

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 11 OF 2016**

|                                            |   |                           |
|--------------------------------------------|---|---------------------------|
| <b>The Managing Director</b>               | ] |                           |
| <b>Solapur Zilla Sahakari Dudh Utpadak</b> | ] |                           |
| <b>Sangh, Solapur, having office at</b>    | ] |                           |
| <b>24/1/A, Morarji Peth,</b>               | ] |                           |
| <b>Near Kalpana Talkies, Solapur.</b>      | ] | <b>]..... Petitioner.</b> |

**Versus**

|                                              |   |                           |
|----------------------------------------------|---|---------------------------|
| <b>Shri Vilas Satyavan More</b>              | ] |                           |
| <b>Age 51 years, Occupation – Nil</b>        | ] |                           |
| <b>Residing at Post Modlimb, Datta Nagar</b> | ] |                           |
| <b>Taluka – Madha, District – Solapur.</b>   | ] | <b>]..... Respondent.</b> |

**ALONG WITH  
WRIT PETITION NO. 22 OF 2016**

|                                            |   |                           |
|--------------------------------------------|---|---------------------------|
| <b>The Managing Director</b>               | ] |                           |
| <b>Solapur Zilla Sahakari Dudh Utpadak</b> | ] |                           |
| <b>Sangh, Solapur, having office at</b>    | ] |                           |
| <b>24/1/A, Morarji Peth,</b>               | ] |                           |
| <b>Near Kalpana Talkies, Solapur.</b>      | ] | <b>]..... Petitioner.</b> |

**Versus**

|                                       |   |                           |
|---------------------------------------|---|---------------------------|
| <b>Shri Pandurang Trimbak Bikkad</b>  | ] |                           |
| <b>Age 37 years, Occupation – Nil</b> | ] |                           |
| <b>Residing at Post Naholi</b>        | ] |                           |
| <b>Taluka – Kej, District – Beed</b>  | ] | <b>]..... Respondent.</b> |

**ALONG WITH  
WRIT PETITION NO. 55 OF 2016**

|                                            |   |                           |
|--------------------------------------------|---|---------------------------|
| <b>The Managing Director</b>               | ] |                           |
| <b>Solapur Zilla Sahakari Dudh Utpadak</b> | ] |                           |
| <b>Sangh, Solapur, having office at</b>    | ] |                           |
| <b>24/1/A, Morarji Peth,</b>               | ] |                           |
| <b>Near Kalpana Talkies, Solapur.</b>      | ] | <b>]..... Petitioner.</b> |

**Versus**

Shri Shivaji Siddheshwar Gund ]  
Age 51 years, Occupation – Nil ]  
Residing at Post Shetphal ]  
Taluka – Mohol, District – Solapur. ]..... Respondent.

ALONG WITH  
WRIT PETITION NO. 56 OF 2016

The Managing Director ]  
Solapur Zilla Sahakari Dudh Utpadak ]  
Sangh, Solapur, having office at ]  
24/1/A, Morarji Peth, ]  
Near Kalpana Talkies, Solapur. ]..... Petitioner.

Versus

Shri Nanasaheb Vitthal Bhosale ]  
Age 51 years, Occupation – Nil ]  
Residing at Khavani, Post Pokhrapur ]  
Taluka – Mohol, District – Solapur. ]..... Respondent.

ALONG WITH  
WRIT PETITION NO. 236 OF 2016

The Managing Director ]  
Solapur Zilla Sahakari Dudh Utpadak ]  
Sanghaa, Solapur, having office at ]  
24/1/A, Morarji Peth, ]  
Near Kalpana Talkies, Solapur. ]..... Petitioner.

Versus

Bajirao Baban Mule ]  
Age 47 years, Occupation – Nil ]  
Residing at Post Khandali ]  
Tal. – Mohol, Dist. Solapur. ]..... Respondent.

ALONG WITH  
WRIT PETITION NO.703 OF 2016

The Managing Director ]  
Solapur Zilla Sahakari Dudh Utpadak ]  
Sangh, Solapur, having office at ]  
24/1/A, Morarji Peth, ]

Near Kalpana Talkies, Solapur.

]..... Petitioner.

Versus

Shri Popal Digambar Sule

]

Age 43 years, Occupation – Nil

]

Residing at Post Ashti

]

Taluka – Mohol, District – Solapur.

]..... Respondent.

ALONG WITH  
WRIT PETITION NO.706 OF 2016

The Managing Director

]

Solapur Zilla Sahakari Dudh Utpadak

]

Sangh, Solapur, having office at

]

24/1/A, Morarji Peth,

]

Near Kalpana Talkies, Solapur.

]..... Petitioner.

Versus

Shri Shivaji Mahadeo Thorat

]

Age 51 years, Occupation – Nil

]

Residing at New Thobade Mala

]

Degaon Naka, District – Solapur.

]..... Respondent.

ALONG WITH  
WRIT PETITION NO. 709 OF 2016

The Managing Director

]

Solapur Zilla Sahakari Dudh Utpadak

]

Sangh, Solapur, having office at

]

24/1/A, Morarji Peth,

]

Near Kalpana Talkies, Solapur.

]..... Petitioner.

Versus

Shri Laxman Keshav Mali

]

Age 38 years, Occupation – Nil

]

Residing at Telangwadi, Post – Shetphal

]

Taluka – Mohol, District – Solapur.

]..... Respondent.

ALONG WITH  
WRIT PETITION NO.716 OF 2016

The Managing Director ]  
Solapur Zilla Sahakari Dudh Utpadak ]  
Sangh, Solapur, having office at ]  
24/1/A, Morarji Peth, ]  
Near Kalpana Talkies, Solapur. ]..... Petitioner.

Versus

Shri Vijay Jaywantrao Patil ]  
Age 31 years, Occupation – Nil ]  
Residing at Post Malikpeth, ]  
Taluka – Mohol, District – Solapur. ]..... Respondent.

ALONG WITH  
WRIT PETITION NO. 2442 OF 2016

The Managing Director ]  
Solapur Zilla Sahakari Dudh Utpadak ]  
Sanghaa, Solapur, having office at ]  
24/1/A, Morarji Peth, ]  
Near Kalpana Talkies, Solapur. ]..... Petitioner.

Versus

Namdeo Murlidhar Kshirsagar ]  
Age 41 years, Occupation – Nil ]  
Residing at 201/5, Siddheshwar Nagar ]  
MojreWadi, Hotagi Road, Solapur. ]..... Respondent.

ALONG WITH  
WRIT PETITION NO. 2443 OF 2016

The Managing Director ]  
Solapur Zilla Sahakari Dudh Utpadak ]  
Sanghaa, Solapur, having office at ]  
24/1/A, Morarji Peth, ]  
Near Kalpana Talkies, Solapur. ]..... Petitioner.

Versus

Shahaji Daji Mundhe ]  
Age 59 years, Occupation – Nil ]  
Residing at Post Udkadgaon ]

Tal. Barshi, Dist. Solapur.

]..... Respondent.

**ALONG WITH  
WRIT PETITION NO. 2444 OF 2016**

|                                     |                    |
|-------------------------------------|--------------------|
| The Managing Director               | ]                  |
| Solapur Zilla Sahakari Dudh Utpadak | ]                  |
| Sangh, Solapur, having office at    | ]                  |
| 24/1/A, Morarji Peth,               | ]                  |
| Near Kalpana Talkies, Solapur.      | ]..... Petitioner. |

**Versus**

|                                      |                    |
|--------------------------------------|--------------------|
| Shri Chandrasen Bhagvan Mule         | ]                  |
| Age 45 years, Occupation – Nil       | ]                  |
| Residing at Post Ladole              | ]                  |
| Taluka – Barshi, District – Solapur. | ]..... Respondent. |

**ALONG WITH  
WRIT PETITION STAMP NO.13981 OF 2014**

|                                     |                    |
|-------------------------------------|--------------------|
| The Managing Director               | ]                  |
| Solapur Zilla Sahakari Dudh Utpadak | ]                  |
| Sangh, Solapur, having office at    | ]                  |
| 24/1/A, Morarji Peth,               | ]                  |
| Near Kalpana Talkies, Solapur.      | ]..... Petitioner. |

**Versus**

|                                      |                    |
|--------------------------------------|--------------------|
| Shri Dadasaheb Sudhakar Patil        | ]                  |
| Age 31 years, Occupation – Nil       | ]                  |
| Residing at Post Ladole              | ]                  |
| Taluka – Barshi, District – Solapur. | ]..... Respondent. |

Mr. Kiran Bapat i/by Mr. S S Aradhye for the Petitioner in all Petitions.  
Mr. Neel G Helekar for the Respondents in all Petitions.

CORAM : R. M. SAVANT, J.  
DATE : 16<sup>th</sup> SEPTEMBER, 2016

**ORAL JUDGMENT**

1 Rule in all the Petitions. With the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2 The above Writ Petitions take exception to the identical orders all dated 16-1-2014 passed by the Learned Judge of the Labour Court, Solapur, by which orders the applications under Section 33-C(2) of the Industrial Disputes Act (hereinafter referred to as the said Act), filed by the Respondent in each of the above Petitions, came to be allowed and resultantly the Respondents were held to be entitled to the encashment of leave to the extent of the amounts mentioned in the operative part of each of the orders. Since the Petitions involve common facts and an identical challenge, they are all heard together. By the consent of the Learned Counsel for the parties Writ Petition No.11 of 2016 is treated as the lead matter.

3 The facts giving rise to the said Petition can in brief be stated thus:

The Petitioner is a Co-operative Society established under the Maharashtra Co-operative Societies Act and is the Zilla Dudh Utpadak Sangh. The Respondent herein was working as a Senior Supervisor with the Petitioner from the year 1987. The Petitioner with a view to rationalise its work force announced a Voluntary Retirement Scheme on 30-6-2010 and issued a circular in that respect which was displayed on the notice board of the Petitioner. The terms and conditions of the said Voluntary Retirement Scheme were

mentioned in the said circular. The payments that the employees were entitled to was segregated on the basis of the number of years of services that an employee had put in. The maximum amount towards wages that an employee was entitled to under the said Voluntary Retirement Scheme was payment of wages for 36 months. The scheme also envisaged payment of gratuity for every completed year of services as also encashment of one month leave. The employees were informed as to the manner in which they had to opt for the said scheme by filing an application, affidavit etc., and that the manner in which the payment would be made was also mentioned. It seems that to the said scheme, a proforma of the calculation as regards the payment that would be made to an employee was also displayed including the payment on account of gratuity as also on account of encashment of leave.

4           The Respondent abovenamed by his letter dated 7-7-2010 addressed to the Managing Director applied for availing of the benefits of the said Voluntary Retirement Scheme. The said application was processed and the Respondent was communicated by letter dated 3-12-2010 that his application was accepted and that his services would come to an end on 7-12-2010 and that he should execute a receipt on Rs.100 stamp paper and that he should remain present in the head office for perusing the statement of account on 24-12-2010. There is no dispute about the fact that the Respondent was paid the amount due to him under the Voluntary Retirement Scheme and that the

Respondent has executed a bond in favour of the Petitioner wherein it has been stated that after the receipt of the amount he has no grievance in respect of his employment or in respect of any payment that is due from the Petitioner. The said bond it appears has been executed in or about 3-12-2010.

5           The Respondent long after accepting the benefits of the Voluntary Retirement Scheme addressed a letter dated 27-6-2011 to the Managing Director of the Petitioner stating that there was leave balance to the extent of 296 days and since it had been encashed for 50 days, the encashment for 246 days remained to be granted. The Respondent therefore called upon the Petitioner to make the payment towards leave encashment within 7 days as otherwise he would be constrained to approach the court of law. The said letter dated 1-7-2011 was replied to on behalf of the Petitioner by letter dated 7-7-2011 and the claim made by the Respondent was rejected on the ground that the Respondent having availed of the benefit of the Voluntary Retirement Scheme he would not be entitled to the encashment of leave. On account of the refusal of the Petitioner to grant the Respondent encashment of the leave balance to his credit which was communicated by the said reply dated 7-7-2011, the Respondent invoked jurisdiction of the Labour Court under Section 33-C(2) of the said Act and sought the relief that he is entitled to the amount of Rs.91,777.22 paise which was the amount, which would be due to the Respondent on account of the encashment of 246 days leave. The Respondents



in the companion Petitions claimed the amounts on the basis of the leave which was standing to their credit. The said application was founded on the fact that the Respondent was entitled to the said encashment in terms of the standing orders. The said application filed by the Respondent under Section 33-C(2) was replied to on behalf of the Petitioner. The Petitioner in its reply took a preliminary objections as regards the maintainability of the said application under Section 33-C-(2) of the said Act, as according to the Petitioner the Respondent was not entitled to the encashment of leave under the Voluntary Retirement Scheme save and except to the extent of 30 days. It was also contended that the Respondent having accepted the benefits of the said Voluntary Retirement Scheme is now estopped from claiming the amount on the basis of the encashment of leave. In the light of the pleadings of the parties, the Trial Court framed the issues, amongst which was the issue whether the Respondent was entitled to the difference on account of the encashment of leave. The parties led evidence in respect of their respective assertions. The Petitioner led evidence of one of its employee Mr. Patekar, whereas the Respondents led their respective evidence in each of their applications. In so far as the Respondent abovenamed is concerned, he adduced his own evidence in respect of the instant application being IDA No.9 of 2011. In so far as the evidence of the Respondent – Mr. More is concerned, it has come in his evidence that the circular was put up on the notice board as also the calculation. It has further come in his evidence that he had seen the

circular Exhibit C-22 which is the circular on which the Respondent relies. It has further come in his evidence that he has opted for the Voluntary Retirement Scheme on the basis of the said circular Exhibit C-22. In so far as the other Respondents are concerned, their evidence seems to have been taken after the evidence of Mr. More and therefore some improvement was sought to be made by denying the fact that they had opted for the Voluntary Retirement Scheme on the basis of the said circular Exhibit C-22.

6           The Learned Judge of the Labour Court proceeded to adjudicate upon the said application filed under Section 33-C(2) and by the impugned order dated 16-1-2014 has allowed the said application and in so far as the Respondent is concerned, has directed the payment of amount of Rs.70,887/- as the amount towards encashment of leave. What has weighed with the Learned Judge of the Labour Court is the fact that though in the Voluntary Retirement Scheme encashment of 30 days leave was provided in fact the Respondent was paid on the basis of encashment of 50 days leave. The Learned Judge held that the cessation of employment under the Voluntary Retirement Scheme would be akin to the cessation of employment on account of resignation or retirement and since the employee on resignation or retirement is entitled to encashment of leave, a person who ceases to be an employee on acceptance of the Voluntary Retirement Scheme would also be entitled to encashment of leave. The Learned Judge therefore held that the

Respondent would be entitled to the encashment of the leave balance to his credit excluding the leave for which he has already received the payment. As indicated above it is the said judgment and order dated 16-1-2014 which is taken exception to by way of the above Petition.

7           The principal contention urged by the Learned Counsel Mr. Bapat appearing for the Petitioner is as regards the jurisdiction of the Labour Court to adjudicate the matter in respect of the encashment of leave under Section 33-C(2) of the said Act, in the light of the fact that no such encashment was contemplated under the Voluntary Retirement Scheme. It was the submission of Mr. Bapat that the contours of the jurisdiction of the Labour Court under Section 33-C(2) of the said Act are well settled by the Judgments of the Apex Court that an application under Section 33-C(2) of the said Act would lie only if there is a pre existing right in an employee. Reliance was sought to be placed on the judgment of the Apex Court in the matter of **Municipal Corporation of Delhi Vs. Ganesh Razak & Anr.** <sup>1</sup>. The Learned Counsel would next contend that the Learned Judge of the Labour Court has misdirected himself and misconstrued the essence of the Voluntary Retirement Scheme whilst making the observation that a person who retires under the Voluntary Retirement Scheme would be entitled to the encashment of leave. The Learned Counsel sought to place reliance on the judgment of the Apex Court in the matter of **HEC Vountary Retd. Employees Welfare Society & Anr. Vs. Heavy**

---

<sup>1</sup> (1995) 1 Supreme Court Cases 235

**Engineering Corpn. Ltd. & Ors.**<sup>2</sup> which judgment sets out the salient features of a Voluntary Retirement Scheme. The Learned Counsel would contend that since there is a dispute as regards the entitlement of the Petitioner to the encashment of leave, the said dispute requires adjudication which cannot be done under Section 33-C(2) of the said Act.

8 Per contra the Learned Counsel Mr. Helekar appearing for the Respondent in the above Petition and for the other Respondents in the companion matters, would support the impugned order. The Learned Counsel would seek to question the manner in which the bonds were got executed by the Respondent by referring to the date of the purchase of the stamp paper. The Learned Counsel would contend that the Respondents are relying on another circular in which no reference is made as regards encashment of any leave. It was the submission of the Learned Counsel that the said circular coupled with the evidence of the official of the Petitioner Mr. Patekar, would prove that the Respondent is entitled to the encashment of leave remaining balance to his credit. The Learned Counsel would contend that the dispute as regards the Respondent's entitlement to the encashment of leave is an incidental issue and can be gone into by the Court whilst exercising jurisdiction under Section 33-C(2) of the said Act. The Learned Counsel sought to place reliance on the judgment of this court in the matter of **Agriculture**

---

2 (2006) 3 Supreme Court Cases 708

**Produce Market Committee Vs. Parshuram Gopalji Kore<sup>3</sup>** and the judgment of the Apex court in the matter of **State of U.P And Anr. VS. Brijpal Singh<sup>4</sup>**.

9           Having heard the Learned Counsel for the parties I have considered the rival contentions. The challenge in the instant Petition has to be looked at from two perspectives, firstly whether having accepted the benefits of the Voluntary Retirement Scheme, it was open for the Respondent to claim encashment of leave beyond what is contemplated in the said Voluntary Retirement Scheme and secondly from the aspect as to whether the claim made by the Respondent could have been adjudicated under Section 33-C(2) of the said Act. In so far as the first aspect is concerned, certain facts are required to be revisited. There is no dispute about the fact that the Petitioner herein announced a Voluntary Retirement Scheme which was comprised in the circular dated 30-6-2010 which was put on the notice board along with a proforma of the calculation made on an hypothetical basis in respect of an employee. The Petitioner does not dispute the fact that the Voluntary Retirement Scheme is comprised in the said circular marked as Exhibit C-22 was seen by him and he accepted the said Voluntary Retirement Scheme which he communicated by his letter dated 7-7-2010. The said acceptance by the Respondent was also accepted by the Petitioner and hence there was a concluded contract between the parties on account of the offer and acceptance

---

<sup>3</sup> 2011(5) All M.R. 714

<sup>4</sup> (2005) 8 Supreme Court Cases 58

of the said scheme. There is no dispute about the fact that the Respondent has accepted the amount which was paid to him under the said scheme as also executed a bond in favour of the Petitioner in which bond as indicated above he has stated that he has now no grievance as regards his employment nor in respect of any amount due from the Petitioner. In the context of the Voluntary Retirement Scheme the judgment of the Apex Court in the case of HEC Voluntary Retd Employees Welfare Society & Anr. (Supra) is eloquent. The said judgment has gone into the nature, object, effect and the mechanism by which the scheme comes into being. The Apex Court has held that the Voluntary Retirement Scheme is a special scheme as contrasted with the general scheme / contract of employment governing the terms and conditions of service or which is part of the statutory rules governing service of employees. The Apex Court held that acceptance of the Voluntary Retirement Scheme amounts to contracting out of the general terms and conditions of the contract. The Apex Court further held that the amount payable under the Voluntary Retirement Scheme is a package one either takes it or rejects it. Paragraphs 11, 18, 19, 20 and 22 of the said judgment are material and reproduced hereinunder for the sake of ready reference:-

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 therefor. The scheme is purely voluntary, in terms whereof the tenure of service is curtailed which is permissible in law. Such a scheme is ordinarily floated with a

purpose of downsizing the employees. It is beneficial both to the employees as well as to the employer. Such a scheme is issued for effective functioning of the industrial undertakings. Although the Company is a "State" within the meaning of [Article 12](#) of the Constitution, the terms and conditions of service would be governed by the contract of employment. Thus, unless the terms and conditions of such a contract are governed by a statute or statutory rules, the provisions of [Contract Act](#) would be applicable both at the formulation of the contract as also the determination thereof. By reason of such a scheme only an invitation of offer is floated. When pursuant to or in furtherance of such a voluntary retirement scheme an employee opts therefor, he makes an offer which upon acceptance by the employer gives rise to a contract. Thus, as the matter relating to voluntary retirement is not governed by any statute, the provisions of [Contract Act](#), 1872, therefore, would be applicable too.

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 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 regard 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 clauses 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 employee. They would be excluded if they are treated to be discharged employee.

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 interdict, 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 for 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.



10           A reading of the aforesaid paragraphs therefore discloses that in so far as the Voluntary Retirement Scheme is concerned, it is not governed by any statute and that the provisions of the Contract Act would be applicable. It is further held by the Apex Court that on acceptance of the Voluntary Retirement Scheme the jural relationship of employer and employee comes to an end and once an employee opts to retire voluntarily in terms of the contract, he cannot raise a claim of a higher salary unless by reason of a statute he becomes entitled thereto. The Apex Court observed that the employees who opt for Voluntary Retirement Scheme make a planning for future and they know where they stand and the financial implications thereof. Hence the Apex Court has in terms observed that the entitlement of the employee would be within the frame work of the Voluntary Retirement Scheme and not outside it, even if there is a change or revision in wages etc, thereafter. In the instant case as indicated above Exhibit-C-22 which is the circular issued in respect of the said Voluntary Retirement Scheme the same contemplates encashment of leave to the extent of 30 days only. Hence the employees like the Respondent herein cannot be heard to say that notwithstanding the Voluntary Retirement Scheme they would be entitled to encashment of leave beyond the said 30 days leave. The Apex Court in HEC Voluntary Retd Employees Welfare Society's case (Supra) has held that the emoluments offered under a Voluntary Retirement Scheme are a package on the basis of which a contract is reached between the parties. In my view,

having received the benefits under the Voluntary Retirement Scheme and being fully aware of the fact that the encashment would not be beyond 30 days of leave, it was not open for the Respondent to file proceedings under Section 33-C(2) of the said Act to claim an amount based on the encashment of leave beyond 30 days. To extricate himself from the said position wherein he had accepted the terms and conditions of the Voluntary Retirement Scheme, on behalf of the Respondent reliance was sought to be placed on the case of one Janak Shankar Kharade who according to the Respondent was granted encashment of leave which was balance to his credit. In so far as the said Kharade is concerned, it has come in the evidence of one of the Respondents i.e. the Respondent in Writ Petition No.2442 of 2016 which is the companion matter that the said Kharade had not opted for the Voluntary Retirement Scheme but had resigned voluntarily and was not granted the encashment of leave. This resulted in the said Kharade filing the proceedings under Section 33-C(2) of the said Act in which proceedings a compromise was reached between the Petitioner and the said Kharade. Hence the illustration of the said Kharade would not further the case of the Respondent in the present Petition or the Respondents in other Petitions as the fact situation was not identical as the said Kharade had not accepted the Voluntary Retirement Scheme but had resigned.

The Respondents are also seeking to rely upon an identical circular which according to them was in fact issued prior to the circular

Exhibit-C-22 but was withdrawn. The circular on which the Respondent relies does not contain any clause as regards encashment of leave. Hence the said circular cannot aid the Respondent in his endeavour to seek encashment of leave and in fact goes against the Respondent, if the said circular is taken to be the circular encompassing the correct Voluntary Retirement Scheme then there is absolutely no encashment of leave which is contemplated. Hence the Respondent herein and the Respondents in the companion Petitions would not be entitled to the encashment of leave as claimed by them. This is in so far as whether the Respondent would be entitled to claim encashment of the leave lying to his credit notwithstanding the fact that he has accepted the Voluntary Retirement Scheme which contemplates only encashment to the extent of 30 days.

11           Now coming to the second aspect as regards whether the Labour Court had the jurisdiction to adjudicate upon the issue as to the entitlement of the Respondent to encashment of leave in the proceedings filed under Section 33-C(2) of the said Act. There can be no dispute about the fact that the provisions of Section 33-C(2) can be invoked to claim a benefit or relief based on an existing right. In so far as the instant case is concerned, as indicated hereinabove, the Voluntary Retirement Scheme contemplates only encashment to the extent of 30 days leave and not beyond it. The Respondent in the instant case as also the Respondents in the companion Petitions are claiming the

encashment of leave beyond the said 30 days. The said fact is seriously disputed on behalf of the Petitioner on the basis of the terms and conditions which are encompassed within the said Voluntary Retirement Scheme. In so far as the jurisdiction of the Labour Court is concerned, the Judgment of the Apex Court in Municipal Corporation of Delhi (Supra) is material. It has been held by the Apex Court in the said judgment that the Labour Court whilst exercising jurisdiction under Section 33-C(2) of the said Act cannot adjudicate a dispute of entitlement or basis of the claim of the workman. It can only interpret the award or settlement on which the claim is based and the jurisdiction of the Labour Court is akin to that of the Executing Court in civil proceedings. Paragraph 8 of the said judgment is relevant and is reproduced hereinunder:

8. Reference may be made first to the Constitution Bench decision in [Central Bank of India Ltd. v. PS. Rajagopalan](#) on which Shri Rao placed heavy reliance. That was a case in which the question of maintainability of proceedings under [Section 33-C\(2\)](#) of the Act was considered in a claim made by the workmen on the basis of the Sastry Award. The employer disputed the claim of the workmen on several grounds including the applicability of [Section 33-C\(2\)](#) of the Act. It was urged that since the applications involved a question of interpretation of the Sastry Award, they were outside the purview of [Section 33-C\(2\)](#) because interpretation of awards or settlements has been expressly provided for by [Section 36-A](#). This objection was rejected. This Court pointed Out the difference in the scope of [Section 36-A](#) and [Section 33-C\(2\)](#) indicating that the distinction lies in the fact that [Section 36-A](#) is not concerned with the implementation or execution of the

award whereas that is the sole purpose of [Section 33-C\(2\)](#); and whereas [Section 33-C\(2\)](#) deals with cases of implementation of individual rights of workmen falling under its provisions, [Section 36-A](#) deals merely with a question of interpretation of the award where a dispute arises in that behalf between the workmen and tile employer and the appropriate Government 'Is satisfied that the dispute deserves to be resolved by reference under [Section 36-A](#). In this context, this Court also indicated that the power of the Labour Court in a proceeding under [Section 33-C\(2\)](#) being akin to that of the Executing Court, the Labour Court is competent to interpret the award or settlement on which a workman bases his claim under [Section 33-C\(2\)](#), like the power of the Executing Court to interpret the decree for the purpose of execution. Relevant extract from that decision is as under: (SCR pp. 154-155)

"Besides, there can be no doubt that when the Labour Court is given the power to allow an individual workman to execute or implement his existing individual rights, it is virtually exercising execution powers in some cases, and it is well settled that it is open to the Executing Court to interpret the decree for the purpose of execution. It is, of course, true that the Executing Court cannot go behind the decree, nor can it add to or subtract from the provision of the decree. These limitations apply also to the Labour Court; but like the Executing Court, the Labour Court would also be competent to interpret the award or settlement on which a workman bases his claim under [Section 33-C\(2\)](#). Therefore, we feel no difficulty in holding that for the purpose of making the necessary determination under [Section 33-C\(2\)](#), it would, in appropriate cases, be open to the Labour Court to interpret the

award or settlement on which the  
workman's right rests."

12           The proposition of law as regards the jurisdiction of the Labour Court has been reiterated by the Apex Court in its judgment in the matter of State of U.P. & Anr (Supra) as also by this Court in the Judgment of Agriculture Produce Market Committee (Supra). Hence the jurisdiction of the Labour Court under Section 33-C(2) extends to the interpretation of the award or settlement on which the workmans right rests and where the basis of the claim is referable to the award or settlement, but it does not extend to determination of the dispute of entitlement on the basis of the claim if there be no prior adjudication or recognition of the same by the employer. In the instant case, the Voluntary Retirement Scheme as accepted by the Respondent does not contemplate encashment of leave beyond 30 days. The claim of the Respondent is seriously disputed once that be so, it was not open for the Labour Court to embark upon the exercise of adjudicating the said dispute under Section 33-C(2) of the said Act. The lack of jurisdiction in the Labour Court cannot be got over by contending that what the Labour Court in fact has done is to go into an incidental issue. The entitlement of the Respondent to encashment of leave beyond 30 days cannot be an incidental issue and in fact the denial of the same by the Petitioner gives rise to a dispute between the two parties which obviously cannot be adjudicated under Section 33-C(2) of the said Act.

13           Now coming to the impugned judgment of the Labour Court, as indicated above, the Labour Court has held against the Petitioner inter alia on the ground that though only 30 days encashment of leave was contemplated under the Voluntary Retirement Scheme, the Respondent has been granted encashment to the extent of 50 days which is beyond what is contemplated in the said scheme and secondly on the ground that it makes little difference whether a person retires pursuant to acceptance of a Voluntary Retirement Scheme or tenders his resignation or retires in the normal course. The Learned Member has gone to the extent of holding that in all three eventualities the workman would be entitled to the encashment of leave. In my view, the Learned Member has not appreciated the essence of a Voluntary Retirement Scheme and the finer nuances thereof. The different facets of the Voluntary Retirement Scheme have been succinctly set out by the Apex Court in the Judgment of HEC Voluntary Retd. Employees Welfare Society (supra). The cessation of the employer and employee relationship on the acceptance of a Voluntary Retirement Scheme cannot be equated with the cessation of employment on account of resignation or retirement in normal course. In fact in the judgment in HEC Voluntary Retd Employees Welfare Society's case (supra) the Apex Court has held that an employee who has accepted a Voluntary Retirement Scheme stands part from a terminated, superannuated or discharged employee. The workman i.e. the Respondent in the instant case has with open eyes as well as knowing the implications has accepted the

Voluntary Retirement Scheme. The amount paid under the Voluntary Retirement Scheme is by way of a package and therefore the cessation of the relationship between the employer and employee under the Voluntary Retirement Scheme is on the basis of the acceptance of the benefits under the said scheme. The Learned Judge of the Labour Court has therefore fallen in error in holding that the workman who has accepted the benefits under the Voluntary Retirement Scheme would also be entitled to the benefits of the full encashment of leave which an employee who has resigned or who has retired would be entitled to. The fact that the amount was paid to the Respondent on the basis of encashment of 50 days leave would not impinge upon the said Voluntary Retirement Scheme. The payment for the extra 20 days may be by way of gratis or may be as and by way of benevolence by the Petitioner, but that would not amount to deviating from the said Voluntary Retirement Scheme so as to create a right in the Respondent to claim the full encashment of the balance leave to his credit. The evidence of the witness Mr. Patekar would also not further the case of the Respondent in the instant matter. The evidence in my view is sought to be wrongly interpreted by the Learned Counsel appearing on behalf of the Respondent. The evidence if read only indicates that the said witness deposed that the benefits under the Voluntary Retirement Scheme were better than the statutory benefits that the Respondent would be entitled to. The said evidence therefore cannot be read to mean, that apart from the amount under the Voluntary Retirement Scheme



the workman would be entitled to all other statutory benefits which are available under various labour legislations.

14           In my view, therefore, the Learned Judge of the Labour Court has erred in exercising jurisdiction when none was vested in him as the proceedings under Section 33-C(2) involved a dispute as regards the entitlement of the Respondent to the encashment of the balance leave to his credit. The impugned order dated 16-1-2014 would therefore have to be quashed and set aside and is accordingly quashed and set aside, as also the impugned orders in the companion Petitions are quashed and set aside. However, it is clarified that it would be open for the Respondent in the above Petition and the Respondents in the companion Petitions to file appropriate proceedings under the Industrial Disputes Act by raising a dispute as regards their entitlement to the encashment of leave balance to their credit, or such other proceedings as advised. If any such proceedings are filed, needless to state that the same would be considered on their own merits and in accordance with law.

15           The above Petition and the companion Petitions are allowed to the aforesaid extent. Rule in all the Petitions is accordingly made absolute with parties to bear their respective costs of the Petitions.

**[R.M.SAVANT, J]**