

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO. 1391 OF 2006
ALONG WITH
NOTICE OF MOTION NO. 347 OF 2007
WITH
NOTICE OF MOTION NO. 183 OF 2007
IN
WRIT PETITION NO. 1391 OF 2006**

K. G. H. Dodhiya	]	
of Mumbai Indian Inhabitant residing	]	
at 502, Vithalkunj, V.P. Road,	]	
Andheri (West), Mumbai 400 058	]	Petitioner

Versus

1. The New India Assurance Co. Limited,	]	
having its registered office at	]	
The New India Assurance	]	
Building, 87 M.G. Road,	]	
Fort, Mumbai – 400 001.	]	
	]	
2. The Chairman,	]	
The New India Assurance Co. Ltd.	]	
Having its registered office at	]	
The New India Assurance Building,	]	
87, M.G. Road, Fort, Mumbai – 400 001.		
3. Union of India	]	
Aayekar Bhavan, Legal Department,	]	
Mumbai	]	.. Respondents

Mr.Sharan Jagtiani along with Mr.Shrinivas Bobde and Mr.Guru Shanmugam i/by M/s. M & M Legal Ventures, Advocates for petitioner.

Mr.Shilpan Gaonkar along with Ms.Ishita Advani i/by M/s. Desai & Diwanji, Advocate for respondent Nos.1 and 2.

Mr.Y.R. Mishra along with Mr. Y.S. Bhate, Advocates for respondent No.3.

CORAM

**: B.R. GAVAI &
N. J. JAMADAR, JJ**

**RESERVED ON
PRONOUNCED ON**

**: 26th FEBRUARY 2019
: 8th MARCH 2019**

JUDGMENT (PER N.J. JAMADAR, J.) :

1. In this petition, the justifiability of the refusal to extend the benefit of Special Voluntary Retirement Scheme, by an instrumentality of State, crops up for consideration, in the backdrop of the following facts :-

(a) The petitioner joined the New India Assurance Company Limited, respondent No.1, as Development Officer, Class II, on 16th April 1977. By passage of time, the petitioner came to be confirmed as Administrative Officer (Development) and posted at EMCA House, Divisional Office, Mumbai. On 1st January 2004, respondent No.3, Union of India, notified a scheme entitled, “General Insurance Officers Special Voluntary Retirement Scheme, 2004” (hereinafter referred to as ‘Scheme-2004’). The said Scheme came to be implemented by respondent No.1-Company. Under the Scheme, all officers who had attained the age of 40 years and had also completed 10 years of qualifying service on the date of the Notification, i.e., 1st January 2004, were eligible to make an offer for Special Voluntary Retirement (SVR), in prescribed format. The Scheme-2004 also provided for, *inter-alia*, ineligibility, ex-gratia amount, other benefits and general conditions for its applicability.

(b) In pursuance of the aforesaid Scheme-2004, the petitioner submitted an application on 13th January 2004. After processing, certain audit queries

were communicated to the petitioner. The petitioner did comply with those queries. However, the petitioner was not relieved on 26th March 2004, the date on which the Administrative Officers, who opt for the SVR under the Scheme-2004, were directed to be relieved. The petitioner addressed communication on 26th March 2004 and sought clarification regarding his status. The petitioner was advised to continue in the employment till issue of relieving order.

(c) The petitioner pursued the matter with the authorities of the respondent No.1-Company. Meanwhile, the petitioner was given to understand that certain vigilance enquiries were pending. The vigilance department eventually conveyed its no objection for consideration of the petitioner's case. The respondent No.1 did not communicate any decision on the application of the petitioner for SVR, though under the Scheme 2004, it was obligatory upon the respondent No.1 to communicate in writing about the acceptance/rejection of the offer made by the officer. The denial of the benefit of SVR under the Scheme 2004 to the petitioner was, thus, stated to be illegal and arbitrary. Hence the petitioner invoked the writ jurisdiction and initially sought a mandamus to the respondents to forthwith grant the SVR to the petitioner in terms of the Scheme 2004. In the alternative, it was prayed that the respondents be directed to consider the application of the petitioner under the Scheme 2004.

2. During the pendency of the petition, the petitioner was informed vide communication dated 25th May 2006, that the competent authority had considered the cases of all the officers who were not eligible under paragraph 3 of the Scheme 2004 and decided to reject all such cases where no vigilance clearance was obtained by 20th April 2005, i.e., the date of the meeting of the Board of the company, wherein such cases were put up. Thus, by amending the petition, the petitioner prayed for quashing and setting aside of the said rejection dated 25th May 2006.

3. To complete narration of facts, it is necessary to note that, during the pendency of the petition, the petitioner came to be transferred to Baroda Divisional Office, vide order dated 25th June 2007, and was relieved from Divisional Office, Mumbai on 24th July 2007. Since the petitioner did not join the post at Baroda Divisional Office, disciplinary proceedings came to be initiated against the petitioner vide the Memorandum dated 29th July 2011. The said action also came to be assailed by amending the petition further. By way of an ad-interim order, on 14th October 2013, this Court directed that those disciplinary proceedings shall remain stayed.

4. The respondents have joined the issue by filing counter. At the outset, the respondents contended that the issue is not justiciable. It is further contended that the petitioner's offer has been rejected because it was found that the petitioner was ineligible for claiming the benefit under

the Scheme-2004 as vigilance enquiry was pending against the petitioner, at the time he had submitted the application. Banking upon the ineligibility clause under the Scheme-2004, the respondents asserted that since the vigilance matter, pursuant to the audit report, was referred to the vigilance department for investigation on 29th July 2002, the petitioner's case was squarely covered by the category of ineligible officers, i.e., against whom the disciplinary proceedings were being contemplated.

5. The respondents further contended that the cases of the officers who were otherwise ineligible under the Scheme 2004 were placed in the Board Meeting of the respondent No.1-company held on 20th April 2005 and it was resolved that the management be authorized to review and decide on SVR applications involving vigilance enquiries, subject to clearance from the vigilance department. The cases which involved suspension or disciplinary proceedings (pending/contemplated), were directed to be placed before the Board. According to the respondents, in pursuance of the aforesaid authorization, the competent authority (respondent No.2) decided to reject all the cases where there was no vigilance clearance on the date the aforesaid Board resolution was passed, i.e., 20th April 2005. Thus, no fault can be found with the rejection of the application of the petitioner. Lastly, there was no absolute right in any of the employee to seek SVR and it was in the discretion of the respondent No.1 to accept or

reject the application for SVR. Thus, the petitioner cannot seek enforcement of a non-existent right, submitted the respondents.

6. In the light of the aforesaid contentions and material placed on record, we have heard Shri Sharan Jagtiani, learned counsel for the petitioner, and Shri Shilpan Gaonkar, learned counsel for respondent Nos.1 and 2. Before advertng to deal with the rival submissions, it may be appropriate to note the undisputed facts and the core question in controversy.

7. To begin with, the jural relationship of employer and employee between the petitioner and respondent No.1 is not in dispute. Nor the fulfillment of the essential conditions by the petitioner, namely, being above 40 years of age and having put in 10 years of service, has been put in contest. It is undisputed that the petitioner had made the offer in prescribed form and within the stipulated period. The controversy revolves around the application and interpretation of the clauses of the Scheme 2004, which render the officers ineligible for the said Scheme 2004, and the general conditions thereunder. It may be apposite to extract the relevant clauses of the Scheme, which have a bearing upon the controversy at hand. They read as under :-

“[INELIGIBILITY] :

The following Officers are not eligible to seek special voluntary retirement :

1. *Those who are under suspension.*

2. Against whom disciplinary proceedings have been initiated are pending.

3. Against whom disciplinary proceedings are being contemplated.

However, such cases may be considered by the Board of the Company having regard to the facts and circumstances of each case and the decision taken by the Board shall be final.

Officers posted abroad or on deputation abroad are not eligible to seek Special Voluntary Retirement.”

GENERAL CONDITIONS :

....

2. The mere submission of application by an employee seeking Voluntary Retirement under this Scheme shall not take effect until and unless the Competent Authority accepts the same in writing.

3. The Competent Authority is vested with absolute discretion either to accept or reject the offer of application of an Officer under this Scheme.

4. In the event of rejection of the offer of application, the Competent Authority shall record the reasons for rejection in writing.

5. The Officer shall be communicated in writing regarding acceptance/rejection of his/her offer of application.

....

16 An Officer who has opted for SVRS is expected to remain on duty till the communication of the Competent Authority regarding his/her acceptance or rejection of the offer of application for SVRS. In case of acceptance, he/she is expected to be on duty till the date of his/her relieving.”

8. In the backdrop of the aforesaid provisions of the Scheme-2004, Shri Jagtiani, learned counsel for petitioner strenuously urged that the action of the respondents, in rejecting the application of the petitioner, is wholly arbitrary, unjust and unsustainable. It was submitted that neither the petitioner was suspended, nor any disciplinary proceedings was pending against him on the date of the application, i.e., 13th January 2004 and thus,

at best, the respondent could resort to the third clause of ineligibility, i.e., disciplinary proceedings being contemplated. The material on record, however, according to the learned counsel for the petitioner, indicates that the pendency of vigilance enquiry against the petitioner was a mere subterfuge. The petitioner was initially cleared on 9th March 2004 and subsequently also the vigilance department gave clearance to the petitioner. It was vehemently urged that till the institution of the petition, no reasons were communicated to the petitioner, though it was obligatory upon the respondents to communicate the decision. Furthermore, the vigilance department had given a clean chit to the petitioner on 5th October 2005 itself. In this backdrop, the rejection of the application by the impugned communication dated 26th May 2006, on the premise that vigilance clearance was not obtained by 20th April 2005 is patently arbitrary and untenable, urged the learned counsel for the petitioner.

9. In opposition to this, the learned counsel for respondent Nos.1 and 2 would submit that the Scheme-2004 conferred discretion upon the respondent No.1 to either accept or reject the application for SVR. The petitioner had no vested right to seek SVR. According to the learned counsel for respondent Nos.1 and 2, the pendency of a vigilance enquiry against the petitioner was a relevant consideration and the respondents were justified in exercising the discretion not to accept the offer of SVR as

the Vigilance matter was pending as of 20th April 2005. Since the Board of Directors of respondent No.1 had authorized the respondent No.2 to take decision on the applications of the officers against whom vigilance enquiry was pending, the action of respondent No.2 cannot be called in question.

10. First and foremost, the justiciability of the exercise of discretion by respondent No.1. Undoubtedly, Clause 3 (General Conditions) of the Scheme-2004 (extracted above) professes to vest absolute discretion with the competent authority either to accept or reject the offer. However, such reservation of absolute discretion, in a society governed by rule of law, is neither decisive nor beyond the purview of judicial review. The discretion vested in the Scheme was, therefore, not unfettered and its exercise must conform to the principles of reasonableness, fairness and non-arbitrariness.

11. The learned counsel for respondent Nos.1 and 2 would, however, urge that when the Scheme 2004 vested discretion with the competent authority, the Court may not interfere with the exercise of the discretion, in a particular way, by the competent authority. Since the competent authority decided to reject all the applications, wherein the vigilance clearance was not obtained as of 20th April 2005, there was no discrimination between the similar circumstanced officers, and, therefore, it cannot be urged that the exercise of the discretion was arbitrary.

12. To bolster up this submission, the learned counsel for respondent

Nos.1 and 2 placed a strong reliance upon the judgment of the Supreme Court in the case of ***Board of Trustees, Visakhapatnam Port Trust & Ors. Vs. T.S.N. Raju & Anr.***¹. In the said case, the Supreme Court was confronted with a situation wherein the competent authority had refused to extend the benefit of voluntary retirement on the premise that the employees therein had crossed the age of 58 years and their services were, in fact, required for the smooth functioning of the organization. In this context, the Supreme Court held that the Chairman was competent to frame the scheme having regard to the exigencies of the work and no one could claim voluntary retirement as of right. The Supreme Court further observed as under :-

“34 In our opinion, the request of the employees seeking voluntary retirement was not to take effect until and unless it was accepted in writing by the Port Trust Authorities. The Port Trust Authorities had the absolute discretion whether to accept or reject the request of the employee seeking voluntary retirement under the scheme. There is no assurance that such an application would be accepted without any consideration. The process of acceptance of an offer made by an employee was in the discretion of the Port Trust. We, therefore, have no hesitation in coming to the conclusion that the VRS was not a proposal or an offer but merely an invitation to treat and the applications filed by the employees constituted an offer.”

(emphasis supplied)

13. We are afraid to accede to the submission on behalf of respondent Nos.1 and 2 that the aforesaid judgment of the Supreme Court, rendered in the backdrop of its peculiar facts, is an authority for the

1 (2006) 7 SCC 664

proposition that when the Scheme confers the discretion upon an authority to accept or reject the application for voluntary retirement, the said discretion is absolute and unfettered. Such absolute discretion, unregulated by the principles of equality, fairness and non-arbitrariness, is anathema to the rule of law.

14. The reliance placed by the learned counsel for respondent Nos.1 and 2 upon a judgment of the Delhi High Court in the case of ***Ashok Sarin Vs. Oil India Limited & Ors.***² also appears to be not well founded. In the said case also, the competent authority refused to accept the prayer of voluntary retirement under the Scheme as the petitioner therein was a specially skilled and experienced Geo-Physicist. The Delhi High Court had referred to and relied upon the aforesaid judgment in the case of ***Vishakhapatnam Board of Trustees*** (Supra) to arrive at the conclusion that the rejection was proper.

15. It is pertinent to note that the aforesaid judgment in the case of ***Visakhapatnam Port Trust*** (Supra) was considered by the Supreme Court in the case of ***Chairman and Managing Director, Indian Overseas Bank & Ors. Vs. Tribhuwan Nath Srivastava***³ and the import of the former judgment was explained in the following words :-

“23. The decision relied upon by Mr. Singh evidently supports his contention but the observations made by this Court as quoted above need to be understood in the context of the case. In the case of T.S.N.

2 Writ Petition (Civil) No. 1067 of 1996 dated 17.05.2010

3 (2011) 3 Supreme Court Cases 475

Raju, the Chairman of the Port Trust made a review on the implementation of the scheme for voluntary retirement and keeping in view the concern expressed by the Secretary, Department of Shipping, Ministry of Surface Transport, Government of India, took the decision that the request for voluntary retirement under the scheme should be considered only in case of employees who were below the age of 58 years. The application of T.S.N. Raju (and another respondent in that case) came up for consideration after they had crossed the age of 58 years and were accordingly rejected on the basis of the decision of the Chairman. They challenged the action of the Port Trust in rejecting their request for voluntary retirement, taking the plea before the court that the Port Trust had no discretion to reject their request to take retirement under the voluntary retirement scheme except in cases of the exigencies of service or the compelling necessities or the indispensability of the employees concerned. It was to rebut such sweeping assertion of right that this Court made the observation that under the scheme, the Chairman of the Port Trust had the absolute right to accept or not accept the request for voluntary retirement under the scheme.

24. The observations made in T.S.N. Raju do not mean that this Court endorsed or approved the discretion vested in the employer (be it the Port Trust or the bank) as absolute in the manner of an unruly horse prancing beyond the control of anyone or anything. In the 62nd year of the Republic, it is rather late in the day for the State or any of the State's agencies or instrumentalities to claim absolute discretion, like the discretion of a despot or a discretion completely divorced from reasonableness.

(emphasis supplied)

16. In view of aforesaid exposition of law, respondent Nos.1 and 2 cannot be heard to submit that they had the absolute unfettered discretion to either accept or reject the application of the petitioner. Nonetheless, we are mindful that this Court in exercise of its power of judicial review is not expected to appraise the merits of the decision taken by the instrumentality of the State. What needs to be considered is whether the decision making process was fair, transparent and non-arbitrary.

17. A profitable reference, in this context, can be made to the observations of the Supreme Court in the case of *Kumari Shrilekha Vidyarthi & Ors. Vs. State of U.P. & Ors.* ⁴, wherein the meaning and import of an arbitrary action and 'the test' to be applied to judge the arbitrariness were enunciated as under :-

“36 The meaning and true import of arbitrariness is more easily visualized than precisely stated or defined. The question, whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in following that procedure, performance of the act otherwise and in a manner which does not disclose any discernible principle which is reasonable, may itself attract the vice of arbitrariness. Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. Rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that be you ever so high, the laws are above you'. This is what men in power must remember, always.”

(emphasis supplied)

18. On the touchstone of the aforesaid principles, reverting to the facts of the case, the justifiability of the rejection of the application of the petitioner vide the impugned communication, dated 26th May 2006 is required to be appreciated. Few facts are germane and have material bearing on the determination of this question. The vigilance matter had its genesis in an audit report with regard to the business supervised by the petitioner, resulting in adverse claims ratio of 615%. A communication to

4 (1991) 1 Supreme Court Cases 212

the Chief Vigilance Officer was, therefore, sent on 29th July 2002 in the light of Special Audit of Group Mediclaim Policies/Claims in respect of M/s. Insurance Awareness Group (IAG). The communication dated 11th March 2004 by the Vigilance Department to the Human Resource department of respondent No.1 records that NOC was given in respect of the petitioner, who had claimed SVR, on 9th March 2004. However, under the said communication, the said NOC was sought to be withdrawn with immediate effect as the vigilance department was reported with a vigilance case, and the same was under investigation.

19. We are not persuaded to give much weight to the fact that the NOC was given to the petitioner on 9th March 2004. It was quite possible that the vigilance matter might have come to the notice of the vigilance department subsequent to the NOC and there was nothing wrong in reopening the vigilance investigation against the petitioner. Thus, we proceed on the premise that as of 11th March 2004, the vigilance enquiry was pending.

20. The action taken by the respondents post conclusion of the vigilance enquiry is, however, of critical significance. There are two documents which shed light on this matter. First, communication dated 30th August 2005 by the Chief Vigilance Officer, disclosing the status of vigilance cases in respect of pending SVRS applications, reveals that the petitioner's case was clubbed in a group under the caption "Vigilance Cases – course of

action to be decided”. Two inferences flow therefrom. One, the vigilance enquiry was still under consideration on 30th August 2005. Two, no positive decision for initiating disciplinary proceedings was taken and the course of action was yet to be decided. Second, the final communication from the vigilance department was on 5th October 2005. In the context of the reference dated 29th July 2002 (in respect of the petitioner, adverted to above), it was categorically observed therein that “irregularities, if any, are of non-vigilance nature and had to be dealt with administratively”. This remark of the Vigilance department puts an end to the vigilance enquiry against the petitioner, in clear and unequivocal terms. It can be safely inferred that by 5th October 2005, the petitioner was cleared of the vigilance angle for all intent and purpose.

21. It is interesting to note that the respondent No.1 did not initiate any administrative enquiry, much less, disciplinary proceedings against the petitioner. The learned counsel for respondent Nos.1 and 2 fairly conceded that no action was initiated against the petitioner after receiving the aforesaid communication dated 5th October 2005 whereby the petitioner was cleared by the vigilance department. This inaction on the part of the respondents cannot be said to be insignificant or inconsequential.

22. The situation which thus emerges is that the petitioner’s case crosses the third hurdle also, i.e., the disciplinary enquiry being contemplated. At

our query, the learned counsel for the respondent Nos.1 and 2 candidly conceded that there is no document which shows that the disciplinary proceedings was ever contemplated against the petitioner, in respect of the vigilance enquiry, arising out of the audit report, of which the petitioner was cleared. Resultantly, ineligibility could not be attributed to the petitioner on any count.

23. This virtually renders the impugned communication to stand or fall by its stated reason. The learned counsel for the respondent Nos.1 and 2 urged with tenacity that the impugned action was justifiable as the Board of Directors of the respondent No.1 had empowered the respondent No.2 to take decision in respect of the applications which were awaiting vigilance clearance as of 20th April 2005. Since the respondents drew support and sustenance from the decision of the Board of Directors, it is extracted below in verbatim :

“The Board directed the Management to distinguish between cases involving vigilance proceedings and those involving disciplinary proceedings. The management is authorized to review and decide on SVRS applications involving vigilance enquiries subject to clearance from vigilance department. The remaining cases which involve suspension or disciplinary proceedings (pending/contemplated) may be placed before the Board.

24. The learned counsel for the respondent Nos.1 and 2 endeavored to persuade us to hold that since the aforesaid decision was taken in the board meeting held on 20th April 2005, the impugned action of rejecting all the applications wherein the vigilance clearance was not obtained by the

said date, i.e., 20th April 2005, was sustainable.

25. We are afraid to accede to the aforesaid submission for reasons more than one. Firstly, the aforesaid decision of the Board of Directors dated 20th April 2005, was in the nature of delegation of the authority to the management to review and decide SVRS applications involving vigilance enquiries, subject to clearance from the vigilance department. The said decision can, by no stretch of imagination, be construed as a policy direction to reject all the applications, wherein the vigilance clearance was awaited on 20th April 2005. On the contrary, the management was expected to deal with each of the applications on its own merits. This fact is underscored by the second part of the decision that the rest of the cases which involved suspension or disciplinary proceedings were directed to be placed before the Board. Admittedly, the later cases were of grave nature. Even in those cases, the Board of Directors did not decide to reject the applications for SVRS. Secondly, the competent authority could not have taken a decision which was in the nature of a policy decision, i.e., reject all the applications wherein the vigilance clearance was not received by 20th April 2005, in clear breach of the direction to review and decide those applications. Thirdly, in any event, when the vigilance clearance in respect of the petitioner was obtained on 5th October 2005, the application could not have been rejected on the spacious premise that the clearance was not

received by 20th April 2005. The rejection of the application with reference to the date of the decision of the Board of Directors, i.e., 20th April 2005, is wholly arbitrary. In the context of the facts of the case, the said cut off date '20th April 2005' was an artificial device and had no nexus with the decision in question.

26. The submission on behalf of the respondent Nos.1 and 2 that there was no discrimination as all the applications wherein the vigilance clearance was not obtained by 20th April 2005, were rejected, is unworthy of acceptance. Since the petitioner was already cleared by vigilance department on 5th October 2005 and no administrative or disciplinary proceedings was contemplated against the petitioner, the rejection of the application for voluntary retirement, with reference to an anterior point of time, which had no nexus whatsoever with the decision in question, is completely arbitrary and also suffers from the vice of non-application of mind.

27. The aforesaid inference is inescapable as the respondents have not endeavored to assign any other reason for rejection of the application. Had the respondents rejected the application citing positive attribute, i.e., the services of the petitioner were required for the purpose of efficient functioning of the respondent No.1 or by pressing in adverse factor, i.e., the respondent No.1 contemplated to proceed against the petitioner despite

vigilance clearance for the alleged lapses or misdeeds, different considerations would have come into play. The rejection of the application with reference to the decision of the Board of Directors, which in no way supports the impugned action, and thereby attaching disqualification retrospectively, can in no circumstance be sustained.

28. Concededly, it was an unique opportunity for the eligible employees of the respondent No.1. The desire to get the benefit under the Scheme 2004 was legitimate. Undoubtedly, the respondent No.1 had discretion but it was to be exercised in a judicious manner. It was not an unfettered discretion to be exercised for consideration *de hors* the prescription under the Scheme and the authorization by the Board of Directors of respondent No.1. The respondent No.2, in our view, could not have the nipped the legitimate aspirations of the employees by a stroke of pen, on the pretext of absence of vigilance clearance at an anterior point of time. The exercise of the discretion, for the said stated reason, appears to be totally unreasonable and for an extraneous consideration.

29. A profitable reference, in this context, can be made to a judgment of the Supreme Court in the case of *Manjushree Pathak Vs. Assam Industrial Development Corpn. Ltd. & Ors.*⁵, wherein also no decision was taken on the application of the petitioner therein for voluntary retirement, though she was eligible, for an inordinately long period, and thereafter, a

5 (2000) 7 SCC 390

show-cause notice came to be issued to her for alleged involvement in political activities. When the matter reached the Supreme Court, it was found that the inaction on the application of the petitioner for a long period and issuance of a show-cause notice for the alleged involvement in political activity, and thereby denying the benefit under the voluntary retirement Scheme amounted to rejection of the request on an extraneous consideration.

30. The observations of the Supreme Court, in paragraph No.16, underscore the nature of the discretion conferred upon the authority in such matter. They read as under :-

“16 The Division Bench of the High Court has failed to see that the Scheme conferred discretion on the Corporation under Clause 8.1 coupled with the duty to act judiciously when application for voluntary retirement was made by an employee. The said clause did not confer any unfettered discretion upon the Corporation to refuse the benefit of the Scheme to any employee being an authority coming within the meaning of Article 12 of the Constitution. It was not open to the Managing Director of the respondent-Corporation to act on extraneous consideration by issuing a show-cause notice dated 15/16.2.1996 so as to deprive the appellant of the benefit flowing from acceptance of her voluntary retirement. It is true that under Clause 8.1 of the Scheme discretion was available to the respondent-Corporation but that discretion was not absolute. It was circumscribed by the terms mentioned in the said Clause and it was to be exercised judiciously. In the case on hand the Managing Director of the Corporation has failed to act reasonably and fairly. He abdicated his duty by not exercising discretion at all in the light of facts and circumstances of the case stated above in sufficient details.”

(emphasis supplied)

31. The aforesaid proposition appears to be nearer to the facts of the case at hand. The application of the petitioner for voluntary retirement,

under the Scheme 2004 was kept pending for a long period, even after the vigilance clearance, and, thereafter, the claim was rejected by attaching ineligibility retrospectively and also contrary to the mandate of the decision of the Board of Directors. The respondent No.2, in the case at hand, can be said to have abdicated his duty by not exercising the discretion in conformity with the Scheme and decision of the Board of Directors.

32. At this juncture, we have given our anxious consideration to the reliefs to be granted to the petitioner. The subsequent events, which transpired during the pendency of the petition, deserve cognizance. The petitioner came to be transferred to Baroda Divisional Office, and relieved vide order dated 24th July 2007. As the petitioner did not join the said office, disciplinary proceedings vide Memorandum dated 29th July 2011 came to be initiated with the charge of unauthorized absenteeism (at the transferred place) and willful disobedience of lawful instructions of superiors officers. This Court, vide order dated 14th October 2013, stayed the said disciplinary proceedings and the said stay is still in operation. In the meanwhile, the petitioner crossed the normal age of superannuation.

33. The learned counsel for the petitioner urged that the petitioner was indisputably entitled for the benefit for the Scheme 2004, which was an unique and golden opportunity. Therefore, the learned counsel for the petitioner submitted that, the petitioner be declared to have retired under

the Scheme-2004 from the date the respondents stopped the payment of salary to the petitioner and the actual payments made to the petitioner be adjusted against the compensation payable under the Scheme. It was further submitted that the petitioner be allowed a reasonable interest on the amount which would become payable under the Scheme 2004, from the said date.

34. In support of this claim for interest, the learned counsel for the petitioner placed reliance on the judgment of the Supreme Court in the case of *Devaki Nandan Prasad Vs. State of Bihar & Ors.*⁶.

35. In contrast, the learned counsel for respondent Nos.1 and 2 submitted that under the Scheme, in terms of Clause 16, the petitioner was expected to continue to remain on duty till the date he was relieved, after acceptance of his offer of SVR. Thus, according to the learned counsel for respondent Nos.1 and 2, the petitioner could not have unilaterally brought an end to the jural relationship between the parties. Since the petitioner has not joined the Baroda Divisional Office, post his transfer, and has not rendered the services, the petitioner is neither entitled for the declaration that he retired under the Scheme 2004 nor the monetary benefits thereunder.

36. We are of the view that the refusal of respondent Nos.1 and 2 to accept the application of the petitioner for voluntary retirement took its

⁶ (1983) 4 SCC 20

toll. The relationship between the employer and employee, on account of an unjust refusal, turned sour. When an employee, who is desirous of parting, with a golden handshake, is denied the opportunity, he is bound to loose interest in the employment. The aforesaid developments are required to be seen through this prism. Though these subsequent developments do not have a bearing upon the validity of the impugned action yet they are of some significance in moulding the relief.

37. It is pertinent to note that the petitioner, admittedly, has not rendered services to the respondents from the end of July 2007. From the documents placed on record by the respondents, especially the memorandum dated 29th July 2011 and its accompaniments, it becomes evident that the petitioner was relieved from Mumbai Divisional Office on 24th July 2007. We are, thus, inclined to hold that it will be appropriate to consider '24th July 2007' as the date on which the petitioner would stand retired from respondent No.1, under the Scheme-2004.

38. The principle, "*No work and no pay*" may not be attracted in this case. Had the respondent Nos.1 and 2 considered the application of the petitioner under the Scheme 2004, in proper perspective, he would have been entitled to the benefit thereunder. In this sense, the claim of the petitioner was legitimate and emanated from the Scheme 2004. We are, therefore, of the considered view that the petitioner is entitled to all the

benefits under the Scheme-2004, on the assumption that the petitioner retired from the service with effect from 27th April 2007.

39. It is true that the amount which would have been paid to the petitioner in the year 2007, would have had better purchasing power. Even the petitioner could have utilized the corpus for a more productive purpose and worthy cause than to which the petitioner may now employ it. However, we are not inclined to grant interest on the monetary benefit which would be admissible to the petitioner under the Scheme-2004 as we find that the petitioner could not have refused to join the post to which he was transferred at Baroda Divisional Office. On balance, we are of the view that, the award of interest on the admissible monetary benefit would not be just and proper.

40. The conspectus of the aforesaid discussion is that the petition deserves to be allowed in the following terms :-

(a) The impugned order dated 26th May 2006 rejecting the application of the petitioner for special voluntary retirement under the Scheme-2004 stands quashed and set aside.

(b) It is hereby declared that the petitioner stood retired, in terms of Special Voluntary Retirement Scheme-2004, with effect from 24th July 2007.

(c) The respondents do pay to the petitioner all the

monetary, pensionary and other terminal benefits under the Scheme-2004 within a period of two months from today.

(d) Any salary, allowance or remuneration paid by the respondent No.1 to the petitioner for the period beyond 24th July 2007 shall be deducted from the amount payable to the petitioner under Clause (c) above.

(e) It is, however, made clear that the petitioner shall be entitled to pension, as admissible under the General Insurance (Employees') Pension Scheme 1995 and Scheme-2004, with effect from 25th July 2007 and shall continue to draw pension like the other similarly circumstanced officers, who retired in terms of the Scheme-2004.

(f) It is further clarified that while deducting the amount paid on account of salary, allowance or remuneration by the respondent No.1 to the petitioner for the period beyond 24th July 2007, the amount of pension to which the petitioner would have been entitled to, as admissible under the General Insurance (Employees') Pension Scheme 1995 and Scheme-2004 with effect from 25th July 2007 till date, shall be adjusted.

41. Rule is made absolute in the aforesaid terms. In the circumstances, there shall be no order as to costs.

42. In view of disposal of the petition, Notices of Motion Nos.347 of 2007 and 183 of 2007 do not survive and are accordingly disposed of.

[N.J. JAMADAR, J.]

[B.R. GAVAI]