

\$~

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

% *Date of decision: 23rd May, 2023*

+ W.P.(C) 14448/2006 & CM APPL. 1711/2021

KEWAL KRISHAN & ORS. Petitioners

Through: Mr. N.S. Dalal, Mr. Devesh Pratap Singh, Mr. Alok Kumar and Ms. Rachana Dalal, Advocates.

versus

DELHI VIDYUT BOARD & ANR Respondents

Through: Mrs. Avnish Ahlawat, Standing Counsel, DVB with Mr. N.K. Singh, Ms. Palak Rohmetra, Ms. Laavanya Kaushik and Ms. Aliza Alam, Advocates for R-1. Mr. Gulshan Chandra and Ms. Smriti Kumari, Advocates for R-2.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

1. By this writ petition, Petitioners seek quashing of impugned order dated 23.01.2006, whereby their claim for pension has been rejected. Writ of mandamus is sought for directions to the Respondents to grant pension from the date of their voluntary retirement with interest @12% per annum on arrears of pension.

2. Factual matrix necessary to decide the writ petition is in a narrow compass. Petitioners are ex-servicemen and after their retirement/discharge from the Armed Forces, they were employed with Delhi Electric Supply Undertaking ('DESU') against the vacancies of Ex-servicemen on different dates between the period 04.10.1988 to 23.07.1992. Petitioners No. 1, 3, 4, 5 & 6 were

appointed as Security Guards whereas Petitioners No.2 and 7 as Junior Clerk (Cash) and Junior Engineer respectively. Appointments were on regular basis and pensionary benefits were governed by CCS (Pension) Rules, 1972(hereinafter referred to as 'Pension Rules').

3. DESU was restructured as Delhi Vidyut Board ('DVB')/ Respondent No.1 and consequent upon unbundling of DVB w.e.f. 01.07.2002, Petitioners along with other employees were transferred to BSES Rajdhani Power Ltd. (BYPL)/Respondent No.2, a DISCOM, on "as is where is" basis and to protect the service conditions of the employees, Tripartite Agreement was entered into between the parties.

4. Respondent No.2 announced a Special Voluntary Retirement Scheme known as 'SVRS-2003' (hereinafter referred to as 'SVRS-2003') for its employees, vide Office Order dated 18.12.2003. After consulting Respondent No.1 i.e. DVB, Respondent No.2 issued a clarification that 5 years weightage could be given to the employees who opt for SVRS-2003 and are eligible under the provisions of Rule 48-B of Pension Rules.

5. Para 1.1 of the SVRS-2003 prescribed the eligibility conditions for an employee to opt for Voluntary Retirement (VR) under the SVRS-2003 viz. (a) regular employment in BYPL; and (b) completion of 10 years of service from the date of joining DVB or upon attaining the age of 40 years, as on the date of issue of SVRS-2003, i.e. 18.12.2003. SVRS-2003 also provided special benefits in paras 2 to 4, such as compensation in terms of salary for certain days specified therein, early bird incentive, encashment of earned leave etc.

6. Finding themselves eligible being regular employees, having completed 10 years of service and age over 40 years, Petitioners opted for VRS under SVRS-2003. Requests were accepted and Petitioners were released on various dates commencing from December, 2003 onwards. Between January to October, 2004, Petitioners No.1, 5, 6 & 7

were paid pension but the same was stopped thereafter without assigning any reason or giving any opportunity of being heard, leading to representations being filed by them. In response to the representations, Respondent No.2 asked the Petitioners to intimate whether they were in receipt of pension from their parent department and responding to this Petitioners communicated that being ex-servicemen, they were drawing pension for their erstwhile services with the Armed Forces. By order dated 23.01.2006, representation of one of the Petitioners Sh. Brij Lal was rejected, which is the order impugned in the present writ petition.

7. The ground of rejection of the claim of the Petitioners was that under Rule 19(1) of Pension Rules, a re-employed military pensioner when confirmed in a civil post becomes eligible to exercise option either to continue to draw military pension or to cease to draw the same. Military pensioner who does not exercise the option within the specified period is deemed to have opted for retention of military pension and he then becomes eligible to draw two pensions, i.e. military and civil pensions, for military and civil services respectively, only on superannuation and is thus not entitled to pension on voluntary retirement under a special voluntary retirement scheme, such as the SVRS-2003.

8. Assailing the impugned action of Respondent No.2, Mr. N.S. Dalal, learned counsel for the Petitioners contended as follows:-

- (a) Clause 1.1 of the SVRS-2003 unambiguously lays down that a regular employee, who has completed 10 years of service from the date of joining DVB or has attained the age of 40 years, is eligible to apply seeking VR. Aim and objective of introducing SVRS-2003 was clearly to enable the employees to earn pension under Rule 49(2)(b) of the Pension Rules and to treat such employees including the Petitioners on a different footing,

as compared to those who retire on superannuation or seek voluntary retirement after completion of 20 years, envisaged under the Pension Rules. The interpretation sought to be given by Respondent No.2, if accepted, would mean that Petitioners would be entitled to pension only after completion of 20 years and this would amount to playing fraud on the Petitioners, who were never informed that short of 20 years no pension was payable, else they may not have sought VR.

- (b) The issue as to whether employees are entitled to pensionary benefits having retired voluntarily under SVRS introduced by the DISCOMS as “Golden Handshake”, is no longer *res integra* and is covered by the judgment of the Supreme Court in ***National Insurance Company Ltd. and Another v. Kirpal Singh, (2014) 5 SCC 189***. In the said case, a similar plea was raised by the Insurance Companies who introduced SVRS-2004 that pension can be granted to only those employees who sought voluntary retirement after completion of 20 years of service. Supreme Court negatived this plea and accepted the stand of the employees that retirement under Special Voluntary Retirement Scheme was different from superannuation and voluntary retirement envisaged in paragraph 30 of Pension Scheme, 1995, which contained a stipulation of requirement of minimum 20 years qualifying service for pensionary benefits. The Supreme Court also held that provisions for payment of pension are beneficial in nature and ought to receive liberal interpretation so as to serve the object not only of the Pension Scheme, 1995 but also of any special scheme under which an employee is given the option to seek voluntary retirement after completion of prescribed number of years of service and age.

- (c) In *Assistant General Manager and others v. Radhey Shyam Pandey*, (2020) 6 SCC 438, the Supreme Court reiterated the position of law that a Voluntary Retirement Scheme is an independent contract and considering the background in which it was floated, pension was payable on completion of 15 years of service and such rights under the contract can be enforced in a Court of law. In the said case, eligibility under the Voluntary Retirement Scheme was 15 years of service as against the requirement of 10 years in the present case, however, the question of law was the same.
- (d) Reliance of Respondent No.2 on Rule 19(1) of Pension Rules in the impugned order to reject the claims of the Petitioners is wholly misconceived. Petitioners are not seeking pension under the Pension Rules but under a special scheme formulated by Respondent No.2 to enable the employees to sever their relationships prior to the date of superannuation even before completing 20 years qualifying service. While the stand of Respondent No.2 that re-employed military pensioners are not entitled to civil pension prior to superannuation is incorrect, but assuming for the sake of arguments that there is merit in this submission, this ought to have been clarified by incorporating it as a rider or pre-condition in SVRS-2003, in which case Petitioners would not opted.
- (e) Action of Respondent No.2 is unjust and unfair and Petitioners are being subjected to double jeopardy. If pension cannot be granted to the Petitioners then they should be given an option to join back and complete either 20 years of service or serve till the age of superannuation at their option, but Respondent No.2 cannot have both ways in their favour.

9. Contentions raised on behalf of Respondent No.2 are as under:-
- (a) Petitioners were appointed as regular employees and governed by Pension Rules for grant of pensionary benefits. In July, 2002, for restructuring of electricity industry, increasing avenues for participation of private sector in electricity industry and generally for taking measures conducive to the development and management of the industry, in an efficient commercial economic and competitive manner, DVB was privatized and unbundled and the employees became employees of private distribution companies, one of them being BSES Rajdhani Power Limited. An agreement was signed between the Delhi Government and the Workers' Union as per which, even after privatisation service conditions of DVB employees will continue to be governed by CCS Rules and FRSR. Therefore, it cannot be argued by the Petitioners today that are excluded from the provision of Rule 19 or 48-A of the Pension Rules.
- (b) It is an admitted position that Petitioners are receiving pension for their past military service and having failed to opt under Rule 19 they are deemed to have opted for retention of military pension under Rule 19(1)(a). Petitioners applied under the SVRS-2003 which does not provide grant of pension on completion of 10 years, as that was only an eligibility condition to opt and on the contrary the stipulation was that pension will be paid by DVB Pension Trust as per Rules. The stand taken by DVB Pension Trust is also that they do not have any separate pension rules and are covered by the CCS (Pension) Rules. Therefore, by virtue of Rule 48-A, pension can be admissible only on completion of 20 years of qualifying service and not 10 years.

- (c) The issue that pension can be paid under the Pension Rules only on completion of 20 years is no longer *res integra*, as the Supreme Court in ***C. Jacob v. Director of Geology and Mining and Another, (2008) 10 SCC 115***, has clearly held while dealing with Rule 43(2) of the Tamil Nadu Pension Rules, 1978 which is pari-materia to Rule 49(2)(b) of the Pension Rules that pension cannot be paid to an employee who has not completed required number of 20 years of service and that when Rule 43(2) refers to payment of pension to a person who has a qualifying service of not less than 10 years, it does not mean that minimum period of service prescribed for retirement pension is reduced to 10 years.
- (d) In December, 2003, Respondent No.2 announced the SVRS-2003 and since Petitioners applied thereunder, their applications were accepted and they were permitted to retire voluntarily. However, it is admitted that they did not have 20 years of qualifying service and therefore, their request for pension was rejected also keeping in mind the provisions of Rule 19(1). SVRS-2003 did not envisage grant of pension at 10 years of service but provided certain special benefits which the employees were entitled to, including compensation, early bird incentive, etc.
- (e) The judgments relied upon by the Petitioners are inapplicable to the present case as in those cases, Pension Rules were not applicable and even the Voluntary Retirement Schemes did not contemplate payment of pension under the CCS (Pension) Rules. Moreover, a Division Bench of this Court in ***Govt. of Delhi & Ors. v. North Delhi Power Ltd. & Ors., 2015 SCC OnLineDel 11559***, relying on the judgment of the Supreme Court in ***C. Jacob (supra)*** and interpreting Rule 49(3) of

Pension Rules held that pension will be payable only on completion of 20 years of service.

10. Appearing on behalf of Respondent No.1/DVB, Mrs. Avnish Ahlawat contended as follows:-

(a) The DISCOMS to which the employees of DVB were transferred on its unbundling floated their respective Special Voluntary Retirement Schemes which were outside the provisions of Pension Rules. Those who sought VR were offered a package and the Scheme itself highlighted that the pension would be payable as per Rules by DVB Pension Trust. Petitioners sought voluntary retirement under SVRS-2003 and once the Scheme itself enabled the employees to seek voluntary retirement on completion of 10 years of service or 40 years of age, it was implicit that on opting and being released, they would be entitled to pension *de hors* the minimum qualifying service prescribed under the Pension Rules.

(b) A similar issue came up before the Division Bench of this Court in *Delhi Transport Corporation v. Shri Baijnath Bhargava & Ors., LPA No.33/1998, Decided on 16.03.2000*, and the Court took the view that those who have rendered 10 years' service and were permitted to voluntarily retire would be entitled to pension and the word 'retiring' in Rule 49(1) and 49(2)(b) was interpreted to mean and embrace 'voluntary retirement'.

11. I have heard learned counsels for the parties and examined their respective contentions.

12. Facts are not really in dispute. Indisputably, a Special Voluntary Retirement Scheme was notified by Respondent No.2 for DISCOMS on 18.12.2003. Clause 1.1 thereof laid down the eligibility conditions to apply for voluntary retirement and reads as follows:-

"1. SCOPE & ELIGIBILITY

1.1 The Scheme shall apply to all the regular employees of BYPL, who have completed 10 years of service from, the date of joining Delhi Vidyut Board (DVB) or have attained the age of 40 years as on the date of this Office Order.”

13. Plain reading of Clause 1.1 shows that SVRS-2003 applied to all regular employees enabling them to seek voluntary retirement, if they had completed 10 years of service from the date of joining DVB or had attained 40 years of age as on 18.12.2003. Petitioners were employees of Respondent No.2 and being eligible, applied under the Scheme and were permitted to retire voluntarily on different dates commencing from December, 2003. It is not disputed that incidentally Petitioners fulfilled both the conditions of eligibility as stipulated in Clause 1.1 i.e. 10 years of service and 40 years of age.

14. The issue that falls for consideration before this Court is whether Petitioners who opted under SVRS-2003 for voluntary retirement are entitled to pension on completion of 10 years of service from the date they joined DVB.

15. Having examined the arguments of the parties, this Court finds substance in the contention that the issue is no longer *res integra* and is squarely covered by the judgment of the Supreme Court in ***National Insurance Company Ltd. (supra)***. In the said case, the question that fell for determination before the Supreme Court was as follows:-

“1. Leave granted. The short question that falls for determination in these appeals is whether the respondents who opted for voluntary retirement from the service of the appellant companies are entitled to claim pension under the General Insurance (Employees') Pension Scheme, 1995. The High Court [Kirpal Singh v. National Insurance Co. Ltd., (2008) 149 PLR 755 : (2008) 2 SLR 239 (P&H)] having answered the question in the affirmative, the appellant Insurance Companies have appealed to assail that view.”

16. In exercise of powers under Section 17-A of the General Insurance Business (Nationalisation) Act, 1972, Central Government framed the General Insurance Employees' Special Voluntary Retirement Scheme, 2004 ('SVRS-2004') and para 3 thereof

stipulated the eligibility conditions for opting for voluntary retirement, which importantly are akin to the conditions in the present case and are extracted hereunder for ready reference:-

“All permanent full time employees will be eligible to seek retirement under the Scheme provided they have attained the age of 40 years and completed 10 years of qualifying service as on the date of notification.”

17. Under SVRS-2004, certain other benefits such as Provident Fund, Gratuity, Leave Encashment were also included in addition to Pension as per General Insurance (Employees’) Pension Scheme, 1995. Respondents therein opted for voluntary retirement under SVRS-2004 and claimed pension as one of the benefits admissible to them under para 6 of the Scheme. The claim was rejected, leading to the Respondents agitating the matter before the High Court. By a common order dated 25.01.2008, the High Court allowed the petitions holding the Respondents entitled to claim pension as they had rendered minimum 10 years of service in the Company.

18. In appeal before the Supreme Court, the Company/Appellant contended that in terms of para 6 of SVRS-2004, pension will be admissible to those employees who had 20 years qualifying service as prescribed under Para 30 of Pension Scheme, 1995. Respondents, on the other hand, submitted that they had not sought voluntary retirement under para 30 of the Pension Scheme which was a general provision but had voluntarily retired pursuant to a totally different Special Voluntary Scheme and thus the condition of minimum 20 years qualifying service cannot apply.

19. Agreeing with the Respondents and dismissing the appeals, the Supreme Court held that SVRS-2004 does not rest the claim for payment of pension on any of the two provisions of Pension Scheme i.e. para 29 dealing with superannuation pension and para 30 dealing with pension on voluntary retirement. Relevant paras of the judgment

are as follows:-

“4. The respondents who opted for voluntary retirement in terms of the SVRS of 2004 aforementioned appear to have claimed pension as one of the benefits admissible to them under Para 6 above. The claim was rejected by the appellants forcing the respondents to agitate the matter before the High Court in separate writ petitions filed by them. The High Court has by a common order dated 25-1-2008 [Kirpal Singh v. National Insurance Co. Ltd., (2008) 149 PLR 755 : (2008) 2 SLR 239 (P&H)] , allowed the said petitions holding the respondents to be entitled to claim pension. The High Court has taken the view that Para 6 of the SVRS of 2004 read with Para 14 of the General Insurance (Employees') Pension Scheme, 1995 entitled the employees to claim pension so long as they had rendered a minimum of ten years' of service in the corporation/company from whose service they were seeking retirement. Para 14 of the Pension Scheme, 1995 reads as under:

“14. Qualifying service.—Subject to the other condition contained in this Scheme, an employee who has rendered a minimum ten years of service in the Corporation or a Company, on the date of retirement shall qualify for pension.”

xxxx

xxxx

xxxx

6. *It was contended on behalf of the appellant companies that in terms of Para 6 of the SVRS of 2004 (supra) pension will be admissible to those seeking voluntary retirement only if they were eligible for the same under the Pension Scheme, 1995. Para 30 of the Pension Scheme, 1995 in turn made only such employees eligible for pension who had completed twenty years of qualifying service. Inasmuch as the respondents had not admittedly completed twenty years of qualifying service on the date of their voluntary retirement, they were not eligible for pension under the Pension Scheme, 1995.*

7. *On behalf of the respondents, it was argued that the respondents had not sought voluntary retirement in terms of Para 30 of the Pension Scheme, 1995 which is a general provision and which stipulates twenty years of qualifying service for being eligible to claim pension nor was it a case where the SVRS of 2004 either specifically or by necessary implication adopted Para 30 of the Pension Scheme, 1995 for determining the eligibility of those seeking retirement under the said Scheme. The respondents had, it was contended, voluntarily retired pursuant to the SVRS of 2004 which was different from what was envisaged under Para 30 of the Pension Scheme, 1995. The condition of eligibility for pension stipulated under Para 30 viz. twenty years of qualifying service had, therefore, no application to the respondents implying thereby that the claim for pension ought to be seen in the light of Para 14 of the Pension Scheme, 1995 treating retirement under the Special Scheme of 2004 also as a retirement for the purposes of that para.*

8. *We find considerable force in the contention urged on behalf of the respondents. The Pension Scheme, 1995 provides for “superannuation pension” and “pension on voluntary retirement”.*

Superannuation pension is regulated by Para 29 of the Pension Scheme, 1995 while voluntary retirement pension is governed by Para 30 which reads as under:

“29.Superannuation Pension.—*Superannuation pension shall be granted to an employee who has retired on his attaining the age specified in Para 12 of the General Insurance (Rationalisation and Revision of Pay Scales and Other Conditions of Service of Supervisory, Clerical and Subordinate Staff) Scheme, 1974 and in Para 4 of the General Insurance (Termination, Superannuation and Retirement of Officers and Development Staff) Scheme, 1976.*

30.Pension on voluntary retirement.—*(1) At any time after an employee has completed twenty years of qualifying service, he may, by giving notice of not less than ninety days, in writing to the appointing authority, retire from service:*

(5) The qualifying service of an employee retiring voluntarily under this paragraph shall be increased by a period not exceeding five years, subject to the condition that the total qualifying service rendered by such employee shall not in any case exceed thirty years and it does not take him beyond the date of retirement.

(6) The pension of an employee retiring under this paragraph shall be based on the average emoluments as defined under clause (d) of Para 2 of this Scheme and the increase, not exceeding five years in his qualifying service, shall not entitle him to any notional fixation of pay for the purpose of calculating his pension.”

9. *The SVRS of 2004 does not obviously rest the claim for payment of pension on any one of the above two provisions. That is because what is claimed by the employees, the respondents before us is not superannuation pension nor is it pension on voluntary retirement within the meaning of Para 30 (supra). As a matter of fact, Para 6(1)(c) of the SVRS of 2004 specifically provides that the notional benefit of additional five years to be added to the service of the retiring employee as stipulated in Para 30 of the Pension Scheme shall not be admissible for purposes of determining the quantum of pension and commutation of pension. It follows that the SVRS of 2004 did not for the purposes of grant of pension adopt the scheme underlying Para 30 of the Pension Scheme, 1995. Such being the case, the question is whether the provisions of Para 6 of the SVRS of 2004 read with Para 14 of the Pension Scheme, 1995 which stipulates only ten years' qualifying service for an employee who retires from service to entitle him to claim pension would entitle those retiring pursuant to the SVRS of 2004 also to claim pension. Our answer is in the affirmative. If Paras 29 and 30 do not govern the entitlement for those seeking the benefit of SVRS of 2004, the only other provision which can possibly be invoked for such pension is Para 14 (supra) that prescribes a qualifying service of ten years*

only as a condition of eligibility.

10. *The only impediment in adopting that interpretation lies in the use of the word “retirement” in Para 14 of the Pension Scheme, 1995. A restricted meaning to that expression may mean that Para 14 provides only for retirements in terms of Paras (2)(t)(i) to (iii) which includes voluntary retirement in accordance with the provisions contained in Para 30 of the Pension Scheme. There is, however, no reason why the expression “retirement” should receive such a restricted meaning especially when the context in which that expression is being examined by us would justify a more liberal interpretation; not only because the provision for payment of pension is a beneficial provision which ought to be interpreted more liberally to favour grant rather than refusal of the benefit but also because the Voluntary Retirement Scheme itself was intended to reduce surplus manpower by encouraging, if not alluring employees to opt for retirement by offering them benefits like ex gratia payment and pension not otherwise admissible to the employees in the ordinary course. We are, therefore, inclined to hold that the expression “retirement” appearing in Para 14 of the Pension Scheme, 1995 should not only apply to cases which fall under Para 30 of the said Scheme but also to a case falling under the Special Voluntary Retirement Scheme of 2004. So interpreted, those opting for voluntary retirement under the said SVRS of 2004 would also qualify for payment of pension as they had put in the qualifying service of ten years stipulated under Para 14 of the Pension Scheme, 1995.*

xxx

xxx

xxx

17. *In the case at hand Para 2 of the Pension Scheme, 1995 (extracted earlier) defines the expressions appearing in the Scheme. But what is important is that such definitions are good only if the context also supports the meaning assigned to the expressions defined by the definition clause. The context in which the question whether pension is admissible to an employee who has opted for voluntary retirement under the 2004 Scheme assumes importance as Para 2 of the Scheme starts with the words “In this Scheme, unless the context otherwise requires”. There is nothing in the context of the 1995 Scheme which would exclude its beneficial provisions from application to employees who have opted for voluntary retirement under the Special Scheme, 2004 or vice versa. The term retirement must in the context of the two schemes, and the admissibility of pension to those retiring under the SVRS of 2004, include retirement not only under Para 30 of the Pension Scheme, 1995 but also those retiring under the Special Scheme of 2004. That apart, any provision for payment of pension is beneficial in nature which ought to receive a liberal interpretation so as to serve the object underlying not only of the Pension Scheme, 1995 but also any special scheme under which employees have been given the option to seek voluntary retirement upon completion of the prescribed number of years of service and age.”*

20. From a reading of the aforementioned judgment, it is clear that the Supreme Court segregated the claim for pension under a Special Voluntary Retirement Scheme and a General Pension Scheme prevalent in the organisation and held that there was no reason why the expression 'retirement' should receive a restricted meaning especially when provision for payment of pension is a beneficial provision and ought to be interpreted liberally to favour grant rather than refusal of the benefit. It was also observed that Voluntary Retirement Scheme was intended to reduce surplus manpower by encouraging, if not alluring employees to opt for retirement by offering them benefits like pension which are not otherwise admissible in ordinary course.

21. Few years later in the year 2020, the Supreme Court reaffirmed this position of law in *Assistant General Manager (supra)*. In the said case, the question involved was whether the Respondent employees were entitled to pension on completion of 15 years of service as per State Bank of India Voluntary Retirement Scheme (VRS-2000). The Scheme provided eligibility of 15 years of service for opting for voluntary retirement and provided various benefits such as *ex gratia* amounts, gratuity, pension, bank's contribution towards provident fund and leave encashment as per rules. Under the Pension Rules of SBI, both existing up to 09.03.2001 and those amended thereafter, pension was admissible to an employee having completed 20 years' pensionable service provided he had attained age of 50 years or if he was in the service of the bank on or after 01.11.1993 having completed 10 years' pensionable service provided he attained the age of 58 years or if he was in service of the bank on or after 22.05.1998, after having completed 10 years' pensionable service provided he attained the age of 60 years.

22. The question before the Supreme Court was whether under VRS-2000, as approved and adopted by the Central Board of Directors of SBI, pension was admissible to the employees on completion of 15 years of permanent service and if the answer was in the affirmative, whether the Respondents had been denied the benefit of pension unfairly and arbitrarily. In order to answer the question, the Supreme Court considered the background and nature of the VRS Package and relevant paras are as under:-

“21. Firstly, it is necessary to consider the nature of the package, which was accepted in the Resolution by the Central Board of Directors of SBI in its meeting dated 27-12-2000. As already mentioned, exercise was done in order to rationalise the workforce as it was felt that banks were overstaffed. The IBA advised the SBI regarding the issues confronting the public sector banks. In the memorandum submitted to the Central Board of Directors of SBI, the following facts were mentioned as to the adoption of Scheme in right earnest and requirement of manpower planning:

“The data available with IBA indicates that 43% of employees in public sector banks are in the 46+ age group, and only 12% are in the 25-35 age group. This pattern has serious implications for the banks with reference to mobility, training, development of skills, and succession plans for higher-level positions. This, coupled with excess manpower wherever it exists, would come in the way of induction of new skills and proper career progression.

The Committee has recommended the introduction of a voluntary retirement scheme that would assist the banks in their effort to optimise their human resources and achieve a balanced age and skills profile in keeping with their business strategies. IBA has advised that the Government of India has conveyed that they have no objection to the banks' placing before their respective Boards of Director's proposals for adopting and implementing the voluntary retirement scheme. It has been advised that banks may adopt the scheme after obtaining their Boards' approval and implement it in right earnest.”

(emphasis supplied)

“(a) The high establishment costs of the Bank vis-à-vis the foreign banks and new private sector banks have been a matter of concern. The percentage of staff expenses to total expenses in the Bank is 21.85 against the percentage of 7.66 and 3.04 for foreign banks and new private sector banks, respectively. Even if we compare it with other public sector banks, our ratio is

adverse.

* * *

(d) With the computerisation of accounting and other work at a large number of branches, manpower, which was needed for balancing of books, is now rendered surplus. This indicates an imperative need to rationalise the manpower at these branches. While we have already initiated steps for the productive redeployment of staff at these branches through shift banking and seven-day banking, there still exists scope for improvement in this area. Most of these branches are situated in metropolitan and urban centres. Incidentally, the experience of other banks in respect of voluntary retirement schemes shows that a maximum number of applications have been received from these centres.

* * *

(f) As against the average of 43% of employees in public sector banks in the 46+ age group, we have 47% of the employees in this age group. Of this, 1/5th are in the age group of 56 and above. To put it simply, 21,824 employees will reach the age of superannuation and retire by March 2005.

In the light of the abovementioned factors, it will be seen that the manpower of the Bank will undergo major changes in the ensuing years in number and deployment. Further, considering the variety of business the Bank undertakes, and its special role in the banking sector, over-emphasis on quantitative parameters would be inappropriate. An approach paper on Manpower Planning is placed at Annexure 'A'.

Considering the various aspects of Manpower Planning, we are of the view that the voluntary retirement scheme should be employed as a moderate tool to right-size the manpower in State Bank of India."

22. *In the light of the aforesaid, it is clear that the VRS Scheme was devised as a tool to reduce overstaffing. The memorandum submitted to the Central Board contained the following significant aspects:*

"Keeping in view the above, the IBA guidelines and the feedback received from other banks, the draft "SBI Voluntary Retirement Scheme (SBI-VRS)" is prepared and placed for approval at Annexure 'B.'

It is proposed to introduce SBI-VRS for employees who have as on 31-12-2000, completed 40 years of age or 15 years of service as approved by the Government of India and conveyed by IBA. In terms of the IBA scheme, the Banks' Boards may specify any other category as ineligible. We propose to exclude the Watch and Ward staff as these positions cannot be reduced. We also propose to exclude highly skilled and qualified staff from the Scheme.

SBI-VRS will be voluntary in nature. The decision to seek retirement under the Scheme rests with the employee only. The management will retain the discretion as to whether to accept or not the request for voluntary retirement under the Scheme. We have to ensure that while, on the one hand, our Bank benefits by the rightsizing of the staff strength, on the other, any sudden exodus of a very large number of staff does not destabilise the normal operations of the Bank. Considering the attractive features of the Scheme, in terms of ex gratia payment, etc. a large number of applications are expected. However, the Bank will have to control the outflow according to its requirements. Towards this end, it will be necessary to retain the discretion with the management of the Bank to limit the number of employees allowed to retire in each category of staff to be covered under SBI-VRS, and we propose to retain such discretion.”

(emphasis supplied)

23. It was proposed to introduce a VRS for employees who on 31-12-2000, completed 15 years of service as approved by the Government of India and conveyed by IBA. So, it assumes significance that what was approved and conveyed, in terms of the IBA scheme, the Banks' Boards were permitted to specify any other category as ineligible. The SBI considering its requirement proposed to exclude the Watch and Ward staff as these positions could not be reduced. It was also proposed to exclude the highly skilled and qualified staff from the scheme.

24. Funds outlay was also proposed in the memorandum submitted to the Central Board as under:

“FUNDS OUTLAY

As per the estimate received from Bank's actuary, an outlay of approximately Rs 2100 crores would be required for the implementation of SBI-VRS if 10% of the employees opt for retirement. The break-up being as under:

<i>Ex gratia</i>	<i>Rs 1300.00 crores</i>
<i>Leave encashment</i>	<i>Rs 180.00 crores</i>
<i>Additional Provision for Gratuity</i>	<i>Rs 140.00 crores</i>
<i>Additional Provision for Pension</i>	<i>Rs 480.00 crores</i>

(These estimates may undergo a change on receipt of clarification from the Government of India as to the components of “Pay” for the purpose of ex gratia.)”

25. A provision was made for the pension. The Bank reserved the right to modify, amend or cancel any or all the clauses. The Deputy Managing Director and CDO would be the competent authority. Following is the relevant clause regarding modification of the scheme:

“MODIFICATION OF THE SCHEME

Bank reserves the right to modify, amend or cancel any or all the clauses of the Scheme and to give effect thereto from any date it may deem fit. The Dy. Managing Director and CDO would be the competent authority for the purpose.”

xxxx

xxxx

xxxx

28. IBA's letter dated 31-8-2000 makes clear the salient features of the VRS Scheme that all permanent employees with 15 years of service were eligible to retire. Ineligible persons have also been specified. In unqualified terms, it was mentioned in the annexures that such employees would be entitled to the amount of ex gratia of 60 days' salary for each completed year of service or salary for the number of months service is left, whichever is less. Other benefits admissible were gratuity, pension including the commuted value of pension, bank's contribution towards provident fund, and leave encashment as per rules. Thus, scheme was to grant pension to all such employees who opted for VRS on completion of 15 years of service and other benefits as specified in the scheme.....”

23. The Supreme Court then referred to the judgment in ***Bank of India and Others. v. O.P. Swarnakar and Others, (2003) 2 SCC 721***, where VRS-2000 had come up for consideration before the Supreme Court and the Supreme Court held that the Scheme was contractual and provided for pensionary benefits on completion of 15 years of service and this decision was followed in ***HEC Voluntary Retd. Employees Welfare Society v. Heavy Engineering Corporation Ltd., (2006) 3 SCC 708***. Relevant para from the judgment in ***O.P. Swarnakar (supra)*** is as follows:

“89 [Ed. : Para 89 corrected as per Official Corrigendum No. F.3/Ed. B/24/2003]. Furthermore, a large number of employees have withdrawn their offer only when a proviso was sought to be added to Regulation 28 aforementioned. In terms of the Scheme the employees, who expected to get benefits of sub-regulation (4) of Regulation 29 would be deprived thereof. It is not in this dispute that the qualifying period for receiving pension was 20 years. Only upon completion of 20 years, in terms of the statutory regulation contained in Regulation 29, an employee could opt for voluntary retirement and in terms thereof, he would be entitled to the benefits specified therein. The said Regulations had specifically been mentioned for the purpose of computation which would include invocation of sub-regulation (4) of Regulation 29 providing for

relaxation of 5 years towards the qualifying period. The employees must have proceeded on the basis that despite the fact that they have merely rendered 15 years of service which was not a qualifying service under the Regulations, they would be entitled to the pensionary benefits in terms of the Scheme. By introducing the proviso to Regulation 28 pension was sought to be made pro rata in place of full pension.”

24. After analysing the provisions of VRS-2000 and referring to the aforesaid judgement, in **Assistant General Manager (supra)**, the Supreme Court held as follows:-

“60. The question arises in case the Bank accepts the proposal of VRS, and does not alter its Rules, can employees be deprived of the benefit of pension in such an unconscionable manner over an event on which they had no control. It would be nothing, but an outcome of unfair and arbitrary act in case the SBI never intended to act upon the Scheme it ought not to have accepted it, and once it approved VRS, it was incumbent upon it to amend its Rules, if necessary, as was done by other banks in 2002 after Scheme worked out in the year 2000. Even otherwise once it accepted the proposal of the Government of India, it would be violative of the provisions of Articles 14 and 16 to permit it to wriggle out of its obligation under the guise that the Bank did not amend its Rules or pension was not admissible as per existing rules, mainly when the Scheme provided for eligibility for pension on completion of 15 years, that formed independent contract. If the Bank is permitted to get rid of the Scheme due to Rule position, then the Scheme itself would become void and unenforceable. The Bank cannot act in a fanciful manner, particularly with respect to retirement under VRS which was contractual and deny benefit of pension, a right accrued to the employees for receiving the pension in view of the memorandum and the resolution passed by the Central Board of Directors adopting memorandum and the SBI-VRS.

61. The rights under contract cannot be taken away, and they become enforceable by a court of law. The Bank cannot be permitted to make a representation and later on wriggle out of its obligation. It is not permissible to make a “misrepresentation”. Under Section 19 of the Contract Act, when consent is obtained by coercion, fraud, or “misrepresentation”, the agreement is voidable at the option of the aggrieved party. In Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly [Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly, (1986) 3 SCC 156 : 1986 SCC (L&S) 429], this Court considered the contract of employment between the Central Inland Water Transport Corporation and its employees and also the rules. In that context, observed thus : (SCC pp. 205-06, para 75)

“75. Under Section 19 of the Contract Act, 1872, when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the

option of the party whose consent was so caused. It is not the case of either of the contesting respondents that there was any coercion brought to bear upon him or that any fraud or misrepresentation had been practised upon him. Under Section 19-A, when consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused and the court may set aside any such contract either absolutely or if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the court may seem just. Sub-section (1) of Section 16 defines “undue influence” as follows:

‘16. “Undue influence” defined.—(1) A contract is said to be induced by “undue influence” where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.’

The material provisions of sub-section (2) of Section 16 are as follows:

‘16. (2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

(a) where he holds a real or apparent authority over the other’

*We need not trouble ourselves with the other sections of the Contract Act, 1872 except Sections 23 and 24. Section 23 states that the consideration or object of an agreement is lawful unless inter alia the court regards it as opposed to public policy. This section further provides that every agreement of which the object or consideration is unlawful is void. Under Section 24, if any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object is unlawful, the agreement is void. The agreement is, however, not always void in its entirety for it is well settled that if several distinct promises are made for one and the same lawful consideration, and one or more of them be such as the law will not enforce, that will not of itself prevent the rest from being enforceable. The general rule was stated by Willes, J., in *Pickering v. Ilfracombe Railway Co.* [*Pickering v. Ilfracombe Railway Co.*, (1868) LR 3 CP 235] (at p. 250) as follows:*

‘The general rule is that, where you cannot sever the illegal from the legal part of a covenant, the contract is altogether void; but where you can sever them, whether the illegality be created by statute or by the common law, you may reject the bad part and retain the good.’ ”

(emphasis supplied)

62. *In Brojo Nath Ganguly [Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly, (1986) 3 SCC 156 : 1986 SCC (L&S) 429] , this Court considered the concept of unconscionable bargain*

and as to actions showing no regard for conscience; irreconcilable with what is right or reasonable, observed thus : (SCC p. 206, para 76)

“76. Under which head would an unconscionable bargain fall? If it falls under the head of undue influence, it would be voidable but if it falls under the head of being opposed to public policy, it would be void. No case of the type before us appears to have fallen for decision under the law of contracts before any court in India nor has any case on all fours of a court in any other country been pointed out to us. The word “unconscionable” is defined in the Shorter Oxford English Dictionary, Third Edn., Vol. II, p. 2288, when used with reference to actions, etc. as “showing no regard for conscience; irreconcilable with what is right or reasonable”. An unconscionable bargain would, therefore, be one which is irreconcilable with what is right or reasonable.”

(emphasis supplied)

xxxx

xxxx

xxxx

64. *This Court in Brojo Nath Ganguly [Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly, (1986) 3 SCC 156 : 1986 SCC (L&S) 429] held that due to inequality of bargaining power, unreasonable terms, unreasonable favour to the stronger party may involve an element of deception or compulsion, or may show that the weaker party had no meaningful choice. The Court in Brojo Nath Ganguly [Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly, (1986) 3 SCC 156 : 1986 SCC (L&S) 429] also observed that in the sphere of the law of contract, the test of reasonableness or fairness has emerged. Even an unreasonable clause cannot be enforced as that would be unconscionable.*

65. *Here the reasonable construction in the matter is that the pension is clearly admissible as per the resolution passed by the Central Board of Directors of SBI, which is sought to be denied, it was for SBI to amend Rules. Such an action would be unconscionable, and courts cannot be said to be powerless in such a situation to enforce the SBI-VRS with an obligation to make payment of pension.*

xxxx

xxxx

xxxx

67. *The Court clearly held that the contracts, which are the outcome of misrepresentation, cannot be enforced, and inequality of bargaining power merit the intervention of the court. In A. Schroeder Music Publishing Co. Ltd. v. Macaulay (formerly Instone) [A. Schroeder Music Publishing Co. Ltd. v. Macaulay (formerly Instone), (1974) 1 WLR 1308 (HL)] , Lord Diplock made the following observations WLR at pp. 1315-16 thus:*

“My Lords, the contract under consideration in this appeal is one whereby the respondent accepted restrictions upon the way in which he would exploit his earning power as a song writer for the next ten years. Because this can be classified as a contract in

restraint of trade the restrictions that the respondent accepted fell within one of those limited categories of contractual promises in respect of which the courts still retain the power to relieve the promisor of his legal duty to fulfil them. In order to determine whether this case is one in which that power ought to be exercised, what your Lordships have in fact been doing has been to assess the relative bargaining power of the publisher and the song writer at the time the contract was made and to decide whether the publisher had used his superior bargaining power to exact from the song writer promises that were unfairly onerous to him. Your Lordships have not been concerned to inquire whether the public have in fact been deprived of the fruit of the song writer's talents by reason of the restrictions, nor to assess the likelihood that they would be so deprived in the future if the contract were permitted to run its full course.

It is, in my view, salutary to acknowledge that in refusing to enforce provisions of a contract whereby one party agrees for the benefit of the other party to exploit or to refrain from exploiting his own earning power, the public policy which the court is implementing is not some 19th century economic theory about the benefit to the general public of freedom of trade, but the protection of those whose bargaining power is weak against being forced by those whose bargaining power is stronger to enter into bargains that are unconscionable. Under the influence of Bentham and of laissez faire the courts in the 19th century abandoned the practice of applying the public policy against unconscionable bargains to contracts generally, as they had formerly done to any contract considered to be usurious; but the policy survived in its application to penalty clauses and to relief against forfeiture and also to the special category of contracts in restraint of trade. If one looks at the reasoning of 19th-century Judges in cases about contracts in restraint of trade one finds lip service paid to current economic theories, but if one looks at what they said in the light of what they did, one finds that they struck down a bargain if they thought it was unconscionable as between the parties to it and upheld it if they thought that it was not.

So I would hold that the question to be answered as respects a contract in restraint of trade of the kind with which this appeal is concerned is: 'Was the bargain fair?' The test of fairness is, no doubt, whether the restrictions are both reasonably necessary for the protection of the legitimate interests of the promisee and commensurate with the benefits secured to the promisor under the contract. For the purpose of this test all the provisions of the contract must be taken into consideration."

(emphasis supplied)

68. *A term which exempts the stronger party from his ordinary common law liability should not be given effect except when it is reasonable, as observed in Levison v. Patent Steam Carpet Cleaning Co. Ltd. [Levison v. Patent Steam Carpet Cleaning Co. Ltd., 1978*

QB 69 : (1977) 3 WLR 90 (CA)] and John Lee & Son (Grantham) Ltd. v. Railway Executive [John Lee & Son (Grantham) Ltd. v. Railway Executive, (1949) 2 All ER 581 (CA)] , All ER at p. 584 relied upon in Brojo Nath Ganguly [Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly, (1986) 3 SCC 156 : 1986 SCC (L&S) 429] thus : (Brojo Nath Ganguly [Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly, (1986) 3 SCC 156 : 1986 SCC (L&S) 429] , SCC p. 214, para 85)

“85. The observations of Lord Denning, M.R., in Levison v. Patent Steam Carpet Cleaning Co. Ltd. [Levison v. Patent Steam Carpet Cleaning Co. Ltd., 1978 QB 69 : (1977) 3 WLR 90 (CA)] are also useful and require to be quoted. These observations are as follows (QB at p. 79):

‘In such circumstances as here the Law Commission in 1975 recommended that a term which exempts the stronger party from his ordinary common law liability should not be given effect except when it is reasonable : see The Law Commission and the Scottish Law Commission Report, Exemption Clauses, Second Report (1975) (5-8-1975), Law Com. No. 69 (H.C. 605), pp. 62, 174; and there is a Bill now before Parliament which gives effect to the test of reasonableness. This is a gratifying piece of law reform : but I do not think we need wait for that Bill to be passed into law. You never know what may happen to a Bill. Meanwhile, the common law has its own principles ready to hand. In Gillespie Bros. & Co. Ltd. v. Roy Bowles Transport Ltd. [Gillespie Bros. & Co. Ltd. v. Roy Bowles Transport Ltd., 1973 QB 400 : (1972) 3 WLR 1003 (CA)] , I suggested that an exemption or limitation clause should not be given effect if it was unreasonable, or if it would be unreasonable to apply it in the circumstances of the case. I see no reason why this should not be applied today, at any rate in contracts in standard forms where there is inequality of bargaining power.’ ”

69. *Courts have to construe the contracts according to the tenor. In this regard, in Brojo Nath Ganguly [Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly, (1986) 3 SCC 156 : 1986 SCC (L&S) 429] , the Court considered the question thus : (SCC pp. 214-15, paras 87-88)*

“87. In Photo Production Ltd. v. Securicor Transport Ltd. [Photo Production Ltd. v. Securicor Transport Ltd., 1980 AC 827 : (1980) 2 WLR 283 (HL)] , a case before the Unfair Contract Terms Act, 1977, was enacted, the House of Lords upheld an exemption clause in a contract on the defendants' printed form containing standard conditions. The decision appears to proceed on the ground that the parties were businessmen and did not possess unequal bargaining power. The House of Lords did not in that case, reject the test of reasonableness or fairness of a clause in a contract where the parties are not equal in bargaining position. On the contrary, the speeches of Lord Wilberforce, Lord Diplock, and Lord Scarman would seem to show that the House of Lords in a fit

case would accept that test. Lord Wilberforce, in his speech, after referring to the Unfair Contract Terms Act, 1977, said (AC at p. 843):

‘This Act applies to consumer contracts and those based on standard terms and enables exception clauses to be applied with regard to what is just and reasonable. It is significant that Parliament refrained from legislating over the whole field of contract. After this Act, in commercial matters generally, when the parties are not of unequal bargaining power, and when risks are normally borne by insurance, not only is the case for judicial intervention undemonstrated, but there is everything to be said, and this seems to have been Parliament's intention, for leaving the parties free to apportion the risks as they think fit and for respecting their decisions.’

Lord Diplock said (AC at pp. 850-51):

‘Since the obligations implied by law in a commercial contract are those which, by judicial consensus over the years or by Parliament in passing a statute, have been regarded as obligations which a reasonable businessman would realise that he was accepting when he entered into a contract of a particular kind, the court's view of the reasonableness of any departure from the implied obligations which would be involved in construing the express words of an exclusion clause in one sense that they are capable of bearing rather than another, is a relevant consideration in deciding what meaning the words were intended by the parties to bear.’

Lord Scarman, while agreeing with Lord Wilberforce, described (at p. 853) the action out of which the appeal before the House had arisen as “a commercial dispute between parties well able to look after themselves” and then added: “In such a situation what the parties agreed (expressly or impliedly) is what matters; and the duty of the courts is to construe their contract according to its tenor.’

88. As seen above, apart from judicial decisions, the United States and the United Kingdom have statutorily recognised, at least in certain areas of the law of contracts, that there can be unreasonableness (or lack of fairness, if one prefers that phrase) in a contract or a clause in a contract where there is inequality of bargaining power between the parties although arising out of circumstances not within their control or as a result of situations not of their creation. Other legal systems also permit judicial review of a contractual transaction entered into in similar circumstances. For example, Section 138(2) of the German Civil Code provides that a transaction is void “when a person” exploits ‘the distressed situation, inexperience, lack of judgmental ability, or grave weakness of will of another to obtain the grant or promise of pecuniary advantages ... which are obviously disproportionate to the performance given in

return'. The position, according to the French law, is very much the same."

(emphasis in original)

70. In *Brojo Nath Ganguly [Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly, (1986) 3 SCC 156 : 1986 SCC (L&S) 429]*, it was pointed out what courts should do in such a matter thus : (SCC pp. 215-16, para 89)

"89. Should then our courts not advance with the times? Should they still continue to cling to outmoded concepts and outworn ideologies? Should we not adjust our thinking caps to match the fashion of the day? Should all jurisprudential development pass us by, leaving us floundering in the sloughs of 19th century theories? Should the strong be permitted to push the weak to the wall? Should they be allowed to ride roughshod over the weak? Should the courts sit back and watch supinely while the strong trample underfoot the rights of the weak? We have a Constitution for our country. Our Judges are bound by their oath to "uphold the Constitution and the laws". The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualise the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant

corporations with their vast infrastructural organisations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances.”

xxxx

xxxx

xxxx

76. *In DTC [DTC v. Mazdoor Congress, 1991 Supp (1) SCC 600 : 1991 SCC (L&S) 1213] , the Court also held that Article 14 sheds light on public policy to curb arbitrariness thus : (SCC pp. 749-50 & 753, paras 294-95 & 302)*

“294. In Bashesar Nath v. CIT [Bashesar Nath v. CIT, AIR 1959 SC 149] , S.R. Das, C.J. held that Article 14 is founded on a sound public policy recognised and valued in all States and it admonishes the State when it disregards the obligations imposed upon the State.

295. In E.P. Royappa v. State of T.N. [E.P. Royappa v. State of T.N., (1974) 4 SCC 3 : 1974 SCC (L&S) 165] , Bhagwati, J. (as he then was) held that Article 14 is the genus while Article 16 is a specie. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Equality is a dynamic concept with many aspects and dimensions, and it cannot be “cribbed, cabined and confined” within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetical to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. In Maneka Gandhi case [Maneka Gandhi v. Union of India, (1978) 1 SCC 248] , it was further held that the principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence. In Ramana case [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489] , it was held that it is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting denial of equality. If the classification is not reasonable and does not satisfy the two conditions, namely, rational relation and nexus, the impugned legislative or executive action would plainly be arbitrary and the guarantees of equality under Article 14 would

be breached. Wherever, therefore, there is arbitrariness in State action, whether it be of legislature or of the executive or of an “authority” under Article 12, Article 14, “immediately springs into action and strikes down such State action”. In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution.

*

*

*

302. Article 14 is the general principle, while Article 311(2) is a special provision applicable to all civil services under the State. Article 311(2) embodies the principles of natural justice, but proviso to clause (2) of Article 311 excludes the operation of principles of natural justice engrafted in Article 311(2) as an exception in the given circumstances enumerated in three clauses of the proviso to Article 311(2) of the Constitution. Article 14 read with Articles 16(1) and 311 are to be harmoniously interpreted that the proviso to Article 311(2) excludes the application of the principles of natural justice as an exception; and the applicability of Article 311(2) must, therefore, be circumscribed to the civil services and be construed accordingly. In respect of all other employees covered by Article 12 of the Constitution, the dynamic role of Article 14 and other relevant articles like Article 21 must be allowed to have full play without any inhibition, unless the statutory rules themselves, consistent with the mandate of Articles 14, 16, 19 and 21 provide, expressly such an exception.”

(emphasis supplied)

77. Arbitrariness in State action whether of the legislature or the executive or of an authority under Articles 12, 14 and 21 comes into play to strike down such an action. The Court in DTC [DTC v. Mazdoor Congress, 1991 Supp (1) SCC 600 : 1991 SCC (L&S) 1213] held thus : (SCC pp. 754-56, paras 303 & 308)

“303. Article 19(1)(g) empowers every citizen the right to avocation or profession, etc. which includes right to be continued in employment under the State unless the tenure is validly terminated consistent with the scheme enshrined in the fundamental rights of the Constitution. Therefore, if any procedure is provided for deprivation of the right to employment or right to the continued employment till the age of superannuation as is a source to right to livelihood, such a procedure must be just, fair and reasonable. This Court in Fertilizer Corpn. Kamgar Union v. Union of India [Fertilizer Corpn. Kamgar Union v. Union of India, (1981) 1 SCC 568] , held that Article 19(1)(g) confers a broad and general right which is available to all persons to do works of any particular kind and of their choice. Therefore, whenever there is arbitrariness in State action — whether it be of the legislature or of the executive or of an authority under Article 12, Articles 14 and 21 spring into action and strikes down such an action. The concept of reasonableness and non-arbitrariness pervades

the entire constitutional spectrum and is a golden thread which runs through the whole fabric of the Constitution. Therefore, the provision of the statute, the regulation or the rule which empowers an employer to terminate the services of an employee whose service is of an indefinite period till he attains the age of superannuation, by serving a notice or pay in lieu thereof must be conformable to the mandates of Articles 14, 19(1)(g) and 21 of the Constitution. Otherwise, per se, it would be void. In Moti Ram Deka case [Moti Ram Deka v. North East Frontier Railway, (1964) 5 SCR 683 : AIR 1964 SC 600] , Gajendragadkar, J. (as he then was) after invalidating the Rules 149(3) and 148(3) under Article 311(2) which are in parimateria with Regulation 9(b) of the Regulations also considered their validity in the light of Article 14 and held thus : (Moti Ram Deka case [Moti Ram Deka v. North East Frontier Railway, (1964) 5 SCR 683 : AIR 1964 SC 600] , AIR p. 619, para 56 : SCR p. 731)

'56. ... Therefore, we are satisfied that the challenge to the validity of the impugned Rules on the ground that they contravene Article 14 must also succeed.'

This was on the test of reasonable classification as the principle then was applied. Subba Rao, J. (as he then was) in a separate but concurring judgment, apart from invalidating the rule under Article 311(2) also held that the rule infringed Article 14 as well, though there is no elaborate discussion in that regard. But, Das Gupta, J. considered elaborately on this aspect and held : (Moti Ram Deka case [Moti Ram Deka v. North East Frontier Railway, (1964) 5 SCR 683 : AIR 1964 SC 600] , AIR p. 633, para 113 : SCR p. 770)

'113. Applying the principle laid down in the above case to the present Rule, I find on the scrutiny of the Rule that it does not lay down any principle or policy for guiding the exercise of discretion by the authority who will terminate the service in the matter of selection or classification. Arbitrary and uncontrolled power is left in the authority to select at its will any person against whom action will be taken. The rule thus enables the authority concerned to discriminate between two railway servants to both of whom Rule 148(3) equally applied by taking action in one case and not taking it in the other. In the absence of any guiding principle in the exercise of the discretion by the authority, the Rule has, therefore, to be struck down as contravening the requirements of Article 14 of the Constitution.'

*

*

*

308. In Ramana case [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489] , it has been held that : (SCC p. 504, para 10)

'It is indeed unthinkable that in a democracy governed by the rule of law, the executive government or any of its officers

should possess arbitrary power over the interests of the individual.'

The procedure adopted should match with what justice demands. History shows that it is always subtle and insidious encroachments made ostensibly for a good cause that imperceptibly but surely erode the foundations of liberty."

(emphasis supplied)

78. *An employer cannot act in a manner that is in the negation of just, fair, and reasonable procedure. The Court held : (DTC case [DTC v. Mazdoor Congress, 1991 Supp (1) SCC 600 : 1991 SCC (L&S) 1213] , SCC p. 765, para 329)*

"329. I am, therefore, inclined to hold that the courts, though, have no power to amend the law by process of interpretation, but do have power to mend it so as to be in conformity with the intendment of the legislature. Doctrine of reading down is one of the principles of interpretation of statute in that process. But when the offending language used by the legislature is clear, precise and unambiguous, violating the relevant provisions in the Constitution, resort cannot be had to the doctrine of reading down to blow life into the void law to save it from unconstitutionality or to confer jurisdiction on the legislature. Similarly, it cannot be taken aid of to emasculate the precise, explicit, clear and unambiguous language to confer arbitrary, unbridled and uncanalised power on an employer which is a negation to just, fair and reasonable procedure envisaged under Articles 14 and 21 of the Constitution and to direct the authorities to record reasons, (sic) unknown or unintended procedure, in the manner argued by the learned counsel for the appellants."

(emphasis supplied)

xxxx

xxxx

xxxx

81. *On the basis of the aforesaid principles, it is apparent that once the Central Board of Directors accepted the memorandum for making payment of pension, in case it was not accepting the proposal in the memorandum, it ought to have said clearly that it was not ready to accept the proposals of the Government and the IBA and rejects the same. Once it approved the proposals referred to in the memorandum, which were on the basis of IBA's letter and the Government of India's decision it was bound to implement it in true letter and spirit. By accepting the same, binding obligation was created upon the SBI to make payment of pension on completion of 15 years of service. It cannot invalidate its own decision by relying on fact it failed to amend the rule, whereas other banks did it later on with retrospective effect. They cannot invalidate otherwise valid decision by virtue of exclusive superior power to amend or not to amend the rule and act unfairly and make the entire contract unreasonable based on misrepresentation. It was open to the Board of Directors to reject the proposal. Once it accepted the proposal to make payment of pension on completion of 15 years of service as*

proposed in the memorandum, though the scheme is tried to be interpreted by the SBI that pension was to be admissible as provided in the rule that refers to proportionate pension as noted by this Court in O.P. Swarnakar [Bank of India v. O.P. Swarnakar, (2003) 2 SCC 721 : 2003 SCC (L&S) 200] , and what was decided by the Government of India/IBA, was not taken away rather adopted by the Central Board of Directors. The scheme of contractual nature has to be read in the context and in the backdrop of facts and what has been resolved by the Board of Directors. There is no ambiguity with respect to the admissibility of pension when the memorandum and the scheme are read together. In case of ambiguity and even if two interpretations are possible in the backdrop of facts of the case, one in favour of the employees has to be adopted and so-called clarification dated 11-1-2000 even if considered in the manner so as to deny the benefit of pension, has to be held to be unenforceable, illegal and contrary to law.

82. *It is apparent from the eligibility clause of the VRS Scheme that eligibility is provided for the employees having 15 years of pensionable service and they will be entitled for benefits as provided in the Scheme. The eligibility clause, when read with clauses providing the benefit i.e. Clauses 5 and 6 of the Scheme, leaves no room for any doubt and makes it clear that employees with 15 years of service were treated as eligible to claim the benefit of the Scheme floated by SBI. It was not the provision in the VRS Scheme that incumbents having completed 20 years of service would be entitled for pensionary benefits. The Scheme was carved out specially for attracting the employees by providing pension and other benefits to eligible persons like ex gratia, gratuity, pension and leave encashment. Deprivation of pension would make them ineligible for the benefits and would run repugnant to the eligibility clause.*

xxxx

xxxx

xxxx

85. *As noted in O.P. Swarnakar [Bank of India v. O.P. Swarnakar, (2003) 2 SCC 721 : 2003 SCC (L&S) 200] , the case of Bank itself was that it was a contractual scheme. The expression “pension” as per Rules was only for the purpose of working out the proportionate pension. It was clearly decided to open the scheme to employees who have put in 15 years of service. It was not provided in the Scheme that the incumbent was required to render a pensionable service of 20 years as per the Rules in order to acquire eligibility for the pension. The submission made on behalf of SBI is too tenuous to be accepted. It was observed in para 89 of O.P. Swarnakar [Bank of India v. O.P. Swarnakar, (2003) 2 SCC 721 : 2003 SCC (L&S) 200] quoted above that the employee must have proceeded on the basis of 15 years of service then they were entitled to pensionary benefits.*

xxxx

xxxx

xxxx

92. *It was opined in K. Mohandas [Bank of India v. K. Mohandas, (2009) 5 SCC 313 : (2009) 2 SCC (Civ) 524 : (2009) 2 SCC (L&S) 32] that the amendment to Regulation 28 of the 1995 Regulations intended to cover 15 years of service i.e. employees with 15 years of service who have not completed 20 years of service. A similar action*

to amend the Rule was required to be taken by the SBI, but it failed to take it after having floated a similar scheme. It kept it uncertain what would be the position of the rule as on the appointed date i.e. 31-3-2001. Be that as it may. But it was crystal clear that the incumbent with 15 years of service was eligible for the benefit as provided in the scheme itself. The benefit clause has to be read with the eligibility criteria. Once VRS was formulated and adopted by the SBI in toto, it constituted a complete contractual package in itself.

93. As urged on behalf of SBI if Section 23 of the Contract Act is applied, then how it is helpful to the Bank, is not understandable. In case it is held that the very Scheme was opposed to the law/rules, the entire scheme would fall down. Once it adopted the Scheme, invited applications and the employees acted upon it and retired on the basis of the Scheme, they cannot be left in the lurch. In case its submission is accepted, the Scheme becomes violative of Section 23 of the Contract Act, the Bank would have to suffer the consequences of striking down of the very Scheme and would be required to reinstate the employees and to pay them the salary and other benefits. However, SBI accepted the Scheme, it was incumbent upon it to bring the rules in consonance with the similar VRS Scheme as was done by other banks. The SBI accepted the Scheme on 27-12-2000 without any ifs and buts. Thus, the anomaly was the outcome of the bank's inaction to propose and make amendment of Rules. In such a scenario, the action of SBI is violative of Articles 14, 16 and 21 of the Constitution. The situation created by itself is not going to benefit the Bank to lend support to arbitrary action. The Bank was bound to extend the benefits by amending the Rules, if necessary, to salvage the situation for itself. Breach of law has been committed by the SBI itself, its action is arbitrary and it cannot be permitted to take advantage of its own wrong.

94. The pension cannot be dealt with arbitrarily and cannot be denied in an unfair manner. The concept of pension was considered in D.S. Nakara v. Union of India [D.S. Nakara v. Union of India, (1983) 1 SCC 305 : 1983 SCC (L&S) 145] . The right to a pension can be enforced through the Court, it observed : (SCC pp. 320-21, paras 20 & 22)

“20. The antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deokinandan Prasad v. State of Bihar [Deokinandan Prasad v. State of Bihar, (1971) 2 SCC 330] wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be

necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab v. Iqbal Singh [State of Punjab v. Iqbal Singh, (1976) 2 SCC 1 : 1976 SCC (L&S) 172] .

* * *

22. In the course of transformation of society from feudal to welfare and as socialistic thinking acquired respectability. State obligation to provide security in old age, an escape from undeserved want was recognised and as a first step pension was treated not only as a reward for past service but with a view to helping the employee to avoid destitution in old age. The quid pro quo was that when the employee was physically and mentally alert, he rendered unto master the best, expecting him to look after him in the fall of life. A retirement system, therefore, exists solely for the purpose of providing benefits. In most of the plans of retirement benefits, everyone who qualifies for normal retirement receives the same amount (see Retirement Systems for Public Employees by Bleakney, p. 33)."

95. This Court in D.S. Nakara [D.S. Nakara v. Union of India, (1983) 1 SCC 305 : 1983 SCC (L&S) 145] observed that the principal aim of the socialist State as envisaged in the Preamble is to eliminate inequality. The basic framework of socialism is to provide security in the fall of life to the working people and especially provides security from the cradle to the grave when employees have rendered service in heydays of life, they cannot be destituted in old age, by taking action in an arbitrary manner and for omission to complete obligation assured one. Though there cannot be estoppel against the law but when a bank had the power to amend it, it cannot take shelter of its own inaction and SBI ought to have followed the pursuit of other banks and was required to act in a similar fair manner having accepted the scheme.

96. Resultantly, we are of the opinion that the employees who completed 15 years of service or more as on cut-off date were entitled to proportionate pension under SBI-VRS to be computed as per SBI Pension Fund Rules. Let the benefits be extended to all such similar employees retired under VRS on completion of 15 years of service without requiring them to rush to the court. However, considering the facts and circumstances, it would not be appropriate to burden the bank with interest. Let order be complied with and arrears be paid within three months, failing which amount to carry interest @ 6% p.a. from the date of this order. The appeals are accordingly disposed of. No costs."

25. From a reading of both the abovementioned judgments, it is crystal clear that a Special Voluntary Retirement Scheme is in the nature of a contract and would operate in consonance with its own terms, both with regard to eligibility conditions and the benefits

available under the Scheme. Therefore, once in the SVRS-2003 the eligibility condition stipulated for seeking voluntary retirement was completion of 10 years of service and Petitioners exercised the option fulfilling the said condition and were granted voluntary retirement, they cannot be deprived of the pension available under the SVRS-2003 on the ground that they had not completed 20 years of qualifying service required under Rule 48-A of Pension Rules.

26. Petitioners are also right in urging that had Respondent No.1 not offered and/or accepted voluntary retirement under SVRS-2003, Petitioners would have continued to serve till completion of 20 years and would have been eligible for pension in the ordinary course. Having lured the Petitioners into seeking voluntary retirement at the end of 10 years of service, it is not open to Respondent No.1 to now deny the pensionary benefits as this amounts to a fraud and in case Respondents are not inclined to disburse pension to the Petitioners, then they ought to be given an option to join back and complete the balance 10 years of service required as qualifying service for pension or be permitted to work till the age of superannuation. The Supreme Court has clearly observed in *Assistant General Manager (supra)* that the VR Scheme must operate as a whole and once the employer adopts the Scheme, invites applications and employees act upon it seeking voluntary retirement, they cannot be left in a lurch. It was further observed that if the submission of the Appellant is accepted, the Scheme becomes violative of Section 23 of the Contract Act, 1872 and the Bank would have to suffer the consequences of striking down the very Scheme and reinstate the employees paying them salary and other benefits.

27. Learned counsel for Respondent No.1 laid much emphasis on the judgment of the Supreme Court in *C. Jacob (supra)*, however, in my view, the judgment is wholly inapplicable to the neat legal nodus

arising in the present case. In the said case, Petitioner had joined the Respondent in 1967 and according to him, his services were terminated in 1982, pursuant to a show cause notice. 18 years later, Petitioner represented to be taken back into service and finally approached the Central Administrative Tribunal, which disposed of his Original Application with a direction to the first Respondent to consider his representation and pass an order. Representation was rejected and Petitioner again approached the Tribunal. The Original Application was transferred to the High Court, which held that Department had failed to follow the requirements of the Disciplinary Rules by issuing a charge sheet and holding an inquiry and declared the termination to be illegal. Since Petitioner had attained the age of 59 years and it was impracticable to hold an inquiry, the High Court disposed of the application by declaring that the Petitioner was deemed to have retired in 1982 and directed grant of pension along with arrears. The Division Bench of the High Court set aside the order holding that Petitioner had not completed 20 years of qualifying service as on 18.07.1982 and was not entitled to pension. The order was challenged before the Supreme Court and it is in this context that the claim of the Petitioner therein for pension was examined.

28. The Supreme Court observed that Petitioner neither produced the order of termination nor disclosed the mode of termination or whether it was a case of voluntary retirement/resignation/abandonment and the Department did not have any records as much time had elapsed by then. Examining the various classes of pension, the Supreme Court held that if a Government servant did not fall in any of the classes enumerated in Rule 43(2) of Tamil Nadu Pension Rules, 1978, which is *pari materia* to Rule 49(2)(b) of Pension Rules i.e. superannuation/retiring/absorption/invalid/compensation/compulsory retirement/pension or compassionate

allowance, then he is not entitled to pension. In this backdrop, Petitioner had argued that the minimum service for entitlement to retirement pension was 10 years and not 20 years and dealing with this restricted issue, the Supreme Court held as follows:-

“22. Rule 33 of the TNP Rules provides that a retiring pension shall be granted to a government servant who retires, or is retired, in accordance with the provisions of Rule 42 of the said Rules. Rule 42 of the TNP Rules provides that a government servant, who under Fundamental Rule 56(d), retires voluntarily or is required by the appointing authority to retire in public interest shall be entitled to a retiring pension (corresponding Rule 36 of the CCSP Rules which provides that a retiring pension shall be granted to a government servant who retires, or is retired, in advance of the age of compulsory retirement in accordance with the provisions of Rules 48 or 48-A of those Rules or Rule 56 of the Fundamental Rules or Article 459 of the Civil Service Regulations and to a government servant who on being declared surplus, opts for voluntary retirement in accordance with Rule 29 of those Rules). The provision relating to retiring pension makes it clear that a minimum of 20 years' qualifying service is required for retiring pension. It does not entitle a government servant to retiring pension on completion of ten years' service. Therefore, the petitioner is not entitled to retiring pension.

23. The petitioner contends that if the minimum service for entitlement to retiring pension was 20 years and not 10 years, Rule 43(2) would not have stated “qualifying service of not less than 10 years”. He contended that as Rule 43(2) of the TNP Rules [Rule 49(2)(b) of the CCSP Rules] refers to “not less than 10 years' service”, any government servant who has put in service of 10 years or more is entitled to retiring pension. The said contention is misconceived. As stated earlier, the said Rule does not relate to “entitlement” of pension nor does it prescribe the conditions for eligibility, but only provides how the amount of pension should be calculated in cases where the retiring government servant is entitled to pension under Chapter V of the Pension Rules. The said Rule regulates the “amount” of pension not only in case of retiring pension, but in case of all classes of pension.

24. Under Chapter V, in certain situations, a government servant may be eligible for pension even where the service is less than ten years. Rules 32, 36 and 38 of the TNP Rules [Rules 35, 38 and 39 of the CCSP Rules] do not prescribe any minimum service for being entitled to pension, where the cessation of service is on account of superannuation, or on account of bodily or mental infirmity or on account of abolition of his post. When Rule 43(2) of the TNP Rules [Rule 49(2)(b) of the CCSP Rules] refers to payment of pension to a person who has a qualifying service of not less than 10 years, it does not mean that the minimum period of service prescribed for retirement pension is reduced to 10 years or that government servants who are dismissed/removed/compulsorily retired by way of

punishment, or those who voluntarily retire before reaching the age of superannuation with less than 20 years of qualifying service, become entitled to pension. Rule 43(2) of the TNP Rules [Rule 49(2)(b) of the CCSP Rules], as noticed earlier, comes into play only when the government servant is entitled to any of the classes of pension enumerated under Chapter V of the Pension Rules. Therefore, when Rule 43(2) of the TNP Rules [or Rule 49(2)(b) of the CCSP Rules] dealing with the quantum of pension refers to a government servant retiring in accordance with the said Rules after completing qualifying service of not less than 10 years, it does not mean that pension is payable to persons who have not completed the required minimum number of years (20 years) of service or to persons who have forfeited their service on dismissal/removal from service. Therefore, the petitioner is not entitled to pension.”

29. Therefore, from the factual matrix of the case in **C. Jacob** (*supra*), it is evident that the said case did not relate to a case of a Special Voluntary Scheme as is the present case, where pensionary benefits will have to be regulated, operated, implemented and enforced as per the special terms and conditions stipulated under SVRS-2003 and thus, the judgment will not come in aid of Respondent No.2.

30. From a reading of the impugned order dated 23.01.2006, it is evident that the reason for rejection of the claims of the Petitioners was that Petitioners were re-employed military pensioners and were entitled to two pensions i.e. military pension on discharge from military service and civil pension on discharge from civil service but only on superannuation and are not entitled to civil pension when they seek voluntary/Special Voluntary Retirement and this stand is predicated on provisions of Rule 19(1)(a) of Pension Rules. In my view, the impugned order is wholly illegal and cannot be sustained. Under Rule 19(1), a Government servant who is re-employed in a civil service or post is required to give an option at the time of his confirmation whether he would opt for drawing the military pension or retain gratuity received or discharged from military service, in which case his former military service shall not count as qualifying

service or whether he would opt for ceasing to draw his pension and refund the pension already drawn and the gratuity and count the previous military service as qualifying service. The option has to be exercised within one year from the date of re-employment. The Rule therefore deals with counting of past military service for the purpose of qualifying service for pension and cannot remotely apply to the present situation where the Petitioners sought and were granted voluntary retirement under SVRS-2003 on its own terms i.e. completion of 10 years of service or 40 years of age. The question of the Petitioners exercising any option for counting the military service or otherwise for purpose of qualifying service is wholly irrelevant and the claims have been wrongly rejected.

31. For all the aforesaid reasons, the impugned order dated 23.01.2006 is quashed and set aside, directing Respondent No.2 to grant pension to the Petitioners from the date of their voluntary retirement along with arrears with interest @ 12% per annum from the date the pension became due and payable till the actual payment of arrears. Respondent No.2 shall continue to pay the pension in accordance with the Pension Rules.

32. Writ petition is accordingly allowed and disposed of with cost of Rs.10,000/- payable to each of the Petitioners by Respondent No.2 within a period of six weeks from today. Pending application also stands disposed of.

JYOTI SINGH, J

MAY 23, 2023/KA/kks