

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.01.2020

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN  
AND  
THE HONOURABLE MRS. JUSTICE R. HEMALATHA

W.P.Nos.2155 & 2156 of 2020  
WMP.No.2513, 2515 & 2516/2020

E.Sriram ...Petitioner in W.P.No.2155/2020  
S.Sukumar ...Petitioner in W.P.No.2156/2020

Versus

1. Central Administrative Tribunal  
Madras bench  
Rep. by its Registrar  
High Court Buildings  
High Court, Chennai.

2. Union of India  
rep. by its Secretary to Government  
Department of Telecommunication,  
Sanchar Bhawan  
20, Ashoka Road,  
New Delhi 110 001.

3. Bharat Sanchar Limited,  
rep. By its General manager (HR-Admin)  
Chennai Telephones  
No.78, Purashawalkam High Road,  
Chennai 600 010.

4. The Deputy General Manager (Estt.I)  
BSNL Corporate Office,  
Establishment Branch  
P.A.T. Section, 5<sup>th</sup> Floor,  
Bharat Sanchar Bhavan,  
HC Mathur Lane  
New Delhi 110 001.

...Respondents in both W.P.s

COMMON PRAYER: Writ petition filed under Article 226 of the  
Constitution of India prays to issue a Writ of Certiorari

Mandamus after calling for the concerned records from the 1<sup>st</sup> respondent Tribunal, quash the order of the 1<sup>st</sup> respondent Tribunal in O.A.Nos..38&39/2020 dated 24.01.2020 rejecting the interim relief and consequently forbear the respondent no.3 and 4 from in any manner relieving the services of the petitioner pursuant to the application dated 14.11.2019 submitted by him based on BSNL Voluntary Retirement Scheme, 2019.

For Petitioners in both W.Ps.  
: Mr.Balan Haridas

For Respondents in both W.Ps.  
: Mr.G.Rajagopalan  
Additional Solicitor General  
assisted by Ms.Sunita Kumari,  
Senior Panel for R2  
Mr.S.Udhayakumar for R3 & R4

COMMON ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

The matter in issue pertains to the letter of withdrawal of the BSNL Voluntary Retirement Scheme, submitted by the petitioners, prior to acceptance by the employer namely BSNL.

2. This Court heard the submission of the learned counsel appearing for the petitioner and Mr.G.Rajagopalan, learned Additional Solicitor General of India assisted by Ms.Sunita Kumari, learned Senior Panel counsel appearing for the 2<sup>nd</sup> respondent.

3. The 3<sup>rd</sup> respondent has floated the BSNL Voluntary Retirement Scheme-2019 and also circulated guidelines to facilitate the exercise of option by employees dated 04.11.2019 and it is relevant to extract the following clauses:

2.Options for seeking voluntary retirement under this 'scheme' shall remain open from 04.1.2019 upto 03.12.2019 (5.30 p.m). the effective date of voluntary retirement under this scheme will be 31.01.2020 (A/N).

5(f). Upon successful completion of verification of Option form, the process for vigilance clearance be initiated online by the Administrative Office within two days, and the Vigilance Branch will intimate VC status to the Administrative Office, also within two days.

5(g). On receipt of vigilance status, Administrative office will process the case for acceptance of VRS by the Competent Authority, who will decide the case within

a week's time keeping in view the provisions as mentioned in clause 7(ii) of the VRS Scheme 2019.

Annexure-I: Voluntary Retirement Scheme for BSNL Employees

39F). 'Effective date of Voluntary retirement' means the date as stated in Clause 4.

4. Operation of the scheme:

The effective date of voluntary retirement under this scheme shall be 31.01.2020. the scheme shall come into force from the date of issue of notification inviting option for voluntary retirement under the scheme and shall remain in operation as per the dates mentioned below:

(a) Date of start of option: 04.11.2019

(b) Date of closing of option: 03.12.2019 upto 05:30 PM.

7. Procedure:

(i) Eligible employees shall be required to submit option to voluntarily retire from service under the scheme during the period prescribed and as per the provisions of the scheme.

(ii) The VRS option of employees(s) facing Departmental/judicial proceedings shall be accepted and Earned Leave encashment, Transfer grant, GPF/CPF and pension will be released provisionally as per Rule 69 of CCS Pension Rules 1972.

Provided that the payment of Ex-gratia and Gratuity, shall be released only on the conclusion of and based on the outcome of vigilance/disciplinary proceedings.

(iii) The option once exercised under this Scheme shall be final and decision of the competent authority shall be binding on the concerned employee(s).

Provided that the employees will be allowed to withdraw the option only once at any time till the closing time and date of option.

Provided further that the request for withdrawal of option shall be submitted online along with signed copy in writing.

(iv) the authority for acceptance of option under this scheme shall be the competent authority as defined in clause 3(c).

4. It is the case of the petitioners that prior to 31.01.2020, they have submitted representations dated 31.12.2019 praying for withdrawal of the Voluntary Retirement Applications dated 14.11.2019 for voluntary retirement and as such, based on the earlier option, they should not be relieved from service

under the said scheme.

5. The petitioners also filed O.A.Nos.38 &39 of 2020 to declare the said scheme as illegal, arbitrary and contrary to law and directing the respondents not to act upon the voluntary retirement applications dated 14.11.2019 and continue them in service till the date of their superannuation. The petitioners/Original Applicants, pending disposal of the said Original Applications, also prayed for interim relief.

6. The Tribunal vide impugned order dated 24.01.2020 has taken note of the decision rendered by the Honble Supreme Court of India in Madhya Pradesh State Road Transport Corporation Vs. Manoj Kumar and Others (2016 (9) SCC 375) and rejected the prayer for interim relief and challenging the legality of the said order, these Writ Petitions are filed.

7. Mr.Balan Haridoss, learned counsel appearing for the petitioners has invited the attention of this Court to the decision of the Hon'ble Supreme Court of India in Bank of India and Others Vs. O.P.Swarnakar and Others (2003 (2) SCC 721), which was referred to and considered in the subsequent decision in Madhya Pradesh State Road Transport Corporation Vs. Manoj Kumar and Others (2016 (9) SCC 375) and would submit that since the employer is having option either to accept or reject the Voluntary Retirement Scheme, the petitioners are having right to withdraw the request for voluntary retirement till the effective date of voluntary retirement on 31.01.2020 and as on date, they continue to be in service and hence prays for interim orders.

8. Per contra, Mr.G.Rajagopalan, learned Additional Solicitor General of India would submit that the decision of the Apex Court reported in 2016 (9) SCC 375 is fully applicable to the facts of this case and would submit that admittedly, the petitioners had exercised option under the said scheme and submitted applications dated 14.11.2019 and if at all they want to withdraw their applications, they would have done so before 03.12.2019 at 05.30 pm and admittedly they have submitted representations for withdrawal of the request of Voluntary Retirement Scheme only on 31.12.2019 and in the light of the relevant clauses under the said scheme, they are not entitled to do so and would further add that the Tribunal, on a consideration of the factual circumstances and legal position has rightly rejected the request for interim relief and prays for dismissal of these Writ Petitions.

9. This Court has carefully considered the rival submissions and also perused the materials placed before it.

10. In 2016 (9) SCC 375, similar question arises for consideration and the Hon'ble Supreme Court of India, after referring to its earlier decision, more particularly, 2003 (2) SCC 721 observed as follows:

29. Reading of the aforesaid judgments would clearly demonstrate that in those cases where the Scheme is contractual in nature (and not statutory in character as was seen in State Bank of India's case), provisions of the Contract Act would apply. The VRS Scheme floated by the employer would be treated as invitation to offer and the application submitted by the employees pursuant thereto is an offer which does not amount to resignation in praesenti and the offer can be withdrawn during the validity period. This would be the position even when there is a clause in the Scheme that offer once given cannot be withdrawn at all. However, exception to this principle is that in such cases offer is to be withdrawn during the validity period of the Scheme and not thereafter even when if it is not accepted during the period of the Scheme. That is the clear mandate of Romesh Chander Kanoji [State Bank of Patiala v. Romesh Chander Kanoji, (2004) 2 SCC 651 : 2004 SCC (L&S) 428] . The rationale which is given for carving out this exception is contained in para 9 of the said judgment, which has already been reproduced above. To put it pithily, what is highlighted is that such schemes are funded schemes and time is given to every employee to opt for voluntary retirement. Because these are funded schemes, the management is required to create a fund. The creation of this fund depends upon a number of applications; the cost of the Scheme; liability which this Scheme would impose on the employer and such other variable factors. In this situation, if the employees are allowed to withdraw from the Scheme at any time even after its closure, it would not be possible to work out the Scheme as all calculations of the employer would fail.

30. In the present case, the Corporation had floated the Scheme because of the reason that it has virtually stopped transport business and the purpose of the Scheme was to benefit itself by shrinking the strength of the employees as with no transport business need for such employees is not there. Here also, the Scheme provided that once the option is given, the same cannot be withdrawn. Following the dicta in the aforesaid judgments, as noted above, it is clear that

notwithstanding this clause, the employees had a right to withdraw the offer during the validity period but not thereafter. This legal principle is even taken note of by the High Court as well in the impugned judgment. The High Court has, however, held that though the Scheme was valid up to 1-8-2005, but validity was extended up to 31-7-2007, the employees could withdraw their offers before 31-7-2007. Further, as in all these cases where the offer was withdrawn before 31-7-2007, the High Court has dismissed the appeals of the Corporation herein.

34. Another significant feature which has to be kept in mind is that between 1-8-2005 and 12-10-2006, applications of many employees had been accepted and many out of them had even been offered their terminal dues. Thus, we find that there are two distinct groups of employees who had submitted their applications for VRS. First group was the one which exercised its option between 1-7-2005 to 1-8-2005. Second set of employees are those who submitted their options when another chance was given to them i.e. from 12-10-2006 to 28-10-2006. In view thereof, insofar as first set of employees are concerned, they could withdraw their option, before it was accepted, by 1-8-2005 and not thereafter. Likewise, those who submitted their options in the second phase could withdraw the same before 28-10-2006. A chart was submitted before us giving the status of the applications that were submitted by various respondent employees in these appeals. This chart indicates that some of the employees belonging to the first group had withdrawn their offer before 1-8-2005. They had right to do so. Acceptance of their offer after the withdrawal would be of no consequence. However, those employees who withdrew their offers after 1-8-2005 could not do so and, therefore, the Corporation was within its right to accept their offers. Likewise, those employees belonging to the second category who had withdrawn their offers before 28-10-2006 were entitled to withdraw their offers as those were not accepted by that date. However, the withdrawal after 28-10-2006 when the Scheme was closed would be of no consequence.

11. As per the said scheme, it shall remain open between 04.11.2019 and 03.12.2019 upto 05.30 p.m and the effective date of Voluntary Retirement will be on 31.01.2020.

12. As per clause 3(f) of Voluntary Retirement Scheme of BSNL employees, the effective date of voluntary retirement means the date as stated in clause no.4 and as per clause no.4, the date of start of option was fixed on 04.11.2019 and the date of

closing of option was fixed on 03.12.2019 upto 05.30 PM. Clause 7 also speaks about the procedures and as per 1<sup>st</sup> proviso to sub clause 3, the employees will be allowed to withdraw the option only once at any time, till the closing time and date of option, admittedly the petitioners did not do so.

13. The Tribunal has rightly taken note of the said factual aspects and by specifically relied upon 2016 (9) SCC 375 (above cited), has rightly reached the conclusion that the petitioners are not entitled to any relief.

14. This Court, on an independent application of mind to the entire materials placed and arguments advanced by the respective learned counsel appearing for the parties, is of the considered view that there is no error apparent or infirmity in the reasons assigned by the Tribunal for rejecting the interim relief, sought for by the petitioners.

15. It is to be noted at this juncture that the Tribunal in the impugned order made certain observations / findings and it came to be rendered at an interlocutory stage. It is a well settled legal position that any observation or finding given at the interlocutory stage should not influence the mind of Court / Tribunal, while deciding the matter and it shall be decided on its own merits.

16. In the light of the dismissal of these Writ Petition, in all probability, the Voluntary Retirement Applications submitted by the petitioners are likely to be accepted and their may be relief. If the petitioners succeed in the Original Applications, they may be entitled to all consequential reliefs and benefits and the allowed break in service, in pursuant to the interim orders, may not be put against them. The Tribunal is directed to accord priority and give disposal to the main Original Applications, as expeditiously as possible, not later than three months from the date of receipt of a copy of this order.

17. In the result, these Writ Petitions are dismissed, confirming the order dated 24.01.2020 in O.A.Nos.38 & 39 of 2020. No costs. Consequently connected Miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Registrar  
Central Administrative Tribunal  
Madras bench  
High Court Buildings  
High Court, Chennai.

2.The Secretary to Government  
Union of India  
Department of Telecommunication,  
Sanchar Bhawan  
20, Ashoka Road,  
New Delhi 110 001.

3.The General manager (HR-Admin)  
Bharat Sanchar Limited,  
Chennai Telephones  
No.78, Purashawalkam High Road,  
Chennai 600 010.

4.The Deputy General Manager (Estt.I)  
BSNL Corporate Office,  
Establishment Branch  
P.A.T. Section, 5<sup>th</sup> Floor,  
Bharat Sanchar Bhavan,  
HC Mathur Lane, New Delhi 110 001.

+1cc to Mr.S.Udayakumar, Advocate SR.7038  
+1cc to Mr.Balan Haridas Advocate SR.7158  
+1cc to Mr.Sunita Kumari, Advocate SR.6822

W.P.No.2155 & 2156 of 2020

VBA(CO)  
CB(06/03/2020)

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