$~106 and 107

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

% *Date of Decision: 5th November, 2024*

\+ W.P.(C) 7905/2014

RAJESH KUMAR BHALLA .....Petitioner

Through: Mr. R.A. Sharma, Advocate.

versus

THE NEW INDIA ASSURANCE CO. LTD. & ORS.....Respondents

Through: Mr. Sanjay Rawat and Mr. Vibhav Rawat, Advocates.

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\+ W.P.(C) 8629/2015

RAJESH KUMAR BHALLA .....Petitioner

Through: Mr. R.A. Sharma, Advocate.

versus

THE NEW INDIA ASURANCE CO. LTD. & ORS.....Respondents

Through: Mr. Sanjay Rawat and Mr. Vibhav Rawat, Advocates.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

JYOTI SINGH, J. (ORAL)

1. Writ petition being W.P.(C) 7905/2014 was preferred by the Petitioner seeking quashing of his Performance Appraisal Reports ('PARs') for the years 2003-04, 2004-05 and 2005-06 filled by the Reporting Officer for grant of 1st stagnation increment to the Petitioner and order dated 15.10.2012 whereby the said increment was denied to the Petitioner. Mandamus was sought to Respondents No. 1 to 3 to release the three stagnation increments to the Petitioner w.e.f. 01.07.2006, 01.07.2009 and 01.07.2012 with all consequential benefits and interest.

2. Facts to the extent necessary are that Petitioner joined The New India Assurance Co. Ltd./Respondent No. 1 on 10.01.1978 as Assistant (Typist). On 01.07.2003, while working as Assistant Manager, Petitioner was in receipt of maximum Basic Pay of Rs.14,735/- per month in the pay scale of Rs.10055-360(13)-14735/-. Petitioner urges that on reaching the maximum of the scale of pay on 01.07.2003, he became entitled for every three completed years of service after reaching such maximum, an additional/ stagnation increment equal to the last increment drawn by him in the scale of pay, subject to maximum of 03 such increments and thus, the 03 stagnation increments allegedly became due to the Petitioner on 01.07.2006, 01.07.2009 and 01.07.2012. Placing reliance on the General Insurance (Rationalisation of Pay Scales and Other Conditions of Services of Officers) Scheme, 1975 ('1975 Scheme') as amended in 2000 framed under the General Insurance Business (Nationalisation) Act, 1972 ('1972 Act'), it is urged that the increments are statutory in character and cannot be denied to the Petitioner.

3. Petitioner avers that for 1st stagnation increment, work record of 03 preceding years i.e. 2003-04 to 2005-06 was to be considered while for the 2nd stagnation increment, record of 03 years from 2006-07 to 2008-09 was to be taken into account. Likewise, for grant of 3rd stagnation increment w.e.f. 01.07.2012, work record for the period 2009-10 to 2011-12 was relevant. However, the then Reporting Officer did not fill up the PARs of the Petitioner for grant of 1st stagnation increment at the relevant time and it was only on 02.05.2012 i.e. after 06 years that he filled up the PARs and intentionally made adverse entries/remarks and graded the Petitioner as 'Poor'/'Fair' in several characteristics, being inimically disposed towards

the Petitioner since Petitioner had deposed as a prosecution witness against him in a departmental inquiry. Reviewing Officer observed that there was an element of bias but endorsed the report of the Reporting Officer and as a result 1st stagnation increment was denied to the Petitioner. It is further averred that the 2nd and 3rd stagnation increments were also illegally denied despite the fact that the PARs under consideration for the relevant periods were 'Very Good' and there were favourable recommendations for grant of two stagnation increments.

4. Petitioner thereafter opted for voluntary retirement under the General Insurance (Public Sector) Officers' Golden Gate Scheme for Voluntary Separation, 2009 ('VRS Scheme') and was relieved on 31.01.2014. Representations for grant of increments were not considered by the Respondents and Petitioner filed the writ petition praying for grant of 03 stagnation increments.

5. During the pendency of this writ petition, Petitioner made a detailed representation dated 26.11.2014 against the adverse entries/remarks in PARs for 1st stagnation increment and when the same was rejected by order dated 04.08.2015, Petitioner filed W.P. (C) No. 8629/2015 challenging the said order as also order dated 15.10.2012 and seeking 03 stagnation increments. Since both petitions are filed seeking the same reliefs, save and except, that in the second petition there is a challenge to the order rejecting the second representation dated 26.11.2014, they are being decided by this common judgment.

6. Learned counsel for the Petitioner submits that there was an abnormal and unexplained delay of 06 long years in filling up Petitioner's PARs for grant of 1st stagnation increment by the Reporting Officer and when he filled

the PARs, he deliberately endorsed adverse remarks/'Fair' and 'Poor' gradings and recommended against the grant of increments, since Petitioner had deposed as a prosecution witness against the Reporting Officer in a departmental inquiry. Reviewing Officer was of the view that there was malice in reporting, but instead of expunging the remarks and the low gradings, he endorsed the view of the Reporting Officer and the adverse PARs became the basis of denial of 1st stagnation increment to the Petitioner. Insofar as the 2nd and 3rd stagnation increments are concerned, they were denied without any justifiable reason as Petitioner's PARs under consideration were graded as 'Very Good' by the Reporting Officers as well as the Reviewing Officers.

7. It is further argued that the sole reason to contest the present writ petitions by the Respondents is that Petitioner had sought and was granted VRS and cannot thereafter make any claims pertaining to his service conditions prior to acceptance of voluntary retirement, which is wholly erroneous, inasmuch as the stagnation increments are statutory increments that flow from the 1975 Scheme formulated under the 1972 Act and there can be no estoppel against claims pertaining to dues which are statutory in character. Petitioner had never forgone or waived his right to claim the increments and had continued to agitate the said rights even while applying for VRS. It is also contended by Mr. Sharma that the Scheme defines 'salary' in para 3(h) to mean the aggregate of Basic Pay including stagnation increments and therefore, the Scheme itself envisages payment of increments and whatever is covered under the Scheme cannot be denied to the Petitioner even though he opted for VRS.

8. Mr. Sharma, relies on the judgment of the Supreme Court in ***National Buildings Construction Corporation v. Pritam Singh Gill and Others, (1972) 2 SCC 1,*** where the Supreme Court observed that the purpose and object of Section 33-C of the Industrial Disputes Act, 1947 ('IDA') is to enable individual workman to implement, enforce or execute the existing rights against the employer and to supress the mischief of the difficulties faced by the workman in getting relief without resort to Section 10 of the IDA, which was a long drawn procedure and therefore, Section 33-C (2) must be construed to take within its fold a workman, who was employed during the period in respect of which the relief is claimed, even though he is no longer employed at the time of the application. Reliance is also placed on the judgment of the Supreme Court in ***A. Satyanarayana Reddy and Others v. Presiding Officer, Labour Court and Others, (2016) 9 SCC 462,*** wherein the Supreme Court held that where VRS does not cover past dues like layoff compensation, subsistence allowance etc., workman will be entitled to approach Labour Courts but where the same are specifically covered, no Forum would have jurisdiction to grant the said reliefs.

9. *Per contra,* learned counsel for the Respondents argues that the present writ petitions are not maintainable and Petitioner is not entitled to the reliefs claimed. Respondents had introduced the VRS Scheme for those who had attained 50 years of age as a Golden Gate to provide voluntary separation in the interest of officers who fell in the specified class. The Scheme was purely voluntary and only an invitation of offer from those who were eligible and interested in availing this offer. Under the Scheme, employees were to get certain special benefits as they would retire before completing the requisite period of service enabling them to get pension etc.

These special benefits included ex-gratia payment and additional weightage in calculation of pension wherever payable. These benefits were enumerated in paras 6 and 7 of the VRS Scheme and therefore, the Scheme was a package deal and the offer when accepted by the employee brought a complete cessation of the jural relationship between the parties.

10. It is urged that sub-Para (xiii) of para 8 of the VRS Scheme clearly stipulated that save as provided in para 7(b), the benefits payable under the Scheme shall be in full and final settlement of all claims of whatsoever nature, whether arising under the Regulation or otherwise to the officer. Petitioner, who in the normal course, would have retired on 30.09.2015 opted under the VRS Scheme voluntarily and after acceptance of his offer, he was relieved from the service of the Respondents. Petitioner received a substantial sum of Rs.44,43,704/- which included ex-gratia payment and other dues such as provident fund, gratuity, commutation, GSLI, leave encashment and in addition to monthly pension. Petitioner was completely aware of his claims pertaining to stagnation increments when he opted for VRS and was also aware of the implications under the Scheme which included a condition that all payments will be in full and final settlement of past claims of whatever nature. After opting for VRS, which is a contract between two parties and binds them, Petitioner cannot agitate the alleged past claims of any nature whatsoever. Petitioner accepted all benefits under the Scheme including special benefit such as ex-gratia payment, without protest and demur and cannot call upon this Court exercising power of judicial review to re-write the terms of the contract between the parties under the scheme of voluntary retirement.

11. It is contended that during his service, Petitioner never challenged the PARs which formed the basis of rejecting of his claim for 1st stagnation increment and it is only after being relieved that the Petitioner first approached the Court. If the employees are permitted to raise grievances regarding alleged past rights after opting for VRS and accepting special benefits, the whole purpose of these Schemes will be frustrated. On merits, without prejudice, it is denied that the PARs for the period 2003-04 to 2005-06 were filled by the Reporting Officer out of any malice. It is asserted that the reports were based on the work and conduct of the Petitioner for the relevant period. It is also brought forth that a memorandum of charges dated 26.12.2011 was issued to the Petitioner and pursuant to disciplinary action, 'censure' was awarded on 16.04.2012 with recovery of Rs.15,000/- as per Rule 2(C) of Conduct, Discipline and Appeal Rules, 2003 ('2003 Rules') and therefore vigilance and IDD clearance was not given in respect of the Petitioner, which was the reason for denial of 2nd and 3rd stagnation increments, none of which was challenged by the Petitioner. Learned counsel submits that grant of stagnation increments is not a matter of right and is subject to satisfactory work record as well as IDD and vigilance clearance and cannot be compared to dues such as subsistence allowance or lay off compensation and therefore, reliance on the judgment of the Supreme Court in ***A. Satyanarayana Reddy (supra)*** is misplaced.

12. Heard learned counsels for the parties and examined their rival submissions.

13. The short issue that arises for consideration in the present writ petitions is whether Petitioner is entitled to the 03 stagnation increments allegedly due to him from 01.07.2006, 01.07.2009 and 01.07.2012, in light

of his having sought voluntary retirement under the VRS Scheme, introduced by the Respondents in 2009. As brought forth by the Respondents in the counter affidavit, the Company introduced the Golden Gate Scheme for voluntary separation in 2009 offering voluntary retirement to a specified class of officers. Para 6 stipulates that an officer seeking voluntary separation under the Scheme will be entitled to ex-gratia amount basis the calculations mentioned therein. Para 7 enumerates the usual benefits that will be available even on voluntary retirement such as provident fund, gratuity, commutation of pension, leave encashment etc., in addition to the ex-gratia payment. Para 8 (xiii) of the VRS Scheme provides that the benefits payable under the Scheme shall be in full and final settlement of all claims of whatsoever nature, save as provided in para 7(b), which relates to wage revision if effected from a date prior to the date of relieving of the officer under the Scheme. Relevant paras of the Scheme are as follows:-

> ***"6. Amount of ex-gratia:***
>
> *(a) An Officer seeking Voluntary Separation under this Scheme shall, on approval by the Competent Authority, be entitled to the ex-gratia amount equivalent to the least of the three amounts as given below, namely :*
>
> *One month's salary for each completed year of service;*
>
> *Or*
>
> *Salary for the number of months of remaining service;*
>
> *Or*
>
> *Salary for 24 months*
>
> *(b) The ex-gratia shall be computed on the basis of his/her salary as on the date of relieving.*
>
> ***7. Other benefits:***
>
> *(a) An Officer opting for the Scheme shall also be eligible for the following benefits in addition to the ex-gratia amount mentioned in Para 6, namely:*
>
> *(i) Provident Fund as per the relevant Rules ;*
>
> *(ii) Gratuity as payable under the Rationalization Scheme;*

(iii) Pension (including commuted value of pension) as per General Insurance (Employees') Pension Scheme, 1995, if eligible. Further, the Voluntary Separation under this Scheme shall also be treated as Voluntary Retirement for the purpose of granting the notional benefit of additional qualifying years of service as stipulated in Para 30 of the said Pension Scheme while determining the quantum of pension and Commutation of pension;

(iv) Leave Encashment;

(v) All other benefits as are admissible to an Officer seeking Voluntary Retirement in terms of para 4 (4A) of the General Insurance (Termination, Superannuation and Retirement of Officers and Development Staff) Scheme, 1976 as amended from time to time.

(b) In case, wage revision is effected from a date prior to the date of relieving of the officer under this Scheme, the benefit of revised pay for the purpose of payment of ex-gratia under para 6 and other benefits under para 7(a) hereinabove will be allowed.

8. General Conditions

……

(xiii) Save as provided in Para 7(b), the benefits payable under this Scheme shall be in full and final settlement of all claims of whatsoever nature, whether arising under the regulation or otherwise to the officer (or to the nominee in case of death). An officer who voluntarily separates under this Scheme shall not have any claims against the Company for reemployment or compensation or employment of any of his or her relative on compassionate grounds in the service of the Company or for any other like benefits."

14. From a plain reading of the Scheme and its preamble, it is palpably clear that the Scheme was introduced by the Respondents for a specified class of officers who, having regard to their family obligations, health conditions, future prospects etc. wanted to seek an honourable exit from the Company and was envisaged as a measure to construct a 'Golden Gate' to enable these officers to do so. Voluntary schemes are often termed as measures of 'golden handshake' and when an employee opts under a VRS, substantial amounts are usually paid as in the present case, where Petitioner was paid ex-gratia amounts along with all usual benefits such as PF, gratuity, leave encashment etc. The special benefit under the Scheme was

not paid for any special work or rendering any special service but as a package deal in lieu of the Petitioner leaving the services of the company and as rightly placed by counsel for the Respondents if the grievances relating to past claims are permitted to be entertained after the contract is entered into between two consenting parties and executed, it would frustrate the whole purpose of introducing the voluntary retirement schemes.

15. It be noted that while offering VRS, Respondents had categorically mentioned in the Scheme itself in para 8 (xiii) that benefits payable under the Scheme shall be in full and final settlement of all claims of whatsoever nature and the only exception carved out was as provided in para 7(b) which deals with a wage revision if effected from a date prior to the date of relieving of the officer under the Scheme and this is also qualified to be a wage revision for the purpose of payment of ex-gratia under para 6 and other benefits under para 7(a). It is in this context that the term 'salary' has been defined in the Scheme itself to mean and include Basic Pay with increment. Petitioner opted under the Scheme with his eyes open and knew that if he opted to be relieved on voluntary retirement, he would have to waive and forego all his past alleged claims, which in the present case are limited to 03 stagnation increments. Having been relieved on voluntary retirement and having accepted the special benefits under the Scheme without any protest or a demur, it is not open to the Petitioner to now raise the stale dispute of increments which pertain to the period prior to his being relieved on voluntary retirement w.e.f. 31.01.2014 and which subsumed into the VRS package.

16. The legal issue whether an employee can maintain a claim after accepting voluntary retirement under a VR Scheme and receiving payment

thereunder, is no longer *res integra*. In ***A.K. Bindal and Another v. Union of India and Others, (2003) 5 SCC 163***, the Petitioners had filed claims for revision in pay scales after opting under the VR Scheme. The Supreme Court declined the relief holding that the VRS was a complete cessation of jural relationship between the employer and the employee and past rights including enhancement in pay scales could not be agitated. It was observed that the purpose of VRS would be frustrated if employee was permitted to raise such a grievance after opting for VRS. Relevant paragraphs are as follows:-

> ***"28.*** *... Learned counsel has submitted that the employees of both the Companies having taken advantage of VRS and having taken the amount without any demur, the relationship of employer and employee had ceased to exist. They cannot therefore raise any grievance regarding the non-revision of pay scale at this stage and consequently the writ petitions have become infructuous. Even Shri A.K. Bindal who filed the writ petition in his capacity as the President of the Federation of Officers' Association had also taken voluntary retirement and after acceptance of the amount had left the Company and had gone out."*
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> *xxx* *xxx* *xxx*
>
> ***32.*** *...**The employees accepted VRS with their eyes open without making any kind of protest regarding their past rights**...*
>
> ***33.*** *The Voluntary Retirement Scheme (VRS) which is sometimes called Voluntary Separation Scheme (VSS) is introduced by companies and industrial establishments in order to reduce the surplus staff and to bring in financial efficiency...*
>
> ***34. This shows that a considerable amount is to be paid to an employee ex gratia besides the terminal benefits in case he opts for voluntary retirement under the Scheme and his option is accepted. The amount is paid not for doing any work or rendering any service. It is paid in lieu of the employee himself leaving the services of the company or the industrial establishment and foregoing all his claims or rights in the same. It is a package deal of give and take. That is why in the business world it is known as "golden handshake". The main purpose of paying this amount is to bring about a complete cessation of the jural relationship between the employer and the employee. After the amount is paid and the employee ceases to be under the employment of the***

company or the undertaking, he leaves with all his rights and there is no question of his again agitating for any kind of his past rights with his erstwhile employer including making any claim with regard to enhancement of pay scale for an earlier period. If the employee is still permitted to raise a grievance regarding enhancement of pay scale from a retrospective date, even after he has opted for Voluntary Retirement Scheme and has accepted the amount paid to him, the whole purpose of introducing the Scheme would be totally frustrated.

35. *The contention that the employees opted for VRS under any kind of compulsion is not worthy of acceptance. The petitioners are officers of the two Companies and are mature enough to weigh the pros and cons of the options which were available to them. They could have waited and pursued their claim for revision of pay scale without opting for VRS. However, they in their wisdom thought that in the fact situation VRS was a better option available and chose the same. After having applied for VRS and taken the money it is not open to them to contend that they exercised the option under any kind of compulsion. In view of the fact that nearly ninety-nine per cent of employees have availed of the VRS Scheme and have left the Companies (FCI and HFC), the writ petition no longer survives and has become infructuous."*

(Emphasis supplied)

17. The same issue came up before a Division Bench of this Court in ***PP Vaidya & Ors. v. IFCI Ltd. & Ors., 2014 SCC OnLine Del 1575,*** where the Appellants had opted under VRS and thereafter claimed Performance linked incentives on the ground that the incentive was a part of the salary which was not surrendered by opting for VRS and the Scheme did not exclude payment of the incentives. Judgment of the Supreme Court in ***A. Satyanarayana Reddy and Others v. Presiding Officer, Labour Court, Guntur and Others, (2008) 5 SCC 280,*** was heavily relied on by the Appellants. Respondent had taken a stand that VR Scheme was an invitation to an offer and once the offer was made by the employees and accepted by the employer, it resulted in a concluded contract. The Scheme clearly provided that benefits payable under the Scheme shall be in full and final settlement of all claims and being aware of this clause, the Appellants had

opted to seek voluntary retirement. Relying on the judgment of the Supreme Court in ***A.K. Bindal (supra)*** and other judgments, the Division Bench dismissed the appeals holding that Appellants were not entitled to the incentive having opted under the VR Scheme and accepted all benefits in full and final settlement which resulted in cessation of jural relationship and that the principles of estoppel and waiver were applicable to the said case. The judgment in ***A. Satyanarayana Reddy (2008) (supra)*** was distinguished holding that the position with respect to claims pertaining to lay off compensation etc. is different which is not akin to a claim of revision in salary. The Division Bench summarised certain principles with respect to voluntary retirement schemes also in the said judgment. Relevant paragraphs of which are as under:-

> *"10. In HEC Voluntary Retired Employees Welfare Society v. Heavy Engineering Corpn. Ltd., (2006) 3 SCC 708, the employees of Heavy Engineering Corporation Ltd. (HEC Ltd.) opted for VRS and retired during the period 1st January, 1992 to 31st December, 1996. Vide circular dated 9th October, 1997, HEC Ltd. revised the pay scale of the employees on the rolls of the company with retrospective effect from 1992. The erstwhile employees who had taken VRS, filed the writ petition before Patna High Court to seek the revision of their pay scale which was dismissed. The Division Bench in appeal upheld the dismissal of the writ petition. The Supreme Court, relying upon A.K. Bindal (supra), dismissed the Special Leave Petition holding that an employee after taking the VRS cannot raise claim for higher salary unless by reason of a statute he becomes entitled thereto. The relevant portion of the said judgment is reproduced hereunder : -*
>
> > *"**11. An offer for voluntary retirement in terms of a scheme, when accepted, leads to a concluded contract between the employer and the employee. In terms of such a scheme, an employee has an option either to accept or not to opt therefore the scheme is purely voluntary, in terms whereof the tenure of service is curtailed, which is permissible in law. Such a scheme is ordinarily floated with a purpose of downsizing the employees. It is beneficial both to the employees as well as to the employer. Such a scheme is issued for effective functioning of the industrial undertakings.** Although the*

Company is "State" within the meaning of Article 12 of the Constitution, the terms and conditions of service would be governed by the contract of employment. Thus, unless the terms and conditions of such a contract are governed by a statute or statutory rules, the provisions of the Contract Act would be applicable both at the formulation of the contract as also the determination thereof. By reason of such a scheme only is an invitation of offer floated. When pursuant to or in furtherance of such a Voluntary Retirement Scheme an employee opts therefor, he makes an offer which upon acceptance by the employer gives rise to a contract. Thus, as the matter relating to voluntary retirement is not governed by any statute, the provisions of the Contract Act, 1872, therefore, would be applicable too. (See Bank of India v. O.P. Swarnakar [(2003) 2 SCC 721 : 2003 SCC (L&S) 200].)

12. *It is also common knowledge that a scheme of voluntary retirement is preceded by financial planning. Finances for such purpose, either in full or in part, might have been provided for by the Central Government. Thus financial implications arising out of implementation of a scheme must have been borne in mind by the Company, particularly when it is a sick industrial undertaking. Offers of such number of employees for voluntary retirement, in that view of the matter, were to be accepted by the Company only to the extent of finances available therefor.*

13. *We have noticed hereinbefore the benefits admissible under the Scheme. The employee offering to opt for such voluntary retirement not only gets his salary for the period mentioned therein but also gets compensation calculated in the manner specified therein, apart from other benefits enumerated thereunder.*

xxx xxx xxx

16. *The question which arises for our consideration is whether in view of the fact that the employees who had opted for voluntary retirement having not been excluded from the purview of the said Circular No. 5/97 by clause 3.3, would be treated to be included or the benefits thereof would be available to only such employees who come within the purview of clause 3.2 thereof?*

17. *Construction of the aforementioned provisions undoubtedly would depend upon the purport and object of the Voluntary Retirement Scheme vis-à-vis the retrospective effect given to the revision of pay in terms of the aforementioned circular dated 9-10-1997.*

18. *The Voluntary Retirement Scheme speaks of a package. One either takes it or rejects it. While offering to opt for the same, presumably the employee takes into consideration the future implication also.*

19. *It is not in dispute that the effect of such Voluntary Retirement Scheme is cessation of jural relationship between the employer and the employee. Once an employee opts to retire voluntarily, in terms of the contract he cannot raise a claim for a higher salary unless by reason of a statute he becomes entitled thereto. He may also become entitled thereto even if a policy in that behalf is formulated by the Company.*

20. *We have indicated hereinbefore that before floating such a scheme both the employer as also the employee take into account the financial implications in relation thereto. When an invitation to offer is floated by reason of such a scheme, the employer must have carried out exercises as regards the financial implication thereof. If a large number of employees opt therefor, having regard to the financial constraints, an employer may not accept offers of a number of employees and may confine the same to only a section of optees. Similarly when an employer accepts the recommendations of a Pay Revision Committee, having regard to the financial implications thereof it may accept or reject the whole or a part of it. The question of inclusion of employees who form a special class by themselves, would, thus, depend upon the object and purport thereof. The appellants herein do not fall either in clause 3.2 or 3.3 expressly. They would be treated to be included in clause 3.2, provided they are considered on a par with superannuated employees. They would be excluded if they are treated to be discharged employees.*

21. We have noticed that admittedly thousands of employees had opted for voluntary retirement during the period in question. They indisputably form a distinct and different class. Having given our anxious consideration thereto, we are of the opinion that neither are they discharged employees nor are they superannuated employees. *The expression "superannuation" connotes a distinct meaning. It ordinarily means, unless otherwise provided for in the statute, that not only he reaches the age of superannuation prescribed therefor, but also becomes*

entitled to the retiral benefits thereof including pension. "Voluntary retirement" could have fallen within the aforementioned expression, provided it was so stated expressly in the Scheme.

22. *Financial considerations are, thus, a relevant factor both for floating a scheme of voluntary retirement as well as for revision of pay.* ***Those employees who opted for voluntary retirement, make a planning for the future. At the time of giving option, they know where they stand. At that point of time they did not anticipate that they would get the benefit of revision in the scales of pay. They prepared themselves to contract out of the jural relationship by***

resorting to "golden handshake". They are bound by their own act. The parties are bound by the terms of contract of voluntary retirement. *We have noticed hereinbefore that unless a statute or statutory provision interdicts, the relationship between the parties to act pursuant to or in furtherance of the Voluntary Retirement Scheme is governed by contract. By such contract, they can opt out of such other terms and conditions as may be agreed upon. In this case the terms and conditions of the contract are not governed by a statute or statutory rules.*

23. *The question came up for consideration before the Division Bench of this Court in A.K. Bindal v. Union of India [(2003) 5 SCC 163 : 2003 SCC (L&S) 620] wherein this Court took notice of the fact that* ***in implementation of such a scheme a considerable amount has been paid to the employee ex gratia besides the terminal benefits in case he opts therefor.*** *It has further been noticed that* ***the payment of compensation is granted not for doing any work or rendition of service and in lieu of his leaving the services of the Company.*** *(See also Officers & Supervisors of I.D.P.L. v. Chairman & M.D., I.D.P.L. [(2003) 6 SCC 490 : 2003 SCC (L&S) 916])*

24. *In State of A.P. v. A.P. Pensioners Assn. [(2005) 13 SCC 161 : JT (2005) 10 SC 115] this Court categorically held that the financial implication is a relevant criterion for the State Government to determine as to what benefits can be granted pursuant to or in furtherance of the recommendations of a Pay Revision Committee. A fortiori while taking that factor into account, an employer indisputably would also take into consideration the number of employees to whom such benefit can be extended.*

25. *It will also be germane for such a purpose to take into consideration the question as to whether those who are no longer on the rolls of the Company should be given the benefit thereof.*

26. Considering the matter from that context, we are of the opinion that it cannot be said that the Company intended to extend the said benefits to those who had opted for voluntary retirement.

Clause 3.2 of the circular includes only those who were on the rolls of the Corporation as on 1-1-1992, as also those who ceased to be in service on that date on account of superannuation or death. The appellants do not come in the said category. ***In view of the fact that they have not been expressly included within the purview thereof, we are of the opinion that although they have not been excluded by clause 3.3, they would be deemed to be automatically excluded.****"*

(Emphasis Supplied)

11. In ITI Ltd. v. ITI Ex/VR Employees/Officers Welfare Assn., (2010) 12 SCC 347, the erstwhile employees of ITI Ltd. filed a writ petition before the Karnataka High Court to seek wage revision after opting for VRS. The High Court allowed the wage revision which was challenged before the Supreme Court. The Supreme Court allowed the appeal holding that the employees, after opting for VRS, cannot seek revision in wages retrospectively. The Supreme Court referred to and relied upon HEC Voluntary Retired Employees Welfare Society (supra). The relevant portion of the said judgment is reproduced hereunder : -

> ***"4. The short question involved in these appeals is "whether after an employee has accepted the VRS Scheme and received payment under it, can he subsequently claim a higher amount because of subsequent wage revision with retrospective effect by the employer".***
>
> ***5.*** *This Court in HEC Voluntary Retd. Employees Welfare Society v. Heavy Engg. Corpn. Ltd.[(2006) 3 SCC 708 : 2006 SCC (L&S) 602 : (2006) 2 LLJ 245], vide paras 11 and 12, observed as under at p. 248 of LLJ : (SCC p. 715, paras 11-12).*
>
> *xxx xxx xxx*
>
> ***6.*** *Learned counsel for the appellant hence, submitted that the High Court was in error in granting the amounts over and above the amounts which were paid to the employee under the VRS Scheme.*
>
> ***7.*** *Learned counsel for the respondents, however, relied on Circular No. 409 dated 6-9-1995, a copy of which is annexed as Annexure P-2 to these appeals. The relevant Clause 1.2 reads as under:*
>
> > *"1.2. Officers who have ceased to be in service on or after 1-1-1992 due to resignation, superannuation, voluntary retirement or death, will be eligible to arrears on a pro-rata basis wherever due."*
>
> ***8.*** *Per contra, learned counsel for the appellant has invited our attention to another clause of the same circular viz. Clause 23.1 which states as follows:*
>
> > *"23.1. ... Calculations related to compensation paid under the Voluntary Retirement Scheme, incentive for not availing house building advance/interest subsidy for housing loan and/or vehicle advance shall not be reopened."*
>
> ***9. On a plain reading of both the clauses together, quoted above, it is evident that the expression "voluntary retirement" in Clause 1.2 of the said circular does not refer to voluntary retirement under the VRS Scheme but it refers to voluntary retirement independent of such scheme. This is evident if we read the said clause along with the subsequent clause i.e. Clause 23.1 which states that calculations***

related to compensation paid under the Voluntary Retirement Scheme shall not be reopened.

10. *Learned counsel for the respondents submitted that wages had subsequently been revised with retrospective effect and hence in the eye of the law it has to be deemed that at the time when an employee got the benefits under the VRS Scheme, the calculation was done wrongly and the amount should have been calculated on the higher pay.*

11. *We do not find substance in this submission.* ***In our opinion, at the most it can be said that a wrong calculation was done when the benefits were paid to an employee under the VRS Scheme. This will not benefit the employees because Clause 23.1 of the circular, quoted above, does not speak of only valid calculations but it refers to all calculations under the VRS Scheme, irrespective of whether they are valid or invalid calculations, and they shall not be reopened. In other words, if an employee has got the benefits under the VRS Scheme, whether right or wrong, it cannot be reopened and an employee cannot claim any higher amount on account of subsequent revision in the wages retrospectively.****"*

(Emphasis supplied)

12. The learned counsel for the appellants submitted that the jural relationship between the employer and employee does not cease upon taking VRS as held by the Supreme Court in A.K. Bindal (supra) and HEC Voluntary Retired Employees Welfare Society (supra). The learned counsel strongly referred to and relied upon para 9 of UCO Bank v. Sanwar Mal, (2004) 4 SCC 412 in which it has been observed that the voluntary retirement maintains the relationship for the purposes of grant of retiral benefits.

We have carefully gone through UCO Bank v. Sanwar Mal (supra), in which the employee, after resignation, filed a suit for declaration that he was entitled to the pension under the regulations. His suit was decreed and the first as well as second appeals of the bank against the decree were dismissed. The bank approached the Supreme Court by special leave. The Supreme Court held that resignation, dismissal, removal as well as termination results in forfeiture of entire past service and consequently disqualifies the employee for pensionary benefits under Regulation 22. The Supreme Court therefore allowed the appeal and set aside the decree, holding that the resigned employee was not entitled to the pension after resignation.

The issue of voluntary retirement under VRS did not at all arise for consideration in the above case and the judgment does not lay down any law with respect to the rights of the employees after taking VRS. Secondly,

the voluntary retirement mentioned in para 9 of the judgment is the voluntary retirement under the rules and not under any Voluntary Retirement Scheme. It is well settled that voluntary retirement under the Rules is different from the voluntary retirement under a Voluntary Retirement Scheme. This judgment does not help the appellants and reliance placed by the learned counsel for the appellants is clearly misconceived.

It may be noted that this very argument was raised in ITI Ltd. v. ITI Ex/VR Employees/Officers Welfare Assn. (supra) and the Supreme Court in para 9 observed that the voluntary retirement in Clause 1.2 of the circular therein does not refer to voluntary retirement under the Voluntary Retirement Scheme but referred to voluntary retirement independent of such schemes. Para 9 of ITI Ltd. (supra) is again reproduced hereunder : -

> *"9. On a plain reading of both the clauses together, quoted above, it is evident that the expression "voluntary retirement" in Clause 1.2 of the said circular does not refer to voluntary retirement under the VRS Scheme but it refers to voluntary retirement independent of such scheme. This is evident if we read the said clause along with the subsequent clause i.e. Clause 23.1 which states that calculations related to compensation paid under the Voluntary Retirement Scheme shall not be reopened."*

We may also note that in Repakula Vidya Sagar v. State Bank of Hyderabad Head Office, (2002) 3 LLN 143, the Andhra Pradesh High Court summarised the general principles pertaining to voluntary retirement and held that the voluntary retirement under the rules is different from the voluntary retirement under the Voluntary Retirement Scheme. The relevant portion of the judgment is as under : -

> *"7. In the field of public services, once a person joins any public service, he is required to serve such service till he attains the age of superannuation in normal course and he cannot claim that he is entitled to retire from service at any time according to his wish and will before he attains the age of superannuation. However, the rules governing such public service may provide for voluntary retirement of an employee before he attains the age of superannuation. If such rules exist, then, voluntary retirement becomes a condition of service. For example, rule 56(k) of the Fundamental Rules provides that any Government servant may, by giving notice of not less than 3 months in writing to the appropriate authority, retire from service after he has attained a particular age (ranging from 52 to 55 years depending upon the group to which he belongs) and subject to various other stipulations contained in the proviso to that rule. The provision for voluntary retirement, being a condition of service, gives an option in absolute terms to a public servant to voluntarily retire after giving the*

requisite notice and after he has reached the qualifying age or rendered qualifying service, as the case may be. In such a case, when the employee makes a request for voluntary retirement, there is no question of acceptance of the request by the employer. In the absence of rules providing for voluntary retirement, however, no employee could insist, as a matter of course or as a matter of right, that the employer should permit him to retire voluntarily before attaining the age of superannuation keeping the service benefits and conditions intact. The rules providing for voluntary retirement may be of two kinds, namely:

(i) a rule providing an option in absolute terms to a public servant to voluntarily retire on attaining a particular age or after putting in a specified number of years of service and after giving notice; or

(ii) a rule merely prescribing eligibilities to seek voluntary retirement and not providing for voluntary retirement as such.

In the former case, an employee, on fulfilling the prescribed conditions, can claim voluntary retirement as a matter of right, whereas in the latter case he cannot, because, despite the fact that he fulfils the prescribed eligibilities to apply for voluntary retirement, the discretion to accept such offer of retirement is vested in the employer, and the employer may or may not accept such an offer of the employee having regard to the needs and exigencies of service and other relevant considerations. ***In addition to the aforementioned two kinds of rules that may exist in a public service organization providing for voluntary retirement, a particular service organization may also evolve and introduce a special scheme in its discretion de hors the rules providing for voluntary retirement. If an employee seeks voluntary retirement under such Special Scheme, he can seek voluntary retirement strictly in terms of such Special Scheme and not de hors the Special Scheme, because, as already pointed out supra, no employee, after joining a public service, can claim voluntary retirement as a matter of right or course unless the rules governing terms and conditions of his service provide for such retirement.****"*

(Emphasis supplied)

13. The learned counsel for the appellants next relied upon Bank of India v. K. Mohandas, (2009) 5 SCC 313 in which Bank of India floated a Voluntary Retirement Scheme. The salient features of the Voluntary Retirement Scheme are given in para 8 of the judgment. The employees opting for VRS were entitled to gratuity, provident fund, leave encashment and pension in terms of Employees Pension Regulations, 1995. However, the optees for VRS were denied the pension whereupon petitions were filed

before different High Courts to seek the pension. The bank contended that the employees cannot be allowed to resile from the VRS. The Supreme Court rejected the argument and held that the employees were not seeking to resile from the Scheme. The Supreme Court further held that the employees are actually seeking for enforcement of the clause of the Voluntary Retirement Scheme that provides that the optees will be eligible for pension under the Pension Regulations, 1995 and therefore, the plea of estoppel does not at all arise in the facts and circumstances of this case. The Supreme Court further held that the optees of VRS are entitled to the pension under the Pension Regulations, 1995. The relevant portion of the said judgment is as under : -

> ***"24.*** *The principal question that falls for our determination is : whether the employees (having completed 20 years of service) of these banks (Bank of India, Punjab National Bank, Punjab and Sind Bank, Union Bank of India and United Bank of India) who had opted for voluntary retirement under VRS 2000 are entitled to addition of five years of notional service in calculating the length of service for the purpose of the said Scheme as per Regulation 29(5) of the Pension Regulations, 1995?"*
>
> ***"27.*** *In view of the admitted position that VRS 2000 was a contractual scheme; that it was an invitation to offer containing a term that the optee will also be eligible for pension as per the Pension Regulations; that an application by an employee for voluntary retirement was a proposal or offer and that upon acceptance of the application for voluntary retirement made by the employee and a communication of acceptance to him, the concluded contract came into existence and the offeree was relieved from the employment. For consideration of the question posed herein, the Court needs to examine the contract and the circumstances in which it was made in order to see whether or not from the nature of it, the parties must have made their bargain on the footing that a particular thing or state of things would continue to exist."*
>
> ***"64.*** *On behalf of banks it was submitted that the employees, having taken benefits under the Scheme (VRS 2000), are estopped from raising any issue that their entitlement to pension would not be covered by amended Regulation 28. It was suggested that the employees having taken benefit of the Scheme cannot insist for pension under Regulation 29(5). O.P. Swarnakar [(2003) 2 SCC 721 : 2003 SCC (L&S) 200] was relied upon in this regard wherein it has been held that an employee, having taken the ex gratia payment, or any other benefit under the Scheme cannot be allowed to resile from the Scheme.*
>
> ***65.*** *Insofar as the present group of appeals is concerned,* ***the***

employees are not seeking to resile from the Scheme. They are actually seeking enforcement of the clause in the Scheme that provides that the optees will be eligible for pension under the Pension Regulations, 1995. *According to them, they are entitled to the benefits of Regulation 29(5). In our considered view, plea of estoppel is devoid of any substance; as a matter of fact it does not arise at all in the facts and circumstances of the case."*

(Emphasis supplied)

This judgment deals with the specific enforcement of the terms of the Voluntary Retirement Scheme, and the Supreme Court held that the optees of VRS were entitled to the pension under the Pension Regulations which was specifically mentioned in the Voluntary Retirement Scheme. This judgment does not apply to the present case as the appellants are seeking a benefit which has not been mentioned in the Voluntary Retirement Scheme.

14. The learned counsel for the appellants next relied upon A. Satyanarayana Reddy v. Labour Court, (2008) 5 SCC 280 in which the optees of Voluntary Retirement Scheme filed the writ petition to seek lay-off compensation under Section 33-C(2) of the Industrial Dispute Act, 1947 on the ground that the lay-off compensation under Section 33-C(2) is a statutory right. The Supreme Court, in para 17 of the judgment, held that there cannot be any doubt whatsoever that ordinarily upon opting for a voluntary retirement under a scheme framed in that behalf, the workman would cease to have any claim against the management.

However, the position with respect to the statutory right of opting for lay-off compensation may be different. The Supreme Court further observed that in NBCC v. Pritam Singh Gill, (1972) 1 SCC 1, it was held that the proceedings under Section 33-C(2) would be maintainable after discharge and the case was therefore referred to a larger Bench. The relevant portion of the said judgment is reproduced hereunder : -

"17. There cannot be any doubt whatsoever that ordinarily upon opting for a voluntary retirement under a scheme framed in that behalf, the workmen would cease to have any claim against the management. However, the same prima facie in our opinion would not mean that a statutory right of opting for lay-off compensation, unless expressly waived, may continue to remain within the realm of legal right, so as to enforce the same before a forum constituted under the Act. *The Bombay High Court in Premier Automobiles Ltd. [(2002) 1 LLJ 527] as also this Court in A.K. Bindal [(2003) 5 SCC 163 : 2003 SCC (L&S) 620]* ***proceeded on the basis that an employee having received the amount of compensation without any demur whatsoever would be estopped and precluded from raising any other***

***or further claim stating** : (A.K. Bindal case [(2003) 5 SCC 163 : 2003 SCC (L&S) 620], SCC p. 186, para 32)*

> *"32. ... The employees accepted VRS with their eyes open without making any kind of protest regarding their past rights based upon revision of pay scale from 1-1-1992."*

***18. The said decision moreover proceeded on the basis that when the parties enter into a transaction known as "golden handshake", the jural relationship between the employer and the employee comes to an end.** It was opined : (A.K. Bindal case [(2003) 5 SCC 163 : 2003 SCC (L&S) 620], SCC pp. 186-87, para 34)*

> *"34. ... After the amount is paid and the employee ceases to be under the employment of the company or the undertaking, he leaves with all his rights and there is no question of his again agitating for any kind of his past rights with his erstwhile employer including making any claim with regard to enhancement of pay scale for an earlier period. If the employee is still permitted to raise a grievance regarding enhancement of pay scale from a retrospective date, even after he has opted for Voluntary Retirement Scheme and has accepted the amount paid to him, the whole purpose of introducing the Scheme would be totally frustrated."*

***19.** The claim of the appellants in A.K. Bindal [(2003) 5 SCC 163 : 2003 SCC (L&S) 620] was based on the revision in the scale of pay. It was in that context, the aforementioned observations were made."*

> ***"23.** The decision of this Court in National Buildings Construction Corpn. [(1972) 2 SCC 1 : (1973) 1 SCR 40] was not noticed in the aforementioned decision. The question which arose for consideration therein was as to whether a workman even after an order of discharge could maintain an application under Section 33-C(2) of the Act claiming lay-off compensation, in response whereto this Court held : (SCC p. 7, para 9)*
>
> > *"9. In U.P. Electric Supply Co. Ltd. v. R.K. Shukla [(1969) 2 SCC 400 : AIR 1970 SC 237] this Court approvingly referred to a passage from the judgment in Chief Mining Engineer, East India Coal Co. Ltd. [Chief Mining Engineer, East India Coal Co. Ltd. v. Rameshwar, AIR 1968 SC 218] already reproduced by us, in which, inter alia, it was emphasised that Labour Court had jurisdiction to entertain a claim in respect of an existing right arising from the relationship of an industrial workman and his employer. Again in R.B. Bansilal Abirchand Mills Co. Ltd. v. Labour Court [(1972) 1 SCC 154 : AIR 1972 SC 451], this Court, after a review of its previous decisions, upheld the*

jurisdiction of the Labour Court to entertain application for lay-off compensation under Section 33-C observing that such jurisdiction could not be ousted by a mere plea denying the workman's claim to computation of the benefit in terms of money, adding that the Labour Court had to go into the question and determine whether on the facts it had jurisdiction to make the computation."

24. *Noticing a large number of decisions of the High Courts on the said subject, this Court held : (National Buildings Construction case [(1972) 2 SCC 1 : (1973) 1 SCR 40], SCC p. 10, para 12)*

"12. ... In order to remove this repugnancy Section 33-C(2) must be so construed as to take within its fold a workman, who was employed during the period in respect of which he claims relief, even though he is no longer employed at the time of the application. In other words the term 'workman' as used in Section 33-C(2) includes all persons whose claim, requiring computation under this sub-section, is in respect of an existing right arising from his relationship as an industrial workman with his employer. By adopting this construction alone can we advance the remedy and suppress the mischief in accordance with the purpose and object of inserting Section 33-C in the Act."

25. The right of the workman to claim payment of lay-off compensation is not denied or disputed. If the said claim has no nexus with the voluntary retirement scheme, in our opinion, in a given case, like the present one, it is possible to hold that a proceeding under Section 33-C(2) of the Act would be maintainable. We are, therefore, of the opinion that the question being one of some importance should be considered by the larger Bench as there exists an apparent conflict in the said decisions of National Buildings Construction Corpn.[(1972) 2 SCC 1 : (1973) 1 SCR 40] and A.K. Bindal [(2003) 5 SCC 163 : 2003 SCC (L&S) 620].*"***

(Emphasis supplied)

The issue referred to the larger Bench specifically relates to the maintainability of a statutory right of a workman under Section 33-C(2) of the Industrial Disputes Act which has not been waived.

This judgment does not help the appellants in the present case who are not claiming any statutory right. With respect to the claims other than Section 33-C(2), the Supreme Court has clearly observed in para 17 that there cannot be any doubt whatsoever that ordinarily upon opting for a voluntary retirement under a Voluntary Retirement Scheme, the workmen

would cease to have any claim against the management. As such, this judgment does not deviate from the law laid down in HEC Voluntary Retired Employees Welfare Society (supra) that an employee after taking the VRS, cannot raise a claim unless by reason of a statute he is entitled thereto.

xxx *xxx* *xxx*

23. ***Summary of principles***

23.1 ***Voluntary Retirement Schemes*** *- Voluntary Retirement Schemes (VR Scheme) are ordinarily floated with a purpose of downsizing the employees. A considerable voluntary retirement amount is offered to the employees for voluntary retirement, not for doing any work or rendering any service but in lieu of their leaving the service and foregoing all their claims or rights in the same. It is a package deal of give and take. It is beneficial both to the employees as well as the employers and, therefore, known as 'Golden Handshake'. The main purpose of paying this amount is to bring about a complete cessation of the jural relationship between the employer and the employee.*

(As in the present case, Clause 7.5 of the VR Scheme provides for voluntary retirement amount equivalent to two months' salary for each completed year of service or monthly salary at the time of relieving multiplied by the balance complete calendar months of service left or Rs. 15,00,000/- whichever is less. For example, an employee who had completed 30 years of service and 69 months of service remaining would have earned total salary of Rs. 17,87,100/- (Rs.25,900 × 69) in 69 months against which the employee would be paid Rs. 15,00,000/- without doing any work meaning thereby that the employee gets more than 80% of the salary without working).

23.2 ***Voluntary Retirement Schemes are not negotiable*** *- The VR Schemes are purely voluntary and not negotiable.*

23.3 ***Voluntary Retirement Schemes are contractual in nature*** *- The VR Scheme is an invitation to offer. If the employee opts for VRS, it amounts to an offer which when accepted by the employer, results in a concluded contract. Both the parties are bound by the terms of the VR Scheme. It is not for the Court to rewrite the terms of the VR Scheme. The relationship between the parties to the VR Scheme is governed by the Contract Act, 1872 and not by any statute.*

23.4 ***Cessation of jural relationship*** *- Acceptance of the VRS application results in complete cessation of jural relationship between the employer and the employee, and the employee cannot agitate for any kind of his past rights or enhancement of pay scale for an earlier period, unless by reason of a statute, he becomes entitled thereto.*

23.5 ***Full and final settlement*** *-The employees opting for voluntary retirement under the VR Scheme are paid compensation calculated in the manner specified in the Scheme in full and final settlement.*

23.6 ***Estoppel*** *- The employees who accept the VRS with open eyes without making any kind of protest regarding their past rights, are estopped from making a claim in the Court of Law. If a person makes a representation to another, on the faith of which the latter acts to his prejudice, the former cannot resile from the representation made by him. The doctrine of estoppel is a branch of the rule against assumption of inconsistent positions. One who knowingly accepts the benefit of a contract is estopped from denying the binding effect of such contract on him. This rule has to be applied to do equity.*

23.7 ***Waiver*** *- Having taken advantage of VRS and having taken the amount without any demur, the employees cannot raise a claim for past rights or non-revision of pay scale. Such claims are also barred by the principle of waiver. The plea of waiver is closely connected with the plea of estoppel, the object of both being to ensure bona fides in day to day transactions.*

23.8 The employees who opt for voluntary retirement make a planning for future and take into consideration all its implications. At the time of giving the option, they know where they stand and they cannot get additional benefits other than mentioned in the Scheme. They prepare themselves to contract out of the jural relationship and are bound by their own acts.

23.9 The employees who are not satisfied with the amount offered in the VR Scheme should wait and pursue their claims without opting for VRS. However, the employees who in their wisdom thought that in the factual situation, VRS was a better option available and apply for VRS and accept the money, it is not open to them to contend that they exercised the option under any kind of compulsion.

23.10 If the employee is permitted to raise a grievance regarding his past rights or the enhancement of a pay scale from retrospective date even after opting for VRS and accepting the amount thereunder, the whole purpose of the VR Scheme would be frustrated.

23.11 ***Belated service related claims*** *- A belated service related claim is liable to be rejected on the ground of delay and laches except in the case of a continuing wrong. However, there is an exception to the above exception namely if the grievance in respect of any order or administrative decision related to or affected several others also and if the opening on the issue would affect the settled rights of third parties, then the claim would not be entertained. The VRS results in cessation of jural relationship and therefore falls in the last category of exception to an exception.*

23.12 ***Stale Claims*** *- Stale claims of failure to make out grounds for condonation of delay in seeking remedy should not be entertained by the Courts.*

23.13 The delay in filing the writ petition cannot be condoned on the ground that the employee had been making representations. Merely making representations is not a good ground for condoning the delay unless it is a statutory representation.

24. ***Findings***

24.1 The appellants voluntarily opted for the voluntary retirement under the VR Scheme which was accepted by the respondent and resulted in a concluded contract. The terms and conditions of the VR Scheme are not governed by any statute. It is a matter of contract between the appellants and the respondent. It is not for the Court to rewrite the terms of the contract contained in the VR Scheme.

24.2 The appellants have not challenged the VR Scheme or its terms. As such, both the parties are bound by the terms of the VR Scheme.

24.3 After voluntarily opting for VRS without any compulsion after understanding the benefits of the VR Scheme, it is not open to the appellants to make any claim contrary to the terms accepted.

24.4 The appellants are entitled only to the amounts mentioned in Clauses 7.1 to 7.6 of the VR Scheme which does not include SPLI and therefore, the appellants have no right to claim SPLI.

*24.5 The appellants' claim is clearly barred by Clause 7.7 of the VR Scheme which clearly provides that "***no other benefit***" (other than those mentioned in Clauses 7.1 to 7.6) shall be available to the employee opting for the voluntary retirement.*

*24.6 The appellants' claim is also barred by Clause 9.4 of the VR Scheme which provides that the benefits payable under the Scheme shall be in "***full and final settlement of all claims whatsoever, whether arising under the Scheme or otherwise***". The words "***or otherwise***" would exclude all claims including SPLI.*

*24.7 Clause 9.4 of the VR Scheme further provides that the "***appellants will not have any claim against IFCI whatsoever, whether arising under the scheme or otherwise to the employee (or to his nominee in case of death). An employee, who is voluntarily retired under the scheme, will not have any claim against the IFCI whatsoever and no demand or dispute will be raised by him or on his behalf, whether for re-employment or compensation or back wages***". The expression "***back wages***" in Clause 9.4 includes all past benefits of the appellants during the course of the service prior to taking VRS.*

*24.8 The appellants' claim is also barred by Clause 9.12 of the VR Scheme which provides that there will be no revision of the VRS amount on account of pay revision or any other account in future. The words "**any other account**" would exclude the claim of SPLI of the appellants.*

24.9 The appellants' claim is also barred by Clause 9.13 of the VR Scheme which provides that the Scheme is not negotiable.

24.10 The appellants, in the application form submitted at the time of taking VR Scheme, undertook to unconditionally and irrevocably abide by the terms and conditions of the VR Scheme. The appellants further admitted and undertook that they have no further claims and/or rights against the respondent, except for the payment of benefits under the VR Scheme.

24.11 The appellants' claim is in clear violation of the undertaking given in Clause 9 of the application form that they have no further claims and/or rights against the respondent except for payment of benefits under the Scheme.

24.12 The appellants did not raise the claim of SPLI either in the application form for VRS or at the time of receiving the voluntary retirement amount under the Scheme knowing fully well that if they raised any such objection, the respondent would have certainly rejected their application as the Scheme was not negotiable. Thus, having taken the advantage of the VRS and having taken the amount without any protest, the appellants cannot now raise a claim for SPLI which is clearly barred by the principle of estoppel as well as waiver.

24.13 The appellants have not been able to give any reasonable explanation for not raising their claim to SPLI in the application for VRS. In that view of the matter, an adverse inference is drawn against them that they were well aware that SPLI was not payable under the VR Scheme.

24.14 The acceptance of the application for VRS of the appellants by the respondent resulted in complete cessation of jural relationship between the appellants and the respondent.

24.15 The appellants having accepted the VRS without demur, the employee-employer relationship ceased and therefore, the writ petition was not maintainable. The lump-sum amount under the VR Scheme was paid not for doing any work or rendering any service but in lieu of employee himself leaving services and forgoing all claims or rights in same. If after opting for VRS, the employee is permitted to raise grievance regarding SPLI, purpose of the Scheme gets frustrated.

24.16 It is not disputed that all the amounts specified in clauses 7.1 to 7.6 of the VR Scheme have been received by the appellants. No other benefit is available to the appellants in view of clause 7.7 of the VR Scheme. Clause

9.4 clarifies that benefits under the VRS shall be in full and final settlement of all claims whatsoever, whether arising under the scheme or otherwise and an employee who voluntarily retires under the scheme, will not have any additional claim whatsoever and no demand or dispute will be raised by him in this behalf whether for re-employment, or compensation or back wages against the respondent.

24.17 The appellants having opted to take VRS on their own by making applications with undertakings and having enjoyed the benefit of VRS by accepting the conditions stipulated therein, cannot turn around and say that they are entitled to agitate for their rights and there is no estoppel. The appellants cannot resile from the Scheme.

24.18 The appellants after giving an undertaking and enjoying the benefits derived out of such undertaking, are not entitled to say that they can act against such undertaking. In other words, it is to be construed that by enjoying the benefits derived out of such undertaking, they have given up their right, if any. Obviously, but for such undertaking, the appellants would have not been given the benefit of VR Scheme. The appellants cannot blow hot and cold at the same time.

24.19 In view of the admitted fact that the appellants had unconditionally taken voluntary retirement, and accepted all their dues payable under the VR Scheme, the writ petition was not maintainable.

*24.20 We do not agree with the appellants that SPLI was part of the salary which had accrued before announcement of VRS and was not surrendered. The appellants gave up all their claims whatsoever which is clear from the plain reading of Clause 9.4 of the VR Scheme. The words "**all claims whatsoever**", "**whether arising under the Scheme or otherwise**", "**whether for re-employment or compensation or back wages**" clearly mean that the appellants had given up all their claims whether arising under the Scheme or otherwise including the claims of SPLI.*

*24.21 The appellants' contention that the accrued rights cannot be taken away by the VR Scheme is misconceived. Clause 7.7 has taken away a valuable right of "**post retirement medical benefits**" of the appellants. Similarly, Clause 9.4 takes away even the accrued claim of "**back wages**".*

24.22 We also do not agree with the appellants that the SPLI had to be worked out after 1st April, 2008 and was therefore, not claimed at the time of taking VRS on 25th February, 2008. Clause 9.4 of the VR Scheme clearly specifies that the benefits payable under the scheme shall be in full and final settlement of all claims whatsoever arising under the Scheme or otherwise and the appellants will not have any claim against the respondent whatsoever and no demand or dispute will be raised by him whether for re-employment or compensation or back wages. The appellants have no answer to this clause of full and final settlement.

24.23 We also do not agree with the appellants' contention that SPLI was not included in Clause 7 of the VR Scheme because the Scheme was applicable to both officers and workmen. We find the terms and conditions of the VR Scheme to be very clear and explicit.

24.24 There is no force in the appellants' contention that VR Scheme does not exclude SPLI. SPLI shall be deemed to be automatically excluded by virtue of Clauses 7.7 and 9.4. On conjoint reading of clause 7.7 and 9.4 of the VR Scheme read with clause 9 of the application form for VRS, the appellants have no legal right for any other kind of benefits/claim against the respondent except what is mentioned in clause 7 of the VR Scheme. The appellants therefore, have no right to claim SPLI.

24.25 The legal notice dated 28th January, 2010 was issued by the appellants almost after two years of taking voluntary retirement. Since the appellants have not right to claim SPLI after taking VRS, the respondent's failure to reply to the belated legal notice of the appellants would not create any right in favour of the appellants.

24.26 The appellants' contention that the respondent has made a provision for payment of SPLI in their books of accounts has no relevance. If the appellants have no right to SPLI, mere provision in the books, if at all made (which we have not verified) would not be relevant. On the other hand if the appellants had any right, mere non-provision in the books would not take away that right.

24.27 The appellants' objection of discrimination with the officers who have not taken VRS, is untenable. The appellants are bound by the terms and conditions of the VR Scheme whereas officers who are continuing in service would be governed by their service rules and not by the VR Scheme. As such, the appellants have no right to seek parity with the officers continuing in service.

24.28 This case is squarely covered by the principles laid down by the Supreme Court in A.K. Bindal (supra), ITI Ltd. v. ITI Ex/VR Employees/Officers Welfare Assn. (supra) and HEC Voluntary Retired Employees Welfare Society (supra).

24.29 The judgments cited by the appellants namely, UCO Bank v. Sanwar Mal (supra), Bank of India v. K. Mohandas (supra) and A. Satyanarayana Reddy v. Labour Court (supra) do not apply to the facts of this case and are clearly distinguishable."

18. Recently in ***BSES Rajdhani Power Ltd. v. D.P. Sharma, 2024 SCC OnLine Del 7028***, the Division Bench has considered the same issue and held as under:-

*"**42.** The decisions which are crucial to the issue in controversy are, therefore, A.K. Bindal and A Satyanarayana Reddy. Read together, these decisions make the issue of whether the financial benefit which is being claimed by the VRS optee was included in the VRS package, crucial and dispositive of the optee's right to claim the said benefit. In other words, financial benefits which are subsumed by the VRS package would not be available to the VRS optee, after cessation of his employment with the employer. Financial benefits such as lay-off compensation, suspension allowance and the like, which are not part of the VRS package could nonetheless be claimed, provided the entitlement to such compensation arose at a time when the optee was in service.*

***43.** In the present case, the last salary drawn by the respondent was specifically entered, in the form under which the respondent applied for VRS, as Rs. 6600+DA 3894/-. This was the reduced pay scale to which the respondent was entitled consequent on implementation of the punishment awarded to him by the punishment order dated 2 September 1997. Clause 2 of the declaration/undertaking provided by the respondent while availing the VRS specifically noted that, for calculation of benefits under the VRS, the respondent's salary, as on 31 December 2003, would be the last salary drawn. This salary, in the VRS, was the reduced salary after implementation of the punishment imposed on the respondent.*

***44.** The pay drawn by the respondent at the time of availing VRS was, therefore, an integral part of the VRS package. The payment received by the respondent from the appellant under the VRS package was also computed on the basis of the said pay scale.*

***45.** As such, we are of the opinion that this case would be governed by the principles laid down in A.K. Bindal, rather than those contained in A Satyanarayana Reddy. As in the case of A.K. Bindal, the respondent seeks an enhancement of the pay scale to which he was entitled at the time when he ceased to be in the employment of the appellant, after having opted for voluntary retirement under the SVRS and availed financial benefits thereunder. The Supreme Court has clearly held in A.K. Bindal that this is impermissible.*

***46.** The claim of the respondent cannot be likened to the claim of the appellant before the Supreme Court in A Satyanarayana Reddy, which was for lay-off compensation which formed no part of the entitlements under the VRS. Unlike lay-off compensation or suspension allowance, which have been exemplified in A Satyanarayana Reddy as emoluments which are outside the VRS, the pay scale to which the respondent was entitled was, to repeat, an integral part of the SVRS package.*

***47.** Having opted for the SVRS package, therefore, the respondent cannot have, at a later stage, claim any financial benefit on the basis of the impugned judgment of the learned Single Judge. The SVRS, and the*

benefits availed by the respondent thereunder, constituted a package deal. Elements which formed part of the package could not, thereafter, be retrospectively varied.

48. *As the ultimate punishment awarded to the respondent was by way of a reduction in his pay scale by two stages for two years with cumulative effect, the respondent, having thereafter opted for voluntary retirement under the SVRS on the basis of such reduced pay scale, cannot now seek reversal of that position and claim upward revision of the pay scale drawn by him at the time of opting for voluntary retirement. Any such upward revision would alter the terms of the SVRS, which stood availed and implemented. Having availed the benefits of the SVRS at the reduced pay scale, the respondent could not have continued to contest the reduction of his pay scale consequent on the order dated 12 August 1998 of the Disciplinary Authority as modified by the Appellate Authority on 11 February 1999.*

49. *For the aforesaid reasons, we are persuaded to set aside the impugned judgment dated 13 August 2019 and order dated 5 February 2020 of the learned Single Judge, albeit for reasons other than those which persuaded the learned Single Judge to rule in the respondent's favour.''*

19. From the conspectus of the aforementioned judgments, the principles that emerge in respect of an employee opting under VRS are that Voluntary Retirement Schemes are purely voluntary and non-negotiable and bind the parties to the terms of the VR Schemes. Acceptance of VRS results in complete cessation of jural relationship between the employer and employee and once the benefits offered under the Schemes are accepted in full and final settlement, an employee cannot agitate past rights, save and except, those which are not covered under the VRS Scheme. In ***D.P. Sharma (supra),*** the Division Bench reiterated that VRS is a golden handshake and when read together the judgments of the Supreme Court in ***A.K. Bindal (supra)*** and ***A. Satyanarayana Reddy (supra),*** it is clear that financial benefits which are subsumed in the VRS package would not be available to the VRS optee after cessation of his employment with the employer *albeit* financial benefits such as lay off compensation etc., which are not part of the

VRS package could nonetheless be claimed, provided the entitlement arose when the optee was in service. The important highlight of the said judgment is the observation of the Division Bench that if the pay drawn by an employee at the time of availing VRS is an integral part of the VRS package and the payment received from the employer under the said package is also computed on the basis of such pay scale, he cannot stake any claim outside the salary last drawn when he had opted under the VRS Scheme and elements forming part of the package cannot be retrospectively varied.

20. In the present case, Petitioner seeks 03 stagnation increments allegedly due to him from 01.07.2006, 01.07.2009 and 01.07.2012, which were denied to him while he was in service. As noted above, Petitioner did not take recourse to any legal remedy against the denial of the increments or to challenge the PARs, before opting under the VRS on 30.10.2013 and there is no dispute that the special benefits paid under the VRS such as ex-gratia as also other benefits such as commutation of pension, leave encashment etc. were all computed on the basis of salary without the 03 stagnation increments. The last salary drawn by the Petitioner was specifically entered in the Form under which the Petitioner had applied for VRS and this was without the 03 stagnation increments and therefore, the pay drawn by the Petitioner at the time of availing VRS was an integral part of the VRS package and case of the Petitioner would be governed by the judgment in ***A.K. Bindal (supra).***

21. In this context, it will be useful to allude to the provisions of the VRS Scheme also. As rightly pointed out by Mr. Sharma, salary has been defined under the VRS Scheme to mean the aggregate of Basic Pay including stagnation increments and dearness allowance. The special benefit of ex-

gratia was granted under para 6 of the VRS Scheme which provided a method of computing the ex-gratia amount as equivalent to the least of the three amounts i.e. one month salary for each completed year of service or salary for the number of months of remaining service or salary for 24 months and importantly, para 6(b) stipulates that ex-gratia shall be computed on the basis of optee's salary as on the date of relieving. This leaves no doubt that the salary at the time when the Petitioner was relieved on acceptance of offer of VRS became the basis of computation of the ex-gratia payment offered as a part of the VRS package and was subsumed in the package.

22. Another important aspect of the matter is that under para 8(xiii), it was stipulated that the benefits payable under the VRS Scheme shall be in full and final settlement of all claims of whatsoever nature whether arising under the Regulation or otherwise to the officer. This para is significant for two reasons. Firstly, the para extinguishes the right of the VRS optee to claim and agitate past rights and all benefits are accepted in full and final settlement and this para is identical to Clause 9.4 which was a part of the VRS Scheme considered by the Division Bench in ***PP Vaidya (supra),*** upon consideration of which the Division Bench, following the principles in ***A.K. Bindal (supra),*** concluded that it was not open to the Appellants to claim the incentive once they had accepted the benefits under the VRS in full and final settlement. Secondly, the VRS Scheme consciously carves out only one exception to para 8(xiii) and which is para 7(b), which provides that in case wage revision is effected from a date prior to the date of relieving of the officer under this Scheme, the benefit of revised pay will be available but further qualifies the benefit to be restricted to calculation of ex-gratia

payment under para 6 (a) and other benefits under para 7(a).

23. The argument of the Petitioner that he is entitled to 03 stagnation increments only because these are statutory dues, cannot be accepted. Stagnation increments cannot be likened to a claim of lay-off compensation as was the case in ***A. Satyanarayana Reddy (supra).*** The controversy before the Supreme Court in ***A. Satyanarayana Reddy (supra)*** was different. I may mention that in ***A. Satyanarayana Reddy (2008) (supra),*** a two-Judge Bench of the Supreme Court held that the right of the workman to claim payment of lay-off compensation has no nexus with the VRS and therefore, he could enforce the same despite his having accepted voluntary retirement under the VRS. However, the matter was referred to a Larger Bench noticing a conflict in the decisions in ***National Buildings Construction Corporation (supra)*** and ***A.K. Bindal (supra).*** Thereafter in ***A. Satyanarayana Reddy (supra)***, the Supreme Court held that even though there is cessation of relationship between the employer and employee in VRS but if it does not cover the past dues like lay off compensation etc., the workman will be entitled to enforce the claim.

24. In the present case, admittedly, grant of stagnation increments was not automatic or a matter of course and thus the judgement in ***A. Satyanarayana Reddy (supra),*** cannot aid the Petitioner. Even the Petitioner concedes that the grant of increments was based on Performance Appraisal Reports for the 03 preceding years as also on vigilance clearance. He neither challenged the PARs nor the penalty of censure before opting for VRS. Moreover, at the cost of repetition it be noted that when VRS was granted to the Petitioner the pay taken for computation of all benefits was without the 03 increments and was accepted as full and final settlement. All special and other benefits

based on this computation were accepted by the Petitioner and were subsumed in the package since the salary as defined under the Scheme included increments. The jural relationship between the Petitioner and the Respondents ceased once the offer of VRS was accepted.

25. For all the aforesaid reasons, writ petitions are dismissed being devoid of merit.

JYOTI SINGH, J

NOVEMBER 5, 2024
B.S. Rohella/shivam