

NEW INDIA ASSURANCE CO. LTD.
v.
RAGHUVIR SINGH NARANG & ANR.
(Civil Appeal No. 3295 of 2009)

FEBRUARY 25, 2010*

[R.V. RAVEENDRAN and K. S. RADHAKRISHNAN, JJ.]
2010 (4) SCR 299

The Order of the Court was delivered by

ORDER

R.V. RAVEENDRAN, J. 1. The respondents were working as Development Officers under the appellant - New India Assurance Co. Ltd. Section 17A of the General Insurance Business (Nationalisation) Act, 1972 ('the Act', for short) inserted by the Amendment Act 3 of 1985 empowered the Central Government to regulate, by issue of notifications, the pay scales and other terms and conditions of service of officers and other employees of the appellant by framing one or more schemes and by adding, amending or varying any scheme. In exercise of the powers under Section 17A of the said Act, the Central Government framed a Scheme by Notification dated 2.1.2003 to amend the General Insurance (Rationalization of Pay Scales and Other Conditions of Service of Development Staff) Scheme, 1976. Paragraph 15-C inserted by the said Amendment Scheme of 2003 gave a special option to the Development Officers of the appellant, to opt within 60 days of commencement of the said Amendment Scheme: (a) for Special Voluntary Retirement Package as per Annexure 1 appended thereto; or (b) to render his services as Development Officer (Administration) under paragraph 21A, as per Annexure II thereto. Sub-para (2) of the said Para 15-C provided that a Development Officer, who does not exercise either of the options, under sub-para (1) within the stipulated period of sixty days, shall continue to render services as such under the General Insurance (Rationalization of Pay Scales

and Other Conditions of Service of Development Staff) Amendment Scheme, 2003.

2. Annexure-1 appended to the Amendment Scheme of 2003 contained the Special Voluntary Retirement Package ('SVRP' for short). Para (1) of SVRP specified the eligibility criteria. Para (2) thereof prescribed the ex-gratia amount and Clause (3) prescribed the other benefits, which a Development Officer seeking SVRP will be entitled. Para 5 thereof laid down the General Conditions of the Scheme and Clauses (3), (4) and (5) of para 5 which are relevant for our purpose are extracted below:

“(3) The mere request of such Development Officer seeking Special Voluntary Retirement Package shall not take effect unless it is accepted in writing by the Company.

(4) A Development Officer shall not be eligible to withdraw the option once made for Special Voluntary Retirement Package.

(5) The Company shall have absolute discretion either to accept or reject the request of a Development Officer seeking Special Voluntary Retirement Package depending upon the requirement of the Company. The reasons for rejection of request of a Development Officer seeking Special Voluntary Retirement Package shall be recorded in writing by the Company. Acceptance or rejection of the request of a Development Officer seeking Special Voluntary Retirement Package shall be communicated to him in writing.”

(emphasis supplied)

3. Respondents 1 and 2 on 3.3.2003 opted for the Special Voluntary Retirement Package. The Regional Office of appellant informed the Divisional Office at Indore by letter dated 28.3.2003 that in view of several writ petitions challenging the provisions of the Amendment Scheme, the Head Office had instructed that it will not be possible to relieve all the opting Development Officers with effect from 1.4.2003. The respondents were, accordingly

informed on 29.3.2003. This was followed by a circular dated 31.3.2003 issued by the appellant stating that status quo should be maintained in regard to Development Officers who have opted for Special Voluntary Retirement Package. On 31.3.2003, the respondents requested the appellant to extend the scheme and give more time for exercising the option under the Scheme, and if that was not possible, then treat the option earlier exercised by them on 3.3.2003 as withdrawn as till that day (31.3.2003) there was no communication from the appellant regarding acceptance of the voluntary retirement.

4. On 1.4.2003, the appellant relieved the respondents from the services of the Company stating that the competent authority has accepted the voluntary retirement of the respondents. The respondents sent a letter dated 2.4.2003 stating that they should be permitted to continue in service until a fresh option was given. The appellant, by letter dated 3.4.2003, informed the respondents that they cannot withdraw from the option already given. This was followed by letter dated 12.5.2003 wherein the appellant reiterated that the respondents were relieved on 1.4.2003 in view of the acceptance by the competent authority, of the option exercised by the respondents to retire from service. Feeling aggrieved, the respondents filed a writ petition seeking a direction to the appellant to reinstate them in the post of Development Officer. The said writ petition was allowed by the Madhya Pradesh High Court by order dated 27.8.2003, purporting to follow the decision of this Court in *Bank of India vs. Swaranakar & Ors.*, (2003) 2 SCC 721. It held that the SVRP Contained in the Amendment Scheme of 2003 was not a statutory scheme, but was contractual in nature; that the option exercised by the respondents to retire voluntarily in terms of SVRP was merely an offer by the respondents, and that before the acceptance of the request of respondents by the appellant, the respondents could withdraw their offer; and that as respondents had already withdrawn their offers on 31.3.2003, there was no

occasion for the appellant to accept their offers. The said decision is challenged in this appeal.

5. The contentions urged give rise to the question whether a Development Officer who exercises the option under the Amendment Scheme of 2003, seeking the Special Voluntary Retirement Package, could withdraw the same before its acceptance.

6. The Special Voluntary Retirement Package was a part of the General Insurance (Rationalization of Pay Scales and Other Conditions of Service of Development Staff) Amendment Scheme 2003 framed by the Central Government in exercise of the powers in Section 17A of the General Insurance Business (Nationalisation) Act 1972. The said Scheme is a delegated Legislation which is statutory in character. The validity of the said statutory scheme has been upheld by this Court (with reference to other provisions in the Scheme) in *National Insurance Co.Ltd. v. General Insurance Development Officers Association* – 2008 (5) SCC 472 following *Kishan Prakash Sharma v. Union of India* 2001 (5) SCC 212. Paragraph 5(4) of the Special Voluntary Retirement Package categorically states that a Development Officer shall not be eligible to withdraw the option once made for the Special Voluntary Retirement Package.

7. It is true that the principles of Contract Law relating to offer and acceptance enables the person making the offer to withdraw the offer any time before its acceptance; and that any subsequent acceptance of the offer by the offeree, after such withdrawal, will not result in a binding contract. Where the voluntary retirement is governed by a contractual scheme, as contrasted from a statutory scheme, the said principle of Contract will apply and consequently the letter of voluntary retirement will be considered as an offer by the employee and therefore any time before its acceptance, the employee could withdraw the offer. But the said general principle of Contract will be inapplicable where the voluntary retirement is under a statutory

scheme which categorically bars the employee, from withdrawing the option once exercised. The terms of the statutory scheme will prevail over the general principles of contract. This distinction has been recognized by a series of decisions of this Court. We may refer to a few of them :

(7.1.) In *Union of India vs. Gopal Chandra Misra* – 1978 (2) SCC 301, a Constitution Bench of this Court held :

“It will bear repetition that the general principle is that *in the absence of a legal, contractual or constitutional bar*, a ‘prospective’ resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office-tenure of the resignor..... In the case of a Government servant/or functionary who cannot under the conditions of his service/or office, by his own unilateral act of tendering resignation, give up his service/or office, normally, the tender of resignation becomes effective and his service/or office-tenure terminated, when it is accepted by the competent authority.

[emphasis supplied]

(7.2.) In *Balram Gupta vs. Union of India* – 1987 (Supp) SCC 228, this Court held that *independent of any statutory Rules*, an employee who gives notice of voluntary retirement to take effect prospectively from a subsequent date, is at liberty to withdraw his notice of voluntary retirement, any time before it comes into effect. But this normal rule would not apply, where having regard to the statutory Rules governing the matter, the employee cannot withdraw except with the approval of an authority. But such approval can not be the *ipse dixit* of the approving authority. He should act reasonably and rationally. He cannot keep the matter pending for unduly long time, nor can he discriminate in dealing with applications of employees similarly situated.

(7.3.) In *Punjab National Bank vs. P.K. Mittal* – 1989 Supp (2) SCC 175, this Court held :

“The result of the above interpretation is that the employee continued to be in service till April 21, 1986 or June 30, 1986, on which date his services would have come normally to an end in terms of his letter dated January 21, 1986. But, by that time, he had exercised his right to withdraw the resignation. Since the withdrawal letter was written before the resignation became effective, the resignation stands withdrawn, with the result that the respondent continues to be in the service of the bank. It is true that there is no specific provision in the regulations permitting the employee to withdraw the resignation. It is, however, not necessary that there should be any such specific rule. Until the resignation becomes effective on the terms of the letter read with Regulation 20, it is open to the employee, on general principles, to withdraw his letter of resignation. *That is why, in some cases of public services, this right of withdrawal is also made subject to the permission of the employer. There is no such clause here.*”

[emphasis supplied]

(7.4.) In *Union of India vs. Wg.Comdr. T. Parthasarathy* – 2001 (1) SCC 158, this Court held :

“So far as the case in hand is concerned, *nothing in the form of any statutory rules or any provision of any Act has been brought to our notice which could be said to impede or deny this right of the appellants.* On the other hand, not only the acceptance of the request by the Headquarters, the appropriate Authority was said to have been made only on 20-2-86, a day after the respondent withdrew his request for pre-mature retirement but even such acceptance in this case was to be effective from a future date namely 31-8-86. Consequently, it could not be legitimately contended by the appellants that there was any cessation of the relationship of master and servant between the Department and the respondent at any rate before 31-8-86. While that be the position

inevitably the respondent had a right and was entitled to withdraw or revoke his request earlier made before it ever really and effectively became effective.”

[emphasis supplied]

8. In this case the statutory scheme contains a specific provision that a Development Officer shall not be eligible to withdraw the option once made for Special Voluntary Retirement Package. In view of the said statutory provision, the general principle of contract that an offer could be withdrawn any time before its acceptance stands excluded.

9. Let us now consider whether Clauses (3) and (5) of Paragraph 5 of the Scheme have any relevance to the issue. Clause (3) provides that when an employee exercises an option seeking Special Voluntary Retirement Package, it will not take effect unless it is accepted in writing by the employer Company. Clause (5) provides that the employer shall have the discretion either to accept or reject the request made by the Development Officer. The effect of these clauses is that voluntary retirement will not take effect unless it is accepted in writing by the employer. Where the employee exercises an option to retire from a future date, unless and until it is accepted in writing by the employer, the Development Officer will continue to be the employee, even after the date mentioned as the date of retirement. Similarly, where the employer rejects the request of the employee, the employee will continue as an employee, in spite of his exercise of option to retire. Neither Clause (3) nor Clause (5) can be interpreted as giving an option to the employee to withdraw the option once exercised. Clauses (3) and (5) of Para 5 deal with the question as to whether the retirement, in pursuance of option exercised by the employee, will come into effect without acceptance by the employer. These clauses have no bearing on the issue whether the employee can withdraw from the exercise of option.

10. The High Court proceeded on an erroneous assumption that the voluntary retirement package was not part of any statutory scheme, but was contractual in nature and therefore the general principles of contract will apply. The reliance placed by the High Court upon the decision of this Court in *Swarnakar*, to assume that every scheme for voluntary retirement is always contractual and not statutory, is misconceived.

11. A detailed reference to the decision in *Swarnakar* is necessary, to clear the misconception under which the High Court has proceeded. The said decision related to VRS Schemes floated by Nationalised Banks and the State Bank of India. The VRS schemes of Nationalized Banks contained a provision (Para 10.5) that it will not be open for an employee to withdraw the request made for voluntary retirement under the scheme, after having exercised such option. The scheme of State Bank of India was slightly different as it permitted withdrawal of the application before a given date and also contained a provision laying down the mode and manner in which applications for voluntary retirement should be considered, which created an enforceable right in the employee if State Bank of India failed to adhere to its preferred policy. The Punjab & Haryana High Court held the VRS Scheme of the Nationalised Banks was not a valid piece of subordinate legislation. The other High Courts, on the other hand, held that the Clause 10.5 of the voluntary retirement scheme which barred an employee from withdrawing the request for voluntary retirement after having exercised the option was not operative as the employee had an indefeasible right to withdraw his offer before it was accepted. The decisions of the Punjab & Haryana High Court as also of the other High Courts were challenged by various Banks including State Bank of India and they were disposed of by the said common judgment.

(11.1.) This Court at the outset noticed that there was a difference in the scheme floated by the State Bank of India and the schemes framed by the Nationalised Banks. This Court held that the schemes of the Nationalised Banks were introduced by a circular dated 20.8.2000 with the purpose of

downsizing the number of employees and that the terms and conditions of service of the employees of Nationalized Banks (except in the matter of pension) were not statutory in nature and the VRS schemes of the Nationalised Banks were floated by way of contract and did not have any statutory flavour. Consequently, it was held that the provisions of the Indian Contract Act, 1872 would apply to the VRS schemes of the Nationalised Banks. This Court also held that the scheme being an invitation to offer and not an offer by the Banks, the employee made an offer when exercising the option, and he can withdraw the offer any time before it was accepted by the employer. This Court further held that Clause 10.5 of the scheme barring employee from withdrawing the request for the voluntary retirement was an agreement without consideration and was therefore not valid. This Court observed that once it was found that by giving their option under the Scheme, the employees did not derive an enforceable right, in the absence of any consideration, the term would be void in terms of Section 2(g) of the Contract Act as opposed to an enforceable agreement in terms of Section 2(h) of that Act. This Court further therefore concluded that once the application filed by the employees is held to be an offer, Section 5 of the Contract Act would come into play, *in the absence of any other independent binding contract or statute or statutory Rules to the contrary*.

(11.2.) In so far as the scheme of State Bank of India, this Court held that the terms and conditions of service of its employees were governed by statutory Rules and the scheme was also statutory in nature; that the provisions of the Scheme would show that there was some 'consideration' for the employee agreeing not to withdraw the voluntary retirement and consequently the scheme would be binding. As a result this Court allowed the appeals of the State Bank of India but dismissed the appeals of the Nationalised Banks except in cases where employees have accepted a part of the benefit under the scheme.

(11.3.) The effect of the decision in *Swarnakar* can be summarized thus :

(i) If a contractual scheme provides that the voluntary retirement by exercise of option by the employee, will come into effect only on its acceptance by the employer, it will not create any enforceable right in the employee to claim SV retirement. Any term in such a scheme that the employee shall not withdraw from the option once exercised, will be an agreement without consideration and therefore, invalid. Consequently, the employee can withdraw the offer (that is option exercised) before its acceptance. But if the contractual scheme gives the option to an employee to voluntarily retire in terms of the scheme and if there is no condition that it will be effective only on acceptance by the employer, the scheme gives an enforceable right to the employee to retire, by exercising his option. In such a situation, a provision in the contractual scheme that the employee will not be entitled to withdraw the option once made, will be valid and binding and consequently, an employee will not be entitled to withdraw from the option exercised.

(ii) Where the scheme is statutory in character, its terms will prevail over the general principles of contracts and the provision of the Contract Act. Further, there will be no question of any “consideration” for the condition in the Scheme that the employee will not withdraw from the option exercised. Subject to any challenge to the validity of the scheme itself, the terms of the statutory scheme will be binding on the employees concerned, and once the option is exercised by an employee to voluntary retire in terms of the Retirement Package contained in the Scheme, the employee will not be entitled to withdraw from the exercise of the option, if there is a bar against such withdrawal.

12. The question therefore is whether Clause 4 of Para 5 of the SVRS contained in the Amendment Scheme of 2003 is void and whether Section 5 of the Contract Act which enables the person making the offer, to withdraw the offer, any time before its acceptance, would apply. The special voluntary retirement package is a part of the General Insurance (Rationalization of Pay

Scales and Other Conditions of Service of Development Staff) Amendment Scheme, 2003, made by the Central Government in exercise of the power under Section 17A of the General Insurance Business Insurance (Nationalisation) Act, 1972. Section 17A, as noticed above, authorizes and empowers the Central Government, to frame, by notification published in the official gazette, one or more schemes for regulating the pay scales and other terms and conditions of service of officers and other employees of the Corporation or of any acquiring company (including the appellant). Sub-section (6) of Section 17A provides that the provision of Section 17 and of any scheme framed under it shall have effect notwithstanding anything to the contrary contained in any other law or any agreement award or other instrument for the time being in force. Therefore the scheme is statutory in character. Consequently, the provisions of the Scheme will prevail over the provisions of Contract Act or any other law or any principle of contract, and having regard to the binding nature of the scheme, the employee upon exercising the option, cannot withdraw from the same.

13. We, therefore, allow this appeal and set aside the judgment of the High Court and dismiss the Writ Petition filed by the respondents before the High Court.

JUDGMENT