protest. The appellants cannot now raise the claim of TBPS which is clearly barred by the principle of estoppel and waiver.

48. The appellants did not raise the claim of TBPS at the time of accepting VRS and could not give any reasonable explanation for not raising their claim at the time of taking VRS.

49. If the appellants are permitted to raise the grievance regarding TBPS, the whole purpose of the VR Scheme would be frustrated.

50. We do not agree with the appellants that the claim of TBPS would fall under Clause 4.1.7 of the VR Scheme. “***Any other benefit as applicable as in case of retirement as per rules***” means the benefits available at the time of taking the voluntary retirement on the basis of the designation and pay declared by the appellants in their application form for VRS.

51. The present cases are squarely covered by *A.K. Bindal* (supra), *HEC Voluntary Retired Employees Welfare Society* (supra) and *ITI Ltd. v. ITI Ex/VR Employees/Officers Welfare Assn.* (supra).

52. The judgments cited by the appellants namely, *UCO Bank v. Sanwar Mal* (supra), *Bank of India v. K. Mohandas* (supra) and *A. Satyanarayana Reddy v. Labour Court* (supra) do not apply to the facts of these cases and are clearly distinguishable.

Conclusion

53. On careful consideration of all the rival contentions of the parties, we are of the view that the writ petitions filed by the appellants suffered from gross and unexplained delay and laches of more than 12 years and therefore have been rightly dismissed by

the learned Single Judge. That apart, the appellants' claim is not maintainable as they had taken voluntary retirement as back as in 2003 to 2006 without any demur/protest which resulted in cessation of jural relationship. The appellants are guilty of deliberately concealing the most important fact of their having taken voluntary retirement in the writ petitions.

54. The appeals, being an abuse of the process of law, are dismissed with costs of Rs.25,000/- each. The respondent can recover the costs in accordance with law. All pending applications stand disposed of.

55. The original records handed over by the respondent be returned to them.

J.R. MIDHA, J

P.K. BHASIN, J

MAY 06, 2014/aj