

CASE NO.:
Appeal (civil) 2957 of 2008

PETITIONER:
National Textile Corporation (M.P.) Ltd.

RESPONDENT:
M.R. Jhadav

DATE OF JUDGMENT: 24/04/2008

BENCH:
S.B. Sinha & V.S. Sirpurkar

JUDGMENT:
J U D G M E N T
REPORTABLE

CIVIL APPEAL NO. 2957 OF 2008
[Arising out of SLP (Civil) No. 6934 of 2006]

S.B. SINHA, J :

1. Leave granted.
2. Interpretation of a Voluntary Retirement Scheme (VRS) floated by the appellant \026 Corporation is in question in this appeal which arises out of a judgment and order dated 10.01.2006 passed by the High Court of Madhya Pradesh at Indore in Writ Petition No. 2623 of 2001.
3. Respondent at all material times was working as an Assistant Spinning Master. A Voluntary Retirement Scheme was floated by the appellant.
4. Respondent, on or about 16.05.2000 opted for the said Scheme with effect from 31.07.2000. The said application was in a prescribed proforma, the relevant portion of which reads as under:

"With reference to your circular/ Notice No\005..dated\005./Memorandum of Settlement dated\005.containing details of N.T.C. Scheme of Voluntary Retirement, I hereby tender my unconditional resignation from my post and service of your mills/ office with effect from\005. I hereby opt for Voluntary Retirement in terms of above said Scheme of Voluntary Retirement which I have carefully read and understood.

2. I hereby undertake that I shall not claim any payments from your management/ mills/ company on account of my Voluntary resignation consequent on my Voluntary Retirement other than those admissible under the aforesaid scheme of Voluntary Retirement.

3. I also undertake that I shall not at all withdraw resignation herein tendered by me from your service. I have furnished the required particulars in the Appendix enclosed."

5. Indisputably, administrative clearance in relation thereto was made but no decision taken by a competent committee in that behalf was

communicated to the respondent. Indisputably, he at the material time was aged over 57 years.

6. Respondent on expiry of the said date, i.e., 31.07.2000, requested the appellant for being relieved from his post by a letter dated 19.09.2000.

7. According to the appellant, sufficient fund was not available with it for implementation of the scheme and to proceed with the request of the respondent for his offer to retire voluntarily in terms of the said Scheme. The General Manager in his letter dated 26.09.2000 addressed to the respondent, stated:

"In reference to your VRS proposal dated 16.5.2000, we have received the administrative approval from HO vide letter of IR/VRS/NBT/99/980 dated 24.5.2000. Accordingly, your VRS was prepared and sent to HO for funds. HO has informed us that the funds for payment of VRS are not forthcoming hence do not relieve the employees on relieving date till further orders.

Therefore, we are not in a position to relieve you as requested by you, which you please note."

8. Respondent issued a legal notice upon the appellant contending that it had not been acting to effectuate his application under VRS on the ground of non-availability of funds.

9. Indisputably, however, the retirement age of the employees of the appellant \026 corporation was rolled back from 60 years to 58 years. The decision was taken by the CMD of the Holding Company which was approved by the Board of Directors of the Corporation; the procedures wherefor were specified as under:

"(a) The employees who have already attained the age of 58 years or shall attain the same by 31st December 2000 will retire on the close of office hours on 31st January, 2001.

(b) The employees who would attain the age of 58 years in January, 2001 or thereafter will retire in the month in which they attain the age of 58 years in the normal course."

10. Respondent filed a writ petition in the High Court of Madhya Pradesh at Indore inter alia praying for issuance of a writ of or in the nature of mandamus directing the appellant to effectuate his VRS application on and from 1.08.2000 upon making payment of admissible dues.

The said writ petition was disposed of by a learned Single Judge of the said Court, by an order dated 8.03.2001, stating:

"2. In the situation of this nature, the only direction at this stage that this Court can give is to decide the application of the petitioner by the respondent within a period of six months from today.

3. This Court does not give any opinion at this stage except to direct the respondent to pass appropriate orders on the application which the petitioner has claimed to have made under the VRS scheme. On such decision being taken, the petitioner is always free to raise any other grievances depending upon the orders passed by the respondents."

11. Pursuant thereto or in furtherance of the said direction, an office order dated 7.08.2001 was passed by the appellant herein rejecting the said proposal, stating:

"6. Under these circumstances, the application of Shri M.R. Jadhav for Voluntary Retirement made on 16.5.2000, which was not sanctioned, could not have been sanctioned in view of the VRS not being in vogue. Shri M.R. Jadhav was accordingly retired on 31.1.2001 in accordance with the orders dated 20.11.2000 whereunder the age of retirement was rolled back to 58 years and he stood retired as aforesaid.

7. In view of the position indicated in para 6 above an amount of Rs. 1,53,743/- being the amount of gratuity admissible under the Payment of Gratuity Act, 1972 was deposited with the Controlling Authority (Payment of Gratuity Act, 1972), Bhopal as Shri M.R. Jadhav did not turn up to collect this amount though offered to him and other dues viz Leave Encashment etc. (if payable)."

12. Questioning the validity of the said order, the respondent filed another writ petition before the Indore Bench of the Madhya Pradesh High Court praying inter alia for the following relief:

"The Respondent Employer be commanded through a Writ of Mandamus to effectuate acceptance of VRS by making payment of admissible dues without further delay together with interest as may be deemed proper."

13. By reason of the impugned judgment, a learned Single Judge of the said Court has allowed the said writ application upon following the decisions of this Court in Tek Chand v. Dile Ram [(2001) 3 SCC 290] and State of Haryana v. S.K. Singhal [(1994) 4 SCC 293], stating:

"6. From the above principle of law and in the facts and circumstances of the case, in my opinion, the petitioner is entitled to get the benefits of voluntary retirement scheme. Consequently, petition of the petitioner is allowed. The respondents are directed to grant benefits of the voluntary retirement scheme to the petitioner. Necessary payments be made to the petitioner within a period of three months from the date of receipt of copy of this order. No order as to cost."

14. Mr. Sanjay Ghose, learned counsel appearing on behalf of the appellant, in support of this appeal, inter alia would submit that having regard to the fact that the offer of the respondent was not accepted, the impugned judgment cannot be sustained.

15. Ms. Meera Mathur, learned counsel appearing on behalf of the respondent, on the other hand, would urge:

(i) Appellant being a 'State' within the meaning of Article 12 of the Constitution of India was bound to act fairly and reasonably.

(ii) Having regard to the scope and purport of the Voluntary Retirement Scheme floated by it as also the fact that the respondent had applied pursuant thereto in time which was one of the relevant

factors which having been approved by the competent authority, a legal right accrued in favour of the respondent.

16. Indisputably, Appellant is a public sector undertaking. It, however, at the relevant time was a sick company. A financial burden was cast on it in meeting the aforementioned Scheme.

17. When a scheme is floated for voluntary retirement, it constitutes an offer to treat. It is not an offer stricto sensu. Only when pursuant to the said invitation to treat, an employee opts for such a scheme, it constitutes an offer. When such an offer is made, it is required to be accepted.

The matter relating to implementation of the said offer would indisputably be governed by the terms and conditions of the scheme. Does it contain any provision for automatic approval of an offer made by the employee is the question? The High Court has proceeded to hold in view of the decision of this Court in S.K. Singhal (supra) that there was no requirement of an order of acceptance of the notice to be communicated to the employee nor non-communication thereof should be treated as amounting to withholding of permission.

18. The High Court, however, with respect, failed to read the decision in the factual matrix obtaining therein. It was a case where construction of Sub-Rule (1) of Rule 5.32(B) of the Punjab Civil Services Rules was in question. What was, therefore, necessary in terms of the said Rule was a notice to retire and not a request seeking permission to retire. What was contemplated was seeking exemption for the three months period. In terms thereof, failure to refuse to grant permission attracted the acceptance clause from the date of expiry of the said period. In the light of the aforementioned facet of the Scheme, it was held:

"18. In the case before us sub-rule (1) of Rule 5.32(B) contemplates a "notice to retire" and not a request seeking permission to retire. The further "request" contemplated by the sub-rule is only for seeking exemption from the 3 months' period. The proviso to sub-rule (2) makes a positive provision that "where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in sub-rule (1), the retirement shall become effective from the date of expiry of the said period. The case before us stands on a stronger footing than Dinesh Chandra Sangma case so far as the employee is concerned. As already stated Rule 2.2 of the Punjab Civil Services Rules Vol. II only deals with a situation of withholding or withdrawing pension to a person who has already retired."

19. Our attention has also been drawn to a decision of this Court in Manjushree Pathak v. Assam Industrial Development Corpn. Ltd. and Others [(2000) 7 SCC 390] wherein although Clause 8.1 of the Scheme provided for a discretion on the part of the Management to accept or reject the request from any employee for voluntary retirement viewing the organizational requirements and any other relevant factors, para 2 of the prescribed application form was to the following effect:

"I, of my own accord and without any external pressure and coercion, am opting for voluntary retirement under the said Scheme. I shall be obliged if you kindly accept my option for voluntary retirement with immediate effect."

Appellant therein, thus, made a request in the said form for its

acceptance with immediate effect. For a period of 10 days, no response thereto was made. On that date, no vigilance enquiry or any disciplinary proceeding was pending against him. It was in the aforementioned situation, this Court observed:

"\005We are unable to understand why the Managing Director of the respondent Corporation did not accept the same although it was required to be accepted with immediate effect as per para 2 of the prescribed application form. No doubt, as per clause 8.1 of the Scheme extracted above, the management had discretion to accept or reject the request from any employee for voluntary retirement viewing the organisational requirement and any other relevant facts but that does not mean that the respondent Corporation being an authority coming within the purview of Article 12 of the Constitution can abdicate its duty to act reasonably and fairly in exercise of discretion. It is strange as to why the Managing Director of the respondent Corporation, the competent authority to accept the application made for the voluntary retirement, did not act on it at all till 17-2-1996. He ought to have exercised his discretion as per clause 8.1 if not immediately at least within a reasonable time. The last para of Memorandum No.

AIDC/Estt./1485/93/746-51 dated 20-5-1993/21-5-1993 issued by the respondent Corporation reads thus:

"The Corporation has thus offered a unique opportunity. It is now for all eligible and interested employees of the Corporation to avail of this golden opportunity in a big way."

13. As per sub-clause (i) of clause 5 of the Scheme, once an employee applied for voluntary retirement it could not be withdrawn. The appellant wanted to avail this golden opportunity. With this background it is not known as to why her application was not accepted. From the letter of the appellant dated 23-1-1996, it is clear that she informed the Managing Director of the respondent Corporation that there was no need to place her application before the Board and he himself was competent to accept it. The non-response of the respondent Corporation to the letters of the appellant dated 23-1-1996, 14-2-1996 and 15-2-1996 and issuing of show-cause notice by the respondent Corporation subsequently, clearly indicate that all was not well with the respondent Corporation in dealing with her application seeking voluntary retirement. A subsequent complaint alleging indulgence of the appellant in political activities was not germane to the consideration of the application of the appellant, having regard to the relevant factors mentioned in clause 8.1 of the Scheme particularly when there was no infirmity or impediment in terms of the Scheme in considering and accepting the application of the appellant for voluntary retirement, having regard to the fact that the appellant on her part did what all was required to be done."

The said decision also cannot be said to have any application whatsoever in the instant case.

20. Subject, of course, to the terms of "invitation to treat" as also those of the offer as envisaged under the Indian Contract Act, an offer has to be accepted. Unless an offer is accepted, a binding contract does not come into being. A Voluntary Retirement Scheme contemplates cessation of the relationship of master and servant. The rights and obligations of the parties thereto shall become enforceable only on completion of the contract. Unless such a stage is reached, no valid contract can be said to have come into force. Acceptance of an offer must, therefore, be communicated.

21. In Bank of India v. O.P. Swarnakar [(2003) 2 SCC 721], this court held:

"60. Acceptance or otherwise of the request of an employee seeking voluntary retirement is required to be communicated to him in writing..."

22. What is the meaning of the word "communication" has been noticed by this Court in State of Punjab v. Amar Singh Harika [AIR 1966 SC 1313] in the following terms:

"It is plain that the mere passing of an order of dismissal would not be effective unless it is published and communicated to the officer concerned. If the appointing authority passed an order of dismissal, but does not communicate it to the officer concerned, theoretically it is possible that unlike in the case of a judicial order pronounced in Court, the authority may change its mind and decide to modify its order."

[See also BSNL v. Subash Chandra Kanchan (2006) 8 SCC 279]

A distinction, however, has always been made by this Court as to cessation of a contract of service by way of punishment vis-à-vis an order of suspension which does not bring about such a cessation, as for example suspension. [See State of Punjab v. Khemi Ram AIR 1970 SC 214]

23. In MCD v. Qimat Rai Gupta [(2007) 7 SCC 309], this Court opined:

"27. An order passed by a competent authority dismissing a government servant from services requires communication thereof as has been held in State of Punjab v. Amar Singh Harika but an order placing a government servant on suspension does not require communication of that order. (See State of Punjab v. Khemi Ram)"

24. Therefore, there cannot be any doubt whatsoever that communication of the acceptance of offer was necessary. An internal noting does not constitute a communication. Even in a case of order of suspension, only when the case goes out of the control of the appropriate authority, actual communication may not be necessary.

25. If for good and sufficient reasons, the competent authority did not communicate its decision, in our opinion, the respondent did not derive any legal right. Such a legal right cannot be claimed only on the basis of the letter of the General Manager dated 26.09.2000. What was communicated there was the administrative approval. However, it was also categorically stated therein that the Head Office had not sanctioned the funds for payment of VRS. It is in that situation, the request of the respondent to relieve him

from his duties was not acceded to. Respondent continued in his service after 1.08.2000. He had been drawing his salary and other perks. There is nothing on record to show that he drew his salaries without prejudice to his rights and contentions. If he had drawn his salary for the entire period during which he was in service and reached the age of superannuation, by reason thereof, he must be held to have waived his right, if any.

26. An offer for voluntary retirement must be made and accepted so long the relationship of an employer and employee continues, subject of course to the rules to the contrary. Such relationship would come to an end on the date on which the employee reaches his age of superannuation.

27. The contents of the letter dated 26.09.2000, therefore, indicate that although administrative approval had been granted but no final decision had been taken.

28. We, therefore, are of the opinion that in absence of the communication of the offer of the respondent, the respondent derived no legal right to obtain the benefits of the voluntary retirement scheme.

29. It was submitted by Ms. Mathur that by asking the respondent to continue in service, the appellant has taken away the right of an employee to continue in service.

We are unable to accept the said contention. By reason of a mere offer to retire voluntarily, in terms whereof employee was to get some more monetary benefits by itself, did not confer any legal right on him.

30. For the said purpose, it is of some significance to notice that Clause 3.1 of the Scheme provides for acceptance of an employee's offer for voluntary retirement. The scheme postulates that the appointing authority concerned would be competent not to accept the offer.

By reason of Clause 3.2 of the Scheme, the management reserved a right to accept or reject an employee's offer under the Scheme. The said right is absolute and is not hedged by any condition whatsoever. The procedure provided for acceptance also postulates that not only the offer has to be accepted, an order is required to be issued that the post falling vacant in all cases shall stand abolished simultaneously. Issuance of such an order, simultaneously with acceptance of resignation, therefore, plays an important role. Admittedly, no such order was also issued by the appellant.

31. Clause 4 of the Scheme provides for the grant of benefits under the Scheme. Respondent has been paid his provident fund dues, accumulated earned leave as also gratuity. What has not been paid to him is the 'ex gratia payment'. However, such ex gratia payment was to be made equivalent to one and a half month's emoluments for each completed year of service or the monthly emoluments at the time of voluntary retirement multiplied by the remaining months of service before normal date of retirement, whichever is lower. Thus, even the said provision contemplates that some service should remain. If no period of service remained, even ex gratia payment could not be made.

32. For the reasons aforementioned, we are of the opinion that the impugned judgment cannot be sustained and is set aside accordingly. The appeal is allowed. No costs.