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

% *Judgment Reserved on: 14.12.2018*
Judgment Pronounced on: 10.01.2019

+ **LPA 882/2013**

AIRPORTS AUTHORITY OF INDIA AND ORS. Appellants

Through: Mr. K.K. Rai, Sr. Advocate with
Mr. Digvijay Rai, Mr. Anshul Rai and
Mr. Kustubh Singh, Advs.

versus

MAHESH KUMAR SETHI AND ANR Respondents

Through: Ms. Kiran Suri, Sr. Advocate with
Mr. Soumyajit Pant, Mr. Deepak
Bhattacharya, Ms. Aishwarya Kumar,
Ms. Ritika Gambhir and
Mr. Chittranjan Singh, Advs. for R-1
Ms. Anjana Gosain with Ms. Shalini
Nair and Ms. Rabiya Thakur, Advs.
for R-2.
Mr. Kumar Rajesh Singh, Adv. for
R-2.

+ **LPA 870/2013**

AIRPORTS AUTHORITY OF INDIA AND ORS. Appellants

Through: Mr. K.K. Rai, Sr. Advocate with
Mr. Digvijay Rai, Mr. Anshul Rai and
Mr. Kustubh Singh, Advs.

versus

N.K.AWASTHI AND ANR Respondents

Through: Ms. Kiran Suri, Sr. Advocate with
Mr. Soumyajit Pant, Mr. Deepak
Bhattacharya, Ms. Aishwarya Kumar,
Ms. Ritika Gambhir and
Mr. Chittranjan Singh, Advs. for R-1

Ms. Anjana Gosain with Ms. Shalini
Nair and Ms. Rabiya Thakur, Advs.
for R-2

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J.

1. The present appeals have been filed by the Airports Authority of India (hereinafter referred to as 'AAI') seeking quashing and setting aside of the judgment dated 25.09.2013 passed by the learned Single Judge in W.P.(C) Nos. 6823/2012 & 6824/2012 whereby the learned Single Judge has allowed the writ petitions, holding that the respondents had validly withdrawn their respective applications, for voluntary retirement and has accordingly directed their reinstatement with 40% of the total monthly emoluments from 01.05.2009 till the passing of the judgment, along with costs of Rs.25,000/- in favour of the respondents.
2. The relevant and necessary facts for deciding the LPA No.882/2013 are as under:
 - (i) The respondent no.1 herein was appointed as a Wireman Helper with the AAI. He, thereafter, earned promotions and was working as an Assistant (Electrician) at IGI Airport on the date of his voluntary retirement.
 - (ii) AAI entered into a private partnership with a private entity DIAL under an Operation Management and Development Agreement (hereinafter referred to as 'OMDA') on 04.04.2006.

- (iii) Anticipating a change in some service conditions, prejudicial to them, particularly with regard to the transfer and redeployment, the employees of AAI through the AAI Employees Union, filed a writ petition in this Court bearing W.P.(C) No. 8008/2008. A specific challenge was made to Clauses 6.1.4 and 6.1.7 of the OMDA amongst other grievances. The contention of the Union therein was that till 2004, the transfer policy stipulated that Group C & D Employees of the AAI could not be transferred ordinarily and, therefore, Regulation 7 of the Regulations 2003, whereby employees had an all India transfer liability, was adversely affecting the terms and conditions of service of the employees and therefore, such transfers should not be made.
- (iv) While the said writ petition was pending, AAI issued a circular dated 09.03.2009, which was a comprehensive Scheme with respect to redeployment / transfer and Voluntary Retirement Scheme (hereinafter referred to as 'VRS'). The said scheme in Para 2 provided that the employees could choose three Airports/ Establishments of their choice in order of priority for their posting / transfer outside Delhi. The necessity of redeployment / transfer arose due to the IGI and SCI Airports being handed over to Joint Venture Companies and the voluntary support period of three years having come to a close on 02.05.2009. However, for those who did not want to opt for redeployment or transfer to the other Airports, an alternative exit route was given in Para 3 of the Scheme to seek voluntary retirement. The last date to seek VRS was 30.04.2009. Paragraphs 1, 2 and 3 of the Scheme are extracted hereinunder for

ready reference:

“Background: Consequent upon handing over of IGI and CSI Airports to the respective Joint Venture Companies as part of Restructuring and Modernization process, the employees of AAI deployed at IGI and CSI Airports were continued to be posted at respective airports for a period of three years w.e.f. 03.05.2006 to provide operational support to the said Joint Venture Companies as per OMDA. The operational support period is coming to close on 02.05.2009.

Redeployment /Transfer: The employees have been asked separately to choose any three airports/establishments of their choice in order of priority to consider them for posting /transfer. Such transfers are being treated as public interest and employees are extended the following benefits as per rules on the subject.

- a) Transfer: TA&DA for self and family members*
- b) Transfer Tour: He/She will be treated on tour for the first 30 days on his posting at new station to enable him to move immediately and tie up arrangements at new station for moving his family. He shall have entitlement to Daily Allowance at new station for a maximum period of 30 days of his joining a new station of posting.*
- c) Transfer Grant: One month's Basic Pay plus DA.*
- d) Packing Allowance: As per TA/DA Regulations.*
- e) Transportation of personal effects: As per TA/DA Regulations.*
- f) Transport of conveyance: As per TA/DA Regulations*
- g) Joining Time: upto 15 days as per rules.*

The employees of IGI and CSI Airports who do not opt for redeployment/transfer to other airports will be offered voluntary retirement as per the scheme enclosed at Annexure-I.”

(emphasis supplied)

- (v) The respondent did not opt for redeployment / transfer to any of the Airports as envisaged under the Scheme and consequently did not

choose any of the three airports/establishments of his choice. Instead, he chose the alternate path of applying for VRS by an application dated 20.04.2009. In the said application, he clearly stated that he wanted voluntary retirement under the 2009 Scheme and requested to be relieved thereunder. He also stated that he understood the Voluntary Retirement Scheme and would be bound by all its terms and conditions and also undertook that he shall not withdraw his application after the same had been accepted by the competent authority, with due communication to him.

- (vi) Hereinafter the chronology of dates are in dispute. The respondent no.1 claims that he had withdrawn the application for VRS vide a letter dated 29.04.2009 as he wanted to continue in service and it was subsequent to this that his voluntary retirement had been accepted and approved by the AAI, vide a letter dated 30.04.2009.
- (vii) On the other hand, the AAI claims that request for voluntary retirement of the respondent no.1 had, in fact, been accepted by a letter dated 28.04.2009 and thus its withdrawal on 29.04.2009 had no legal sanctity. It is also claimed that the document filed by the respondent no.1 is dated 30.04.2009, but this is an incorrect date in as much, as, the actual date was 28.04.2009 and thus there is a clear tampering of the document by the respondent to create a semblance of a claim.
- (viii) On 30.04.2009, an order was passed in W.P.(C) No. 8008/2008 whereby this Court had directed the AAI to extend the time upto 31.07.2009, to enable the employees to make a meaningful choice for continuing in the AAI or opt for voluntary retirement, under the

2009 Voluntary Retirement Scheme.

- (ix) On 06.05.2009, the respondent no.1 wrote to the AAI reiterating his claim for withdrawal of his VRS and the said letter was followed by reminders dated 11.05.2009, 16.06.2009 and 24.11.2009.
 - (x) Thereafter, the AAI sent a cheque dated 11.08.2009 to the respondent no.1 towards *ex gratia* amount, which the respondent no.1 claims, not to have encashed.
 - (xi) In 2010, some orders were passed in W.P.(C) No. 8008/2008 for release of salaries of the AAI employees and even a contempt petition was filed in that regard.
 - (xii) Another representation was filed by the respondent no.1 for restoration of his service on 28.01.2011, followed by reminders dated 03.10.2011, 11.11.2011 and 31.01.2012. Receiving no response regarding withdrawal of his VRS application, the respondent no.1 filed a writ petition before the learned Single Judge bearing W.P.(C) No. 6823/2012, wherein he sought a writ of mandamus directing the appellant herein to accept the withdrawal of his voluntary retirement under the Scheme of 2009 and reinstate him alongwith back wages and interest @12% per annum. The same was allowed vide the impugned judgment dated 25.09.2013 directing reinstatement with other benefits.
 - (xiii) On 22.11.2013, the present appeal came for admission and while issuing notice, this Court had stayed the directions of the Learned Single Judge in the impugned judgment.
3. The relevant facts in LPA No.870/2013 to the extent they are different

from LPA No.882/2013 are as under:

- (i) The respondent no.1 herein was appointed as a Beldar in Civil Department on 31.08.1984 and was promoted as Senior Assistant (Housekeeping) on 01.08.2000 at the IGI Air Port, New Delhi.
- (ii) On account of alleged personal circumstances, respondent no.1 did not wish to leave Delhi and, hence, applied for VRS on 20.04.2009. However, he sought to withdraw the VRS application vide letter dated 24.04.2009 which was received in the office of appellant on 27.04.2009. As per respondent no.1, the said withdrawal was accepted by the appellants by an office order dated 30.04.2009 whereas as per appellants no order dated 30.04.2009 was issued by their office and that the said document filed by respondent no.1 is forged and fabricated.
- (iii) On 11.08.2009 the appellant sent an ex-gratia amount of Rs.8,37,755/- through a cheque dated 05.06.2009. The appellant continued transferring ex-gratia amount in the account of the respondent no.1, having accepted his voluntarily retirement and this fact was not disputed by the respondent no.1 during the course of hearing as well. It was, however, pointed out by the learned senior counsel for respondent no.1 that the said amounts were being received by respondent no.1 in terms of the order dated 12.03.2014 of this court wherein this court had allowed respondent no.1 to accept the amounts without prejudice to the contentions of both the parties.
- (iv) Respondent no.1 claims to have sent a representation dated

04.05.2009 for cancellation of the voluntarily retirement, followed by reminders dated 29.05.2009, 16.06.2009 and 07.07.2009. Thereafter, respondent no.1 sent another reminder dated 24.11.2009 followed by letters dated 03.10.2011 and 31.01.2012 for withdrawing the VRS. Getting no response from the appellants, respondent no.1 approached this court by way of writ petition bearing W.P.(C) No.6824/2012, wherein he sought a writ of mandamus directing the appellant herein to accept the withdrawal of his voluntary retirement under the Scheme of 2009 and reinstate him alongwith back wages and interest @12% per annum. The same was allowed vide the impugned judgment dated 25.09.2013 directing reinstatement with other benefits.

(v) On 20.11.2003, the present appeal came for admission and while issuing notice, this Court had stayed the directions of the Learned Single Judge in the impugned judgment.

4. Mr. K.K. Rai, learned senior counsel for the appellant contended that the writ petitions ought to have been dismissed by the learned Single Judge on the ground of delay and laches itself, as the same were filed after about a period of 3 ½ years from the date of the arising of the cause of action in April 2009, if any. He further contended that the respondents are guilty of manipulation and fraud, as they had annexed an order purported to be dated 30.04.2009 - by which their voluntary retirement had been accepted, whereas actually the date of the order as passed by the AAI was 28.04.2009 and, therefore, having come to the Court with unclean hands, they were not entitled to any relief. His

third contention was that the VRS Scheme 2009 was not a Simplified Voluntary Retirement Scheme. It was a comprehensive scheme whereunder the employees had been asked to choose any one of the three airports or establishments in the order of priority, outside the Delhi region. Only in the eventuality of the employees not giving their option for redeployment/transfer, they were offered Voluntary Retirement. He further submitted that in fact the respondents did not opt for any three airports outside Delhi and therefore, the only option available to them was to seek voluntary retirement. Learned senior counsel vehemently contended that the intent and motive of the respondents was clearly to remain in Delhi and overreach their transfer outside Delhi and so they initially applied for voluntary retirement. However, soon thereafter, they sought to withdraw it, but admittedly, even then did not give an option to be transferred out of Delhi by making their choices in the order of priority. Learned senior counsel in support of his submissions has relied upon various judgments. Reliance was placed on the judgment of Hon'ble Apex Court in the case of '*State of Madhya Pradesh and Another versus Bhailal Babu*', (1964) 6 SCR 261 and '*Union of India versus S.S. Kothiyal and Ors.*', (1998) 8 SCC 682 to contend that a petition which is filed belatedly after more than 3 ½ years ought to be dismissed as being hit by delay and laches. Reliance was placed on the judgment of the Hon'ble Apex Court in the case of '*K.D. Sharma versus SAIL and Others*', (2008) 12 SCC 481 in support of the submission that a person who does not approach the Court with clean hands by disclosing all facts, or plays fraud, is not entitled to an equitable relief.

5. Per contra, Ms. Kiran Suri, learned senior counsel for the respondent no.1 in LPA No.882/2013 and LPA No. 870/2013 contended on behalf of the respondents that the writ petitions had been rightly allowed by the learned Single Judge in as much, as, the VRS Scheme, 2009 permitted the respondents to apply for voluntary retirement and therefore, the respondents instead of opting for a transfer outside Delhi rightly applied under the Scheme on 20.04.2009. She further submitted that after having applied for VRS, the respondents had a second thought and on 29.04.2009 and 24.04.2009, they submitted a request for withdrawal of the voluntary retirement and this was done before the same was accepted on 30.04.2009. She further contended that the cutoff date for applying/ withdrawal of the VRS option had been extended till 31.07.2009, by the orders of this Court in W.P.(C) No. 8008/2008 and so even the acceptance on 30.04.2008 had no meaning. Learned senior counsel submitted that the learned Single Judge was right in holding that the withdrawal for VRS before the cutoff date was valid and thus the judgment granting reinstatement to the respondents has no infirmity. On the aspect of delay and laches, learned senior counsel submitted that there was no delay and laches and the writ petitions were filed as soon as the cause arose. Narrating the chronology of events, learned senior counsel for the respondents argued that the order accepting the voluntary retirement was passed on 30.04.2009. By an order dated 30.04.2009 in W.P.(C) No. 8008/2008, the date for applying / withdrawal of VRS was extended till 31.07.2009. The respondents, thereafter, sent letters to the appellant for accepting the withdrawal of the VRS. This was followed by

several reminders. When nothing was heard, again several reminders were sent between 2009 to 2012. She further submitted that in this period, deliberations were being carried out by a Committee formed by AAI regarding the service conditions of the employees of the AAI, including transfers. This Court in W.P.(C) No. 8008/2008 was also seized of the issue and thus between 2009 and early 2012, it was not clear to the employees as well as to the AAI as to what would be the new terms and conditions of the service of the employees and therefore, in that situation, there was no reason or occasion for the respondents to have approached any Court. The writ petitions filed in 2012 were therefore not hit by delay and laches. On the issue of having placed on record a letter dated 30.04.2009 whose date was allegedly manipulated, not much submission was made by the learned senior counsel except for stating that there has been no manipulation and the document actually bears the date of 30.04.2009. Responding to the submission of the learned senior counsel for the appellant that having sought withdrawal of the VRS, the respondents should have opted for transfer to any three airports outside Delhi, learned senior counsel for the respondents vehemently submitted that the issue of acceptance of withdrawal was pending throughout the period between 2009 and 2012 and there had been no occasion for the Respondents to have exercised any option for the transfer.

6. We have heard the learned senior counsels for the parties.
7. The learned Single Judge by the impugned judgment has allowed W.P.(C) No. 6823/2012 and W.P.(C) No. 6824/2012 by holding that the withdrawal of the VRS before its acceptance and/ or before the

cutoff date was valid and has relied on the judgment in the case of '**R. Kothandaraman versus The Speaker, Lok Sabha Secretariat & Anr.**', in W.P.(C) No. 7132/2009 decided on 10.01.2013.

8. As regards the issue of delay and laches is concerned, we find that the said issue has not been considered by the learned Single Judge. Learned senior counsel for the appellant stated that the same was taken in the counter affidavit as a preliminary objection and was even argued before the learned Single Judge.
9. On the aspect of fraud and manipulation, the learned Single Judge has observed that this was a disputed question of fact which could not be decided in a writ petition and in any case, nothing would turn on the same in so far as the merits of the case were concerned besides the fact that the cutoff date was extended from 30.04.2009 to 31.07.2009 by a judicial order.
10. Having heard the parties, we find merit in the contention of the appellant that the writ petitions were hit by delay and laches and ought to have been dismissed by the learned Single Judge on this ground alone. It is undisputed that the respondents had sought withdrawal of voluntary retirement by letter dated 29.04.2009 in LPA No. 882/2013 and 24.04.2009 in LPA No. 870/2013 respectively. It was, at that stage, that the cause of action had arisen in favour of the respondent and if they felt aggrieved, they should have approached the appropriate Court for seeking relief. The submission that the respondents were filing repeated representations, between 2009 and early 2012, is no ground to justify the delay in approaching the Court in 2012. It is a settled law that mere making of representations, does

not extend limitation nor can it be a sufficient ground to condone the delay. If the appellant did not respond to their representations in 2009 itself, there was no bar to the respondents in approaching the Court in that year itself. The submission of the learned senior counsel for the respondents that they were awaiting the outcome of the W.P.(C) No. 8008/2018 wherein certain terms and conditions were under adjudication, and also that the order dated 30.04.2009 had extended the cutoff date for applying / withdrawal of VRS can be of no help to the respondents. We had pointedly asked the learned senior counsel for the respondents, if this Court in that writ petition, or in any other litigation, had granted any stay on the scheme or the transfers, and the answer was a categorical 'No'. The respondents had laid overemphasis on the order dated 30.04.2009 in W.P.(C) 8008/2008 to explain the delay, but a bare perusal of the order shows that the Court was never inclined to pass an order staying the transfers or redeployment and infact, in Para 11 of the order, the Court had clearly observed that the Regulations 2003 enabled the authority to transfer or redeploy all categories of employees and there was no fetter on the discretion of the authority to act in a particular manner, as per the Regulations. It had further observed that the discretion of the employer to redeploy a personnel due to the execution of OMDA in 2006 could not be categorized as *per se* illegal. The Court further went on to hold that prima facie, it did not discern any illegality in the transfer orders. In fact, the Court in the operative part of the order extended the time till 31.07.2009 to enable the employees to make a meaningful choice to continue in the AAI or seek voluntary retirement. This order,

therefore, does not help the respondents as in 2009 itself, it was clear to them that either they had to exercise their choice to opt to be transferred outside Delhi or to seek voluntary retirement. The judgments in the case of '*State of Madhya Pradesh and another versus Bhailal Babu*' and '*Union of India & Ors. Vs. S.S. Kothiyal & Ors*' clearly apply to the facts of these cases.

In *State of Madhya Pradesh and another versus Bhailal Bhai*, the Hon'ble Apex Court has held as under:-

“17. At the same time we cannot lose sight of the fact that the special remedy provided in Article 226 is not intended to supersede completely the modes of obtaining relief by an action in a Civil Court or to deny defences legitimately open in such actions. It has been made clear more than once that the power to give relief under Article 226 is a discretionary power. This is specially true in the case of power to issue writs in the nature of mandamus. Among the several matters which the High Courts rightly take into consideration in the exercise of that discretion is the delay made by the aggrieved party in seeking this special remedy and what excuse there is for it. Another is the nature of controversy of facts and law that may have to be decided as regards the availability of consequential relief. Thus, where, as in these cases, a person comes to the court for relief under Article 226 on the allegation that he has been assessed to tax under a void legislation and having paid it under a mistake is entitled to get it back, the court, if it finds that the assessment was void, being made under a void provision of law, and the payment was made by mistake, is still not bound to exercise its discretion directing repayment. Whether repayment should be ordered in the exercise of this discretion will depend in each case on its own facts and circumstances. It is not easy nor is it desirable to lay down any Rule for universal application. It may however be stated as a general Rule that if there has been

unreasonable delay the court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus. Again, where even if there is no such delay the Government or the statutory authority against whom the consequential relief is prayed for raises a prima facie triable issue as regards the availability of such relief on the merits on the grounds like limitation the court should ordinarily refuse to issue the writ of mandamus for such payment. In both these kinds of cases it will be sound use of discretion to leave the party to seek his remedy by the ordinary mode of action in a Civil Court and to refuse to exercise in his favour the extraordinary remedy under Article 226 of the Constitution.”

Similarly, in the case of *Union of India & Ors. Vs. S.S. Kothiyal & Ors.*, the Hon’ble Apex Court held as under:-

“3. In our opinion, the admitted facts of this case alone are sufficient to reverse the judgment of the learned Single Judge as well as that of the Division Bench of the High Court. According to the version of Respondent 1 himself, his representation against non-promotion as Deputy Commandant was rejected on 10-6-1971, the second such representation made on 19-8-1971 was rejected on 4-11-1974 and the third representation made on 12-4-1977 was rejected on 11-7-1977. It is obvious that on rejection of his representation in June 1971, there was no occasion for Respondent 1 to wait any longer to challenge his non-promotion and, therefore, the filing of the writ petition 8 years thereafter in December 1978, was highly belated and deserved to be rejected on the ground of laches alone in view of the settled principles relating to interference in service matters of this kind in exercise of the power of judicial review. The learned Single Judge as well as the Division Bench of the High Court completely overlooked this aspect. The fact that Respondent 1 waited for several years till he was actually promoted as Deputy Commandant in 1972 and even as Commandant in 1975 and more than three years elapsed

even thereafter before he had filed the writ petition, is itself sufficient for the rejection of the writ petition.”

Learned senior counsel for the respondents have relied upon the judgments in the cases of **‘Kuldip Chand versus Union of India & Ors.’**, (1995) 5 SCC 680 and **‘Asger Ibrahim Amin versus Life Insurance Corporation of India’**, (2016) 13 SCC 797. The said judgments relate to issues of seniority as well as pension. Pension has been held to be continuing wrong and, therefore, the Hon’ble Apex Court had liberally construed the delay in approaching the Court. Facts relating to the case on seniority are totally different and the ratio would thus not apply to this case. Coming to the facts of the present case, the respondents knew in 2009 itself, that their withdrawal for the VRS was not accepted and this cannot be construed as a continuing wrong. Therefore, the judgments relied upon by the learned counsel for the respondents have no application to the present cases and would not come to the aid and support of the respondents.

In our view, the petitions of the respondents are hit by delay and latches having been filed more than three years after the cause of action, if any, arose. The same deserved to be dismissed on this ground alone.

11. This Court also finds force in the contention of the appellant that the respondents had tampered with the date of a document and had therefore, approached the Court with unclean hands. The actual documents bearing the date of 28.04.2009 was shown to us. Whether or not the change of date by the respondents has any effect on the merits of the case is not material. The real issue is, whether a litigant

can be permitted to file documents in any Court by forging or manipulating them? It is settled law and a fundamental principle of law that anyone who comes to Court with unclean hands cannot be granted an equitable relief. The respondents could not rebut this argument of the appellant and while we do not want to precipitate this issue further, we certainly feel that this would be a sufficient ground to disentitle the respondents to any relief.

The ratio of the judgment in ***K.D. Sharma Vs. SAIL and Ors.***, reported at (2008) 12 SCC 481 would squarely apply to this case. In ***K.D.Sharma case*** (Supra), the apex Court held as under:-

“34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.

35. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of R. v. Kensington Income Tax Commrs. [(1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)] in the following words: (KB p. 514)

“... it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts—it says facts, not law. He must not misstate the law if he can help it—the court is supposed to know the law. But it knows nothing about

the facts, and the applicant must state fully and fairly the facts; and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement.”

(emphasis supplied)

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, “We will not listen to your application because of what you have done.” The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

37. In *Kensington Income Tax Commrs.* [(1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)] Viscount Reading, C.J. observed: (KB pp. 495-96)

“... Where an *ex parte* application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination

and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit.”

(emphasis supplied)

38. *The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play “hide and seek” or to “pick and choose” the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because “the court knows law but not facts”.*

39. *If the primary object as highlighted in Kensington Income Tax Commrs. [(1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)] is kept in mind, an applicant who does not come with candid facts and “clean breast” cannot hold a writ of the court with “soiled hands”. Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt*

of court for abusing the process of the court.”

12. In so far as the withdrawal of the applications for voluntary retirement are concerned, the argument advanced on behalf of the respondents was that the application having been withdrawn well before the extended cutoff date of 31.07.2009, the same was valid and the appellant ought to have reinstated the respondents. The learned Single Judge, while allowing the writ petitions and holding the withdrawal as valid has observed that, in law, an application for withdrawal of VRS can be made before the last / cutoff date even after the VRS has been accepted, prior thereto. For this, reliance has been placed by the learned Single Judge on the judgment in the case of *R. Kothandaraman (Supra)*. It is in this background that the learned Single Judge has held that since a last / cutoff date was 31.07.2009 and the VRS had been withdrawn on 29.04.2009 and 24.04.2009, respectively by the respondents, it was a valid withdrawal and has granted the relief of reinstatement to the respondents. There cannot be any quarrel with the proposition of law that an application for VRS can be withdrawn before the cutoff date even after the same has been accepted by the competent authority. However, the issue in the present case is not limited to a simplicitor case of a withdrawal of VRS application. The circular issued by the AAI on 09.03.2009 had a background to it. This was the period when IGI and CSI Airports had been handed over to the respective Joint Venture Companies as part of their restructuring and modernization process. The employees of AAI deployed on these airports were continued for a period of three years w.e.f. 03.05.2006 to provide operational support to these Joint Venture

Companies as per OMDA, but this was coming to a close on 02.05.2009. In this background, a decision was taken wherein these employees were given a choice to remain in service but had to opt to be posted outside Delhi. The reasons were clear that the AAI could no longer deploy them at Delhi Airports. At the same time, it was felt that some employees may not want to move out of Delhi owing to personal reasons and circumstances and therefore, the scheme provided an alternate path to these employees to apply for VRS and leave the service. Reading of the Scheme clearly shows that this was not a stand-alone Scheme for VRS and therefore, the employees had no option but to choose one of the two paths. No employee could resort to a third route i.e. neither opt for a transfer outside Delhi nor apply for a VRS. The respondents, in these cases, however, chose the third path. In their wisdom, they opted at the first instance for voluntary retirement, obviously, with an intent to stall their move out of Delhi, but soon became wiser than before and sought to withdraw the voluntary retirement application without simultaneously giving their choices for posting outside Delhi. This was clearly impermissible under the Scheme. In fact, what is discernible from the totality of facts is that, perhaps, a deliberate attempt was made to find a way to remain in Delhi under the garb of withdrawing the VRS and making repeated representations for acceptance of the withdrawal of VRS. The delay in filing the writ petitions also appears to be a part of the respondents' plans, to get reinstated without having to move out of Delhi. This Court cannot subscribe itself to holding that the withdrawal of the VRS application was valid or that the respondents should be reinstated

back into service. The judgment relied upon by the learned Single Judge would be distinguishable on the peculiar facts of this case as the Scheme was a different Scheme with a different background and connotation.

13. We find merit in the present appeals and the same are thus allowed. The judgment of the learned Single Judge dated 25.09.2013 is hereby set aside, with no order as to costs.

**JYOTI SINGH
(JUDGE)**

**VIPIN SANGHI
(JUDGE)**

JANUARY 10, 2019/PB/ssc



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