

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO.6644 OF 2004

1. Madhukar s/o Bapurao Murkute,
Age 47 years, Occ. Service,
R/o Plot No.13, Jyotsana Housing Society,
Jalgaon Road, Aurangabad.
2. Parshuram s/o Gangaram Lokhande,
Age 43 years, Occ. Service,
R/o C/o M.D.C. Vikas Bhavan,
Aurangabad.
3. Shaikh Iqbal s/o Shaikh Mannan,
Age 43 years, Occ. & R/o as above.
4. Balchand s/o Kisanrao Desai,
Age 46 years, Occ. & R/o as above.
5. Deepak s/o Narayan Hatangale,
Age 47 years, Occ. & R/o as above.
6. Magan s/o Deuba Tarde,
Age 46 years, Occ. Service,
R/o C/o Leather Industries Ltd.
Corporation of Marathwada Ltd.,
Vikas Bhavan, Aurangabad
7. Iliyas s/o Moinuddin Mulla,
Age 47 years, Occ. & R/o as above.
8. Popat s/o Bhikanrao Mangate,
Age 43 years, Occ. & R/o as above.

... PETITIONERS

VERSUS

1. The State of Maharashtra
through Secretary,
Industrial, energy & Labour Department
Mantralaya, Mumbai.
(Copy to be served on Government
Pleader, High Court of Judicature

of Bombay, Bench at Aurangabad)

2. Marathwada Development Corporation Ltd.,
Vikas Bhavan, Dr. Rajendra Prasad Marg,
Aurangabad, through its Managing Director.
3. Leather Industries Corporation of
Marathwada Ltd., Vikas Bhavan,
Aurangabad, through its
Executive Director.

... RESPONDENTS

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Shri Pradeep Deshmukh, Advocate for petitioners

Mrs. M.S. Patni, A.G.P. for respondent No.1.

Shri N.K. Kakade, Advocate for respondents No.2 and 3

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CORAM: S.V. GANGAPURWALA AND
 A.I.S. CHEEMA, JJ.

DATED: 27th April, 2015.

ORAL JUDGMENT (Per S.V. Gangapurwala, J.):

1. The petitioners have filed this Writ Petition seeking declaration that the applications filed by the petitioners under the Voluntary Retirement Scheme stand withdrawn and further directions against respondent to treat the petitioners as in service.

2. Mr. Deshmukh, learned counsel for the petitioners submits that the petitioners have applied for voluntary retirement under the scheme flouted by the respondents. The same was applied by the petitioners on different dates in month of December 2003. In January/ March 2004 all the petitioners withdrew their offers of V.R.S. before the offer of V.R.S. was

accepted by the respondents. The learned counsel submits that, the petitioners have filed this Writ Petition on 30.7.2004. However, the petitioners were relieved on 31.7.2004 unilaterally by the respondents. The learned counsel submits that, when the petitioners have withdrawn the offer of V.R.S. before the acceptance of the said offer, the petitioners are to be treated as continuous in service. The unilateral act of the respondents in relieving the petitioners is illegal. The petitioners had right to withdraw the application for V.R.S. before the same was accepted and once the petitioners have withdrawn the offer of V.R.S. before its acceptance by the respondents, the respondents had no alternative but to treat the petitioners as continuous in service and the respondents are not entitled to enforce the V.R.S. on the petitioners. The learned counsel relies on the judgment of the Apex Court in a case of Bank of India & ors. Vs. O.P. Swaranakar with other connected matters, reported in AIR 2003 SC 858(1). The learned counsel also relies on the judgment of the Apex Court in a case of J.N. Srivastava Vs. Union of India & anr., reported in AIR 1999 SC 1571(1). The learned counsel also relies on the judgment of the Apex Court in a case of Power Finance Corporation Vs. Pramod Kumar Bhatia, reported in 1997(4) SCC 282. According to the learned counsel, the acceptance of the monetary benefits under the V.R.S. was under protest and without prejudice to the right of the petitioners

in the pending writ petition. The writ petition was filed immediately even before the petitioners were relieved by the respondents. As the acceptance of monetary benefits was under protest, the same would not negate the right of the petitioners in challenging the action of the respondents relieving the petitioners under V.R.S.

3. Mr. Kakade, learned counsel for respondents No.2 and 3 submits that the petitioners have voluntarily applied for the benefit under V.R.S. The applications of the petitioners are accepted by the Corporation and their names are also displayed on the notice board of the Corporation on 29.12.2003 mentioning the Board of Directors' decision that those who have made applications for V.R.S., their applications are accepted and this communication is displayed on the notice board in usual manner. As such, it cannot be said that before the acceptance of the offer of V.R.S. the petitioners have withdrawn their applications submitted under the V.R.S. The learned counsel submits that, the petitioners have accepted the benefit under the V.R.S. so also have accepted the pension amount being sanctioned to them. The petitioner No.4, after accepting the V.R.S., has taken up employment with other institution namely Sant Rohidas Charmoudyog & Charmakar Vikas Mahamandal Maryadit. According to the learned counsel, as the acceptance by

respondent of the applications of the petitioners seeking voluntary retirement is before the date of withdrawal of their applications, the application for withdrawal shall not have any legal sanctity. So also the petitioners have accepted the benefit under the V.R.S., the petitioners cannot now turn around and agitate that they be continued in service. The learned counsel relies on the order of Division Bench of this Court at its principal seat at Bombay in Writ Petition No.2494/2005, decided on 30.11.2004.

4. We have considered the submissions canvassed by the learned counsel for the respective parties. The proposition that an offer can be withdrawn prior to its acceptance need not be debated. The same is settled position of law. The Apex Court in case of Bank of India & ors. Vs. O.P. Swaranakar; J.N. Srivastava Vs. Union of India & anr. and Power Finance Corporation Vs. Pramod Kumar Bhatia (referred supra) has held that application for V.R.S. can be withdrawn prior to its acceptance. The respondent - employer on affidavit states that on 29.12.2003 the names of all the employees who had made applications for V.R.S. were displayed on the notice board stating that the Board of Directors have taken a decision that all those who have applied for V.R.S., their applications are accepted. By way of usual practice, this communication was displayed on the

notice board.

5. The Contract Act does not lay down a specific mode of communication. Section 3 of the Indian Contract Act lays down that the communication of proposal, acceptance of proposal and the revocation of proposal and acceptances respectively are deemed to be made by any Act or omission of the party proposing, accepting or revoking by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it. As such, it is clear that no specific mode of communication is laid down under the law of contract for communicating the acceptance. The respondent states that the same was communicated by displaying the names of all the persons on the notice board on 29.12.2003. The same was usual mode of communicating with the employees. The same would tantamount to acceptance. However, same is disputed question of fact.

6. We may not enter into the said aspect also. Considering the fact that after the petition is filed the petitioners were relieved on 31.7.2004 pursuant to the V.R.S. Subsequently, the petitioners accepted the benefit under V.R.S. The case of the petitioners is that the said benefit under the V.R.S. has been accepted without prejudice to their rights in the pending Writ Petition and under protest. The Writ Petition is

pending since the year 2004.

7. Even assuming for the sake of argument that the petitioners have accepted the monetary benefits under the V.R.S. without prejudice to their rights and under protest, still the subsequent conduct of the petitioners does not imply the same is under protest. The petitioner No.4 has taken up employment with other institution after taking the monetary benefits under V.R.S. during the pendency of the Writ Petition. The petitioners have been sanctioned the pension amount and are withdrawing the pension amount month to month since 2005, 2006, 2007 etc. The benefits under the V.R.S. are being enjoyed by the petitioners and at the same time the petitioners are coming with a case that they be deemed to be continuous in service. Section 8 of the Contract Act specifically lays down that the performance of conditions of proposal or the acceptance of any consideration for reciprocal promise which may be offered with the proposal, is an acceptance of the proposal. Section 9 of the Contract Act also lays down that the contract may be express or implied. By accepting consideration amount under V.R.S. so also specifically accepting the pension amount month to month and some of the petitioners taking up another employment would be sufficient to show that the petitioners though initially may have received benefit under protest, but subsequently have acted upon the

V.R.S. and by this conduct, have waived their protest. After accepting the benefits under V.R.S., the petitioners now cannot be allowed to turn around and say that they have withdrawn the proposal given by them under V.R.S. The total retiral benefits under V.R.S. has been received by the petitioners so also they are getting the pension amount month to month as per the terms of V.R.S. Some of the employees have undertaken the employment.

8. In view of the above conspectus of the matter, it would not be possible to accept the contentions of the petitioners. As such, the petition is dismissed. Rule discharged. No costs.

(A.I.S. CHEEMA, J.)

(S.V. GANGAPURWALA, J.)