2009 eGLR_HC 10005181

Before the Hon'ble MR S R BRAHMBHATT, JUSTICE

THAKOR NAGJIBHAI BHAILAL Vs. IPCL NOW AMALGAMATED WITH RELIEANCE IND.LTD AND NOW AND 2 - RESPONDENTS

SALES TAX REFERENCE No: 7102 of 2008 , Decided On: 13/03/2009

P.R. Thakkar, K.S. Nanavati, Nandish Chugar, Nanavati Associates, S.S.Shah, Krunal D. Pandya

MR.JUSTICE S.R.BRAHMBHATT

1. The petitioners, 464 in total, have approached this Court by preferring these petition under Article 226 of the Constitution of India, challenging the impugned order of Deputy Labour Commissioner passed in case No. I.D. 10 (i) 889 of 2007 to 1352 of 2007 dated 11/4/2008 and seeking direction to the Deputy Labour Commissioner for referring all their cases to Labour Court / Industrial Court having jurisdiction to adjudicate the dispute in question. Alternatively the petitioners have also prayed for revival of Special Civil Application No. 20727 of 2007 and Special Civil Application No. 20731 to 21201 of 2007 and to adjudicate the same. The petitioners have also filed one page petitions in order to overcome any technical objection as the impugned order though identical in major contents is passed in their individual cases seeking conciliation. Thus all these matters were heard together and are being disposed off by this common judgment and order.

2. Brief facts as stated in the petition are:-

2.1 The petitioners were originally recruited by Indian Petrochemical Corporation Limited, now merged with Reliance Industries Limited, and since about 15 to 30 years they discharged their duties as regular and confirmed employees of respondent Indian Petrochemical Corporation Ltd (IPCL for short), on different posts like khalasi, technician, operator, crane operator, sweeper, rigour, gardener, storeman, compounder, four clip operator, driver, canteen employees etc. They manned non supervisory posts.

2.2 It is stated in the petition that on account of implementation of disinvestment policy of Union of India, through the Ministry of Disinvestment the Reliance Industries Ltd gained control and management of IPCL and ultimately IPCL came to be merged into Reliance Industries Ltd. As stated by the petitioner Reliance Industries assured IPCL before merger that interest of

existing employees of IPCL at the relevant time would be protected and under no circumstances their service conditions would be affected to their detriment.

2.3 As per the say of the petitioners in the petition, after change in management, the respondent IPCL under the new management of RIL, committed breach of the agreement and started to dispense with the services of the employees like the present petitioners. The Respondent no.1 and 2 were interested in relieving employees of erstwhile IPCL and engage contract labour in their places on lesser determination.

2.4 As per the say of the petitioners the Respondent No.1 and 2 prepared Voluntary Retirement Scheme for relieving many permanent employees. They issued Circular Dated 6.03.2007 inviting interested employees to submit their applications as per the procedure prescribed in the scheme for voluntary retirement known as Voluntary Separation Scheme for Baroda Complex. As per the scheme it was open to regular employee of Baroda Complex (including offices located in regions) who had attained 40 years of age or had completed 10 years of service as regular employee with IPCL to opt for Voluntary Separation Scheme for Baroda Complex. (herein after referred to as VSS for the sake of brevity). An employee whose application for voluntary separation was accepted by the competent authority would be entitled to receive compensation and benefits mentioned there under. The Scheme was to remain open up to 20.03.2007. Under the VSS the Whole Time Director was the Competent Authority to decide on the application for VSS and his decision was said to be binding and final. Under VSS, the date of relieving of an employee, whose application for VSS was accepted, was at the discretion of the management however the likely date of relieving was declared to be in the first week of April 2007. The details of the VSS would be adverted to at appropriate place herein after.

2.5 The petitioners have further stated that the VSS was in fact a device to get rid of unwanted regular employees and replace them with cheaper contract labour amounting to unfair labour practice. The management therefore did not provide any scope for withdrawal of the application in the VSS. The management thus could relieve about 2400 employees. The work done by such regular employee was thereafter got done by engaging contract labour. The petitioners have further alleged in the petition that on account of threat of transfer to other IPCL Complexes at Nagothane or at Jamnagar in Reliance Project where no residential accommodation was available and employees had to work in jungle under uncongenial conditions, or threat of retrenchment at meager compensation they were left with no choice but either to opt for VSS or be ready to face retrenchment or transfer to very uncongenial places uprooting them and their families who had deep roots in the surrounding area of their working in IPCL as they were working with IPCL from its inception as many petitioners had been offered employment in IPCL as their land was acquired for IPCL rendering them land-losers.

2.6 The petitioners have also voiced a grievance that IPCL management has adopted annual rate contract method practically in all the offices, plants and the permanent employees who became victims of the pressure tactics of VSS have been thrown away from employment and in their place contract labours have been employed by enhancing quantum of work in every such

places. Thus according to the petitioners, work is there but the management get this work done through contract labours so that cost of labour can be reduced by way of practicing unfair labour practice and with this malicious intention the VSS is introduced by the management which is illegal, null and void, unreasonable and unconstitutional and violative of Article 14 and 16 of Constitution of India as well the settled provisions of Labour Contract Abolition Act and also of the Industrial Dispute Act.

2.7 It is stated by the petitioners that respondent no.1 and 2 prepared VSS in such a fashion, that once an employee acting in good faith and bonafide, would apply for VSS then it would become virtually impossible to resile there from as the VSS did not leave any room or time for withdrawal of such application. In the said scheme no period had been mentioned providing an opportunity to an employee to withdraw himself from the said scheme. Thus the management succeeded in practicing fraud over the employees and in inducing the employees for applying for VSS by threat or coercion. That in case the employee did not succumb to such pressure tactics of applying for VSS, the management introduce punishment like retrenchment, transfer to other IPCL complex at Nagothane or other projects situated in various parts of the country. Therefore, according to the petitioners, the scheme was malicious one, and it suffered from flagrant violation of principles of natural justice and principles of equity as well, inasmuch as non affording an opportunity to review ones own decision of applying for VSS, which has ultimately resulted into fatality to employment.

2.8 The petitioners have further submitted that as the entire atmosphere was fraught with threats, mistrust and rumors pursuant to floating of VSS, the management had to issue Circular dated 15.03.2007 inviting employees to approach the authorities to bring to their notice any incidence of such coercion or threat.

2.9 The Petitioners have further sated that in the atmosphere of uncertainty and ambiguity with regard to their future they were induced to apply for VSS.

2.10 The petitioners have further stated that many of them got disillusioned and on 20.03.2007 itself during last hours of closing the VSS made oral requests for returning them their VSS applications as they never wanted to apply for the same but without any success. As the management refused to hand them back their VSS applications on 20.03.2007, they were inclined to file written requests on 21.03.2007 for withdrawal of their application for VSS. As per the say of the petitioners some of them sent withdrawal application by Registered A.D. on 21.03.2007 and 22.03.2007. Some of the petitioners sent it through email also. The management did not decide the same and instead thereof took up false stand that the petitioners applications were accepted by the competent authority and they were informed about the said acceptance through notice board on 21.03.2007 itself.

2.11 The petitioners have further stated that the Management and its competent authority could not have considered and decided petitioners applications as claimed by it right within few hours of closing of the VSS. The theory of acceptance was adopted with a view to defeat the right of petitioners to withdraw their VSS application before its acceptance.

2.12 The Management could dispatch acceptance letter only on 26.03.2007, hence it could be said that the theory of acceptance of VSS applications right on or before 20.03.2007 or in the morning of 21.03.2007 was merely a sham, bogus and adopted only for defeating petitioners right to withdraw from the VSS.

2.13 The petitioners further submitted that as their withdrawal was prior to the actual acceptance, the contract itself had not been completed so as to gain enforceability. As the petitioners written application for withdrawal made on 21.03.2007 or thereafter remained unanswered they were compelled to send in reminders.

2.14 The petitioners have further submitted that the Managements action of directly crediting VSS Amount into their respective Bank accounts by 4th, or 5th, April 2007 would show that till that date no consideration had passed to the petitioner for treating VSS to be a binding contract.

2.15 The petitioners have further submitted that they approached various Government Dignitaries and law enforcing agencies for help against high handed action of respondent no.1 and 2 but without any avail.

2.16 The petitioners have further submitted that ultimately they chose to approach this Court by way of Special Civil Application No.20727 of 2007 and 20731 to 21201 of 2007 for redressing their grievances wherein this Court (Coram: Honble Mr. Justice H.K. Rathod) vide order dated 22.08.2007 directed the Labour Machinery of the State to decide complaints of petitioners for raising Industrial Disputes. Accordingly they individually approached the concerned Assistant Commissioner of Labour with prayer for conciliation and reference of their disputes to proper forum for adjudication. The petitioners have further submitted that all these 464 applications/complaints were identical and they were numbered as I.D. 10(1) Case No. 889 to 1352 of 2007. The parties produced documents and written submissions supporting their respective cases.

2.17 The Deputy Labour Commissioner decided all these applications vide his order dated 11.04.2008 and rejected the requests for reference on the ground that after receipt of benefits flowing from VSS no relationship of employer and employee remained and as there exist no Industrial Dispute the applications were rejected. This order dated 11.04.2008 is under

challenge in these petitions. In SCA 7102 of 2008 Rule was issued and in other matters also Rule was issued.

3 The Learned Counsel for the petitioners submitted that under the guise of offering voluntary retirement scheme in fact the Respondent no.1 and 2 have brought about illegal termination of the petitioners and other similarly situated employees who were compelled to opt for VSS and whose application for withdrawal was not considered and who were discharged in the 1st, week of April 2007. As the Respondent wanted to replace the regular employees of erstwhile IPCL with cheap contract labour they adopted unfair labour practice and coerced the petitioners to opt for VSS and did not permit them to withdraw their VSS applications despite the same being filed before their application could have been validly accepted. Relying upon documents at page 63, 65, and 67 it was urged that the petitioners and other similarly situated employees were under tremendous psychological pressure to opt for VSS other wise, as they were led to believe that either they would be transferred at far flung places like Jamnagar plant or would be retrenched with meager retrenchment compensation. The entire atmosphere was fraught with various rumors and lack of mutual trust and doubts. The contemporary news papers reports carried detailed description of entire situation then prevalent in the Company. The fact that about 2400 employees chose to opt for VSS only within last two days of scheme operative period i.e. on 19.03.2007 and 20.03.2007 in itself clearly indicate the mental status of employees who were under constant pressure and uncertainty of future. Therefore the applications or offers of employees like petitioners opting for VSS cannot be said to be their free and frank offer made after exercising due care and caution so as to bring about binding contract between the parties. The very essential element of volition and consent of contracting parties was conspicuously missing rendering the contract of VSS unenforceable against the party who had not acted of his free volition and given his free consent.

The Learned Counsel for the petitioners submitted that in fact many of the petitioners orally requested the concerned for returning them their VSS applications right on 20.03.2007 itself but the same did not yield any results hence they made written application on 21.03.2007 and some of them made written application on 22.03.2007 whereon the concerned officer also made an endorsement that "VSS application withdrawal can be allowed as per management decision S.C. Saini 22.03.2007" The management therefore could not have taken decision on their VSS application before 26.03.2007 as that is the date when the acceptance letters have been dispatched by the management which appears to have been back-dated as if they were issued on 20.03.2007 itself. This was done with a view to frustrate the petitioners claim for withdrawing their application for VSS before its acceptance. Page 80 to 154 on the compilation are the copies of these acceptance letters and postal envelops indicating clearly that they were dispatched only on 26.03.2007. In other words the Management accepted VSS application without taking into consideration the withdrawal applications on 26.03.2007 and not prior thereto. As the petitioners request for withdrawal of their VSS applications were prior to their acceptance the management could not have treated the petitioners to have separated and validly discharged from their services. The petitioners had right to withdraw their VSS application prior to its acceptance and in that case no binding contract could come into existence. The Learned Counsel for the petitioners relied upon the decision of the apex court in case of Food Corporation of India Vs. Rameshkumar reported in AIR 2007 SC 2864 and submitted that in the aforesaid case the respondent an employee of FCI applied for voluntary retirement on 13.09.2004 in pursuance to the scheme floated by FCI but he revoked the same on 27.09.2004

despite his withdrawal FCI accepted his offer for voluntary retirement on 09.11.2004 on the ground that it was stipulated in the scheme itself that once the offer was made it could not be revoked. The Court held that once the offer is revoked before it is acted upon, it cannot be acted upon later on. The Learned Counsel for the petitioners submitted that in case of Bank of India and others vs. O.P. Swaranakar etc reported in AIR 2003 SC 858 held on the same line that it was open to the employee to revoke his offer of seeking voluntary retirement before it was actually accepted.

Learned Counsel for the petitioners then submitted that the employees like petitioners persistently made written complaints to various authorities including Labour Commissioner from 20.03.2007 to June 2007 protesting against managements high handed action of compelling the petitioners to opt for VSS against their free will and, thereafter, without considering their requests for withdrawing their VSS application, and accepting the same as if there was no withdrawal application at all. In light of such protest the managements unilateral action of depositing the major part of the VSS monetary benefits into their salary accounts directly would be of no consequences at all. In fact some of the petitioners did send protest letters on 27.09.2007 as one of it was produced at page no.282 on the compilation. The petitioners were ready and willing to refund the entire amount which they have received.

The Learned Counsel for the petitioners submitted that up to 04.04.2007 the Respondent no.1 and 2 did not pay or deposit any money not even unilaterally and the petitioners were not relieved from their services till then. Thus petitioners were entitled to apply for withdrawal of their VSS applications before the date of payment of benefits under VSS and or before their actual relieving from service. Thus the action of the respondent no. 1 and
2 being illegal and contrary to law the petitioners are entitled to seek relief from the adjudicatory authority and the denial by the respondent no.3 is therefore required to be quashed and set aside.

The Learned Counsel for the petitioners submitted that looking to the various conditions of the VSS dated 6.03.2007, especially Condition No.2.8 for payment of Notice Pay in lieu of notice period, Condition No. 6 specifying the period of operating scheme up to 20.03.2007, Condition No. 7 Date of Relieving at the discretion of management and notifying the likely date of relieving in the first week of April 2007, Condition No. 9 in respect of Managements discretion to accept or reject the requests for VSS without assigning any reasons, Condition no. 10 prescribing that Whole Time Director to be the Competent Authority and making his decision final and binding would go to show that jural relations of employees and employer did not get snapped only on so called acceptance of VSS applications as the petitioners were not relieved till 4.04.2007 and their requests for withdrawing from the VSS had already submitted prior to their actual relieving from service.

The Learned Counsel for the petitioners submitted that Respondent no.3 has committed serious error in holding that except 4 petitioners rest of the 460 have not produced any evidence in respect of making and submitting their withdrawal applications hence their claim

of having it withdrawn before the date of reliving is said to be not proved. The Counsel submitted that it is well settled proposition of law that if there was no dispute between the parties on happening of any events as it is in this case that petitioners submitted withdrawal application on 21/22 . 03.2007, the question of proving the same did not arise. As it was the case of the petitioners before the labour Commissioner that there was oral withdrawal on 20.03.2007 written withdrawal on 21/22.03.2007 and that was never disputed by the respondent company. Thus the Labour Commissioner ought not to have ignored such pleadings and come to perverse findings.

The Learned Counsel for the petitioners submitted that the respondent no.1 and 2 never categorically

that petitioners did apply for withdrawal on or before 20.03.2007. The respondents have for the first time only before this Court in subsequent affidavit on page 367 and chart on age 374 stated that only 110 petitioners applied for withdrawal on 21/22.03.2007. Thus findings of the Labour Commissioner cannot be said to be based upon record, evidence and pleadings of the parties.

10 The Learned Counsel for the petitioners submitted that in view of the documents at annexure B,C,D,E, and G 11 G14 produced before him along with the copy of the previous petition Labour Commissioner was not justified in holding that there was no threat or coercion.

11 The Learned Counsel for the petitioners submitted that while passing the impugned order the Labour Commissioner has abdicated his duty of forming an opinion with regard to existence of industrial disputes but has arrogated to himself the functioning of adjudicating the vary same disputes, rendering his order illegal and untenable in eye of law.

12 The Learned Counsel for the petitioners submitted that the case of both the parties placed before the Labour Commissioner involved disputed questions of fact which were required to be determined on elaborate inquiry and leading of evidences. The question as to when did the competent authority of respondent management actually accepted the VSS applications, Whether the petitioners application for withdrawal of their VSS applications were received by the management only after the Competent Authority accepted their VSS applications, Whether the respondent company could have processed scrutinize and accepted about 2400 VSS applications right on 20.03.2007 especially when the VSS provided that it was to remain operative till midnight of 20.03.2007, Whether the petitioners have in fact received the amount flowing from the VSS Scheme before they were actually relieved. These were the questions which were required to be answered before holding that petitioners ceased to be workmen on the day they requested for conciliation or reference to the proper forum. These questions could not have been validly decided by the Labour Commissioner under Section 10(1) of I.D. Act 1947. The impugned order therefore deserves to be quashed and set aside.

13 The Learned Counsel for the petitioners submitted that the respondents have come out with many new pleas before this Court. The theory of acceptance of VSS applications and its communication right on 20.03.2007 and 21.03.2007 respectively for the first time pleaded before this Court in this petition. The respondents attempts to justify the impugned order on the basis of subsequent pleas raised before this Court for the first time deserve to be rejected.

14 The Learned Counsel for the petitioners relying upon the decision of the Apex Court in case of Sharadkumar Versus Government of NTC of Delhi reported in AIR 2002 SC 1724, submitted that when determination of questions requires examination of factual matters for which material including oral evidence will have to be considered then the State Government cannot arrogate to itself the power to adjudicate on such questions and hold that employee was not workman.

15 The Learned Counsel for the petitioners mainly relied upon the following decision in support of his submissions.

(a) (2002)3 SCC 437 : Shambhu Murari Sinha Vs. Project and Development India Ltd.

b) (2002)5 SCC 621 Shambhu Murari Sinha Vs. Project and Development India Ltd.

c) 1997 (3) GLR 2397 : N.A.Vasava Vs. Chief Refinery Coordinator Indian Oil Corporation.

d) 2000(0) GLHEL 26005 : Shambhu Murari Sinha Vs. Project and Development India Ltd.

e) (2001)1 SCC 158 : Union of India & others Vs. Wing Commander T. Parthsarathy.

f) (2002) 5 SCC 278 : K.L.E. Society vs. Dr. R.R. Patel and another.

g) 1998 (2) GLR 1001 : Jayant Kumar Atmaram Bhatt Vs. Gujarat State Road Transport Corporation & anr.

(h) (2001) 3 SCC 290 : Tek Chand Vs. Dilip Kumar.

(i) AIR 1970 SC 214 : State of Punjab vs. Khemi Ram.

(j) AIR 1966 SC 1313: State of Punjab vs. Amarsingh Harika.

(k) AIR 2002 SC 1724 (already set out herein above).

(l) 1999(0) GLHEL 207131: Mahagujarat Labour Union VS. Stovee Industries ltd.

(m) 2008(0) GLHEL SC 41262: a.Satyanarayan Reddy vs. Presiding officer Labour Court.

16 The Learned Counsel for the petitioners relying upon the decisions cited herein above submitted that the petitions deserve to be allowed and the order dated 11.04.2008 passed by the respondent no. 3 be quashed and set aside and the dispute be ordered to the appropriate forum under the Industrial Disputes Act 1947.

17 The Learned Counsel for the Respondent No. 1 and 2 submitted that petitions were misconceived and they deserve to be dismissed. It was contended that the Respondent No.3 has rightly held that the petitioners were not "workmen" within the meaning of Section 2(s) of the Industrial Disputes Act 1947, and no Industrial Dispute as defined under Section 2(k) of the I.D. Act existed warranting any reference under Section 10 of the I.D. Act, to the adjudicatory machinery.

The Learned Counsel for the Respondent No. 1 and 2 submitted that petitioners contentions regard to so called coercion and threat were bereft of merits. The Management did invite employees vide his Circular Letter dated 15.03.2007 to indicate any such incidents of threat etc. but none has been reported to him that in itself is sufficient to show that there was no threat or coercion from management as alleged by the petitioners for opting for VSS.

19 The Learned Counsel for the Respondent No. 1 and 2 submitted that the following dates, events and respondents submissions thereon be noted which would go to show that the petitioners cannot claim any relief against the respondents and the petitions deserve to be dismissed. 06/2007 : Voluntary Separation Scheme and Special Separation Scheme floated by the respondent management inviting officers from the concerned employees. As per the scheme, on an average each of the employees opting for VSS received an amount of compensation of Rs. Rs.15 to 17 lacs. 15/03/2007 : Circular displayed by the whole time Director inviting employees for

reporting to him any incidence of threat and coercion goading employees for applying for VSS against their will, so that appropriate steps could be taken.

20/03/2007: The period of operation of the scheme was up to 20/3/2007, meaning thereby, the employees could submit or withdraw their application, if, already made.

20/03/2007: In the late evening / night of 20th March, 2007 decision taken by the competent authority i.e. Mr. S.K. Anand, the whole time Director to accept all the applications (2266 in total) made for VSS for non-supervisory employees and all applications (125) for SSS for non supervisory employees.

21/03/2007: A circular was displayed on the notice boards of all departments, communicating to all the employees who had opted for VSS that the applications for VSS and SSS have been accepted by the competent authorities and they were required to collect the letter of acceptance from the concerned Field Personnel Unit. The PDF copy of the said circular was also e-mailed to all department heads, field personnel, managers and officers who were linked through computer system. Further the affidavits of the concerned personnel who had displayed the said circular on the notice boards are also on record.

21/03/2007 &: Admittedly, the petitioners filed their thereafter : withdrawal applications on 21/3/2007 or 22/3/2007 or there-after, the Company has received only 110 such withdrawal applica- tions in total. 24/03/2007: In fact most of the optees collected their letters of acceptance between 21/3/2007 and 23/3/2007, and "only few" did not collect and hence another circular was displayed on 24/3/2007 with names requesting them to collect their letters of acceptance, at all departments. 26/03/2007: Out of 2391 optees except about 356 optees collected their letters of acceptance from their respective field establishments. For the said remaining 356 employees (including 99 who belong to this group of petitioners) acceptance letters were sent by RPAD on 26/3/2007. 29/03/2007: Relieving letters issued to the employees.

Along with said letters, each one of the employees was handed over pay-slip indicating the amount under VRS which would be deposited in their bank account in the first week of April 2007.

April 2007: First week of April, all the employees were relieved from the service pursuant to the VRS. Admittedly, the payment of compensation package (about Rs.15 to 17 lacs per employee) pursuant to the VRS has been made to all the employees including the petitioner and the payment after deducting TDS has been deposited in their bank accounts in the first week of April 2007. 29/03/2007 to: The petitioners applied for their provident funds.

Last week of It may be noted from such applications that April 2007. the ground for the request for withdrawal of the provident fund is specifically mentioned by them as VRS or SSS.

Last week of March, 2007 onwards all the petitioners have subscribed to mediclaim policy and group term and assurance benefits policy which were in accordance with the terms and conditions of VRS.

Nov. 2007 : The petitioners have applied for pension and onwards : have started receiving pension from RPFC.

The conduct of the petitioners may also be viewed from the fact that, even after the alleged withdrawal, 181 claims have been made for mediclaim benefits by the petitioners flowing out of the terms and conditions of the VSS / SSS and payment whereof has been already made. Thus, the petitioners can not approbate and reprobate at the same time.

20. Thus it can well be said that petitioners have not only accepted the monetary benefits flowing from VSS which they termed to be unilateral crediting but have also by their subsequent conduct proved that they have accepted VSS in totality as they have opted for mediclaim benefits & pension benefits much subsequent to their relieving from services.

21. The Learned Counsel for the Respondent No. 1 and 2 has relied upon the following authorities in support of his submissions.

i. 2000 (1) LLJ 809 (SC) : Secretary India Tea Association Vs. Ajitkumar Barat.

ii. 2003(4) LLJ (Suppl.) NOC 93 : Lakhtaria Premjibhai Narsinhbhai Vs. Union of India.

iii. AIR 2000 SC 469 : National Engineering Vs. State of Rajasthan.

iv. Unreported Judgment of Division Bench (Coram: Honble Justice J.M.Panchal (as he then was) and P.B.Majmudar in case of Gujarat Industrial Development Corporation Vs. Babubhai R Patel in L.P. A no. 852 of 2000 in SCA No. 9413 of 2000.

v. Unreported Judgment of Learned Single Judge (Coram : M.R. Shah J) of this Court in SCA No. 773 of 2005 in case of Somani Pilkingstones Ltd Vs. Assistant Commissioners of Labour.

vi. 2007 (4) L.L.N. 450 : K. Jaypal Vs. Union of India.

vii. 1973 (2) LLJ 547: Secretary Cuttack Motor Association Vs. State of Orissa (Orissa High Court).

viii. 2008 (3) L L J 549 Maruti Udyog Ltd Vs. State of Haryana (P.& H. HighCourt).

ix. 1999 (2) Current Labour Reporter 380 : Everestees Vs. District Labour Officer (Kerala High Court).

x. 2002 (1) LLJ 527 : Premier Automobiles Vs. PAL VRS Employees Association (Bombay High Court).

xi. 2003(2) SCC 721 : Bank of India Vs. O.P.Swarankara and others 103 to 152 para 51,to 65 ,114 115, 130.

xii. 2003 SCC (L&S) 620 : A.K.Bindal Vs. Union of India.

xiii. 2004(4) LLN 868 (SC) Punjab and Sind Bank Vs. S.Ranvirsingh Bava.

xiv. AIR 2005 SC 1503 : Bank of India Vs. Pale Ram Dhania.

xv. 2003(3) SCC 455 : North Zone Cultural Centre Vs. Vedpathi Dineshkumar.

xvi. AIR 1970 SC 214 : State of Punjab Vs. Khemi Ram.

xvii. 2005 AIR SCW 1987 :State of NCT of Delhi Vs. Sanjeev Alia Bittoo.

22.The Learned Counsel for the Respondent No. 1 and 2 submitted that decision in the matter of Bank of India Vs. O.P. Swarankara (supra) has to be borne in mind while considering the ratio in

case of Shambhu Murari Sinha Vs.Project 2002 (3) SCC 437. Looking to the ratio of the decision of the Swarankaras decision it can well be said that once the employees opting for VRS accepts the payment pursuant to the any VRS Scheme, then he cannot resile from the same and contend otherwise. In view of this the petitions deserve to be dismissed.

23. The Learned Counsel for the Respondent No. 1 and 2 submitted that by their conduct the petitioners have shown that not only they have given up their so called right to withdraw from the VSS but they have in fact received and enjoyed monetary benefits flowing there from. The petitioner did not raise any protest for quite some time after the so called unilateral depositing of money of VSS compensation into their bank accounts. This in itself shows that petitioner did not have any right to seek any relief in theses petitions.

24. The Learned Counsel for the Respondent No. 1 and 2 submitted that as per the say of the petitioners themselves in the petition almost all the employees who opted for VSS were relieved by 04.04.2007 and by then the VSS compensation had also been paid by way of depositing it into their bank accounts against which one made any protest for quite some time. This coupled with the fact that petitioners applied for other benefits of VSS on that basis and received the same indicating that they have now no right to seek any relief in these petitions.

25. The Learned Counsel for the Respondent No. 1 and 2 submitted that Respondent No.3 was quite justified in forming opinion that in light of prevalent facts and circumstances of case there exist no relationship of employer and employees and petitioner were not workman nor was there any industrial dispute exist warranting any reference. The opinion forming exercise cannot be termed to be an adjudication.

26. The Learned Counsel for the Respondent No. 1 and 2 submitted under Section 10 (1) of the I.D. Act, the Appropriate Government is not to just act like a postman and refer all the matters that come to it. In fact in its duty of the Appropriate Government to form opinion that there exist industrial dispute before making any reference to proper forum for adjudication.

27. The Learned Assistant Government Pleader appearing for the Respondent No.3 submitted that the impugned order being purely administrative in its purport, the scope of its judicial review under Article 226 is very limited. The respondent No.3 has rightly come to the conclusion based upon the material before him that there exist no industrial dispute warranting any reference for adjudication. The petitions therefore may be dismissed.

28. The Learned AGP has invited this Courts attention to the Affidavit in Reply filed on behalf of the Respondent No.3 and submitted that the impugned order does not require to be interfered with under Article 226 of the Constitution.

29. This Court has heard the Counsels for the respective parties at length. Before adverting to the rival contentions of the parties it would be expedient to set out relevant provisions of law and its interpretations by the Apex Court having vital bearing upon the present controversy in question.

30. The Section 2 (k) of the Industrial Disputes Act 1947 (hereinafter referred to as I.D.Act) defines "industrial disputes" as under : "industrial dispute" means any dispute between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person; Section 2 (oo) defines Retrenchment as under Section 2(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include- a. voluntary retirement of the workman; or b. retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or (bb) termination of the service of the workman as result of the no-renewal of the contract of the employment between the employer and the workman on its expiry or of such contract being terminated under a stipulation in that behalf contained therein ; or c. termination of service of a workman on ground of continued ill-health.

Section 2 (s) "workman" means any person (including an apprentice) employed in any industries to do any manual unskilled skilled technical operational clerical or supervisory work for hire or reward whether the terms of employment be express or implied and for the purpose of any proceedings under this act in relation to an industrial dispute includes any such person who has been dismissed , discharged, or retrenched in connection with or as a consequence of that dispute or whose dismissal discharge or retrenchment has led to that dispute but does not include -

(i) who subject to the AIR Force Act 1950 (45 of 1950) or the Army Act 1950 (46 of 1950) or Navy Act (62 of 1957).

(ii) who is employed in the police service or as an officer or other employee of a prison ;or
(iii) Who is employed mainly in managerial or administrative capacity or
(iv) Who being employed in a supervisory capacity draws wages exceeding one thousand six hundred rupees per mensem or exercises either by the nature of the duties attached to the office or by reason of the powers vested in him functioning mainly of a managerial nature.

The Relevant portion of Section 10 (1) empowers the appropriate Government on its forming opinion that there exists an Industrial Dispute refer it to the forum prescribed therein for adjudication. The voluntary retirement has been specifically excluded from the

definition of Retrenchment under the I D Act. The appropriate Government therefore has to be very careful in forming opinion in such a matter.

31.After setting out the relevant provisions of the I D Act, now let us refer to the important decisions of various courts including Apex Court touching upon the questions with regard to voluntary retirement and validity of withdrawal there from.

32. In case of Food Corporation of India Vs. Ramesh Kumar reported in AIR 2007 SC 2864 the apex court has observed as under :

"Therefore, now the position stands settled that in case of a V.R.S. Scheme of State Bank of India where 15 days time limit for revocation has been laid down in case the incumbent withdraws his offer within 15 days then the offer given by the incumbent cannot be treated against him and it will be deemed that he has revoked his offer. In case of other banks there is a condition that once the offer has been given it shall not be permitted to be revoked but in view of the above decision the incumbent can still withdraw the offer if it has not been accepted by the Management. Now adverting to the present scheme of the Food Corporation, para 8 clearly stipulates that the incumbent has no right to revoke the same and the Management will decide the same within three months. That means the Management still has three months time to consider and decide whether to act upon the offer given by the incumbent or not. But if the incumbent revokes his offer before the Corporation accepts it then in that case, the revocation of the offer is complete and the Corporation cannot act upon that offer. In the present Clause there is one more additional factor which is that the Management has to take a decision within three months. Therefore, once the revocation is made by the incumbent before three months then in that case the Corporation cannot act upon the offer of voluntary retirement unless it is accepted prior to its withdrawal. In the present case, it is clear that the incumbent had given an offer for voluntary retirement on 13.9.2004 and he revoked his offer on 27.9.2004 but the same was accepted on 9.11.2004 i.e. after the revocation of his offer. In view of the law laid down by this Court in the case of State Bank of Patiala (supra) the incumbent has already revoked his offer before it could be accepted. Therefore, in this view of the matter, the approach of the High Court appears to be correct and does not require any interference. The revocation made by the incumbent on 27.9.2004 of his offer of retirement cannot be acted upon as he has revoked it before the Corporation could act upon it. Hence, we are of the opinion, that the view taken by the High Court is correct. Consequently, all the three appeals are dismissed but without any order as to costs".

33.In case of Bank of India Vs. O.P.Swarankara etc reported in AIR 2003 SC 858 the Apex Court has drawn distinction between two schemes of VRS floated by Nationalized Bank and State Bank of India. The observations on various aspects need to be noted for appreciating the ratio of the decision which is rendered after discussing many cases and provisions of law including Contract Act. :

" 43.Following legal issues arise for determination in these appeals :

A. Whether an application by an employee to secure voluntary retirement under the Voluntary Retirement Scheme (VRS) can be withdrawn by such an employee before the same is accepted by the competent Authority though the scheme contained an express stipulation that an application made thereunder is irrevocable and the employee will have no right to withdraw the application once submitted?

B. Whether upon making an application under VRS the employer bank secures the authority to unilaterally determine one way or the other the jural relationship of master and servant between the parties?

44. The moot question which is required to be posed and answered is whether the voluntary retirement scheme is an offer/proposal or merely an invitation to offer. The question is whether the banks intended to make an offer or merely issued an invitation to treat is essentially a question of fact.

45. As would appear from the discussions made hereinafter there appears to be some difference in the schemes floated by the State Bank of India and the nationalized banks ". ....."

49. It is difficult to accept the contention raised in the Bar that a contract of employment would not be governed by the Indian Contract Act. A contract of employment is also a subject matter of contract. Unless governed by a statute or statutory rules the provisions of the Indian Contract Act would be only applicable at the formulation of the contract as also the determination thereof. Subject to certain just exceptions even specific performance of contract by way of a direction for reinstatement of a dismissed employee is also permissible in law."

"74. We, therefore, have no hesitation in coming to the conclusion that the voluntary scheme was not a proposal or an offer but merely an invitation to treat and the applications filed by the employees constituted offer.

75. Once the application filed by the employees is held to be an offer; Section 5, in absence of any other independent binding contract or statute or statutory rules to the contrary would come into play."

"92. However, the case of the State Bank of India stand slightly on a different footing. Firstly, the State Bank of India had not amended the scheme. It, as noticed here before, even permitted withdrawal of the applications after 15th February. The scheme floated by the State Bank of India contained a clause (Cl. 7) laying down the mode and manner in which the application for voluntary retirement shall be considered. The relevant clause as referred to herein before creates an enforceable right. In the event the State Bank failed to adhere to its preferred policy, the same could have been specifically enforced by a Court of law. The same would, therefore, amount to some consideration.

93. Furthermore in the case of State Bank of India, the Punjab and Haryana High Court failed to take into consideration the provisions of the State Bank of India Act, 1955. It further failed to take into consideration that the matter relating to grant of pension was not covered by any statutory regulation.

94. We are, however, not prepared to accept the submission of Mr. Salve to the effect that by reason of the said scheme, merely the tenure of service has been curtailed to some extent which is permissible in law."

"97. We may at this juncture notice the decisions of this Court covering the subject. (emphasis supplied)

"98. In Gopal Chandra Misras case (supra) this Court was considering a question where a Judge of a High Court in terms of Art. 217 of the Constitution of India withdraw the resignation submitted by him. Resignation by a constitutional authority is a unilateral act. In the case of resignation by a constitutional authority, it is governed by the constitutional provisions as resignation of a constitutional authority does not require an express acceptance. The same being unilateral in character, it was observed :

"The substantive body of this letter (which has been extracted in full in a foregoing part of this judgment) is comprised of three sentences only. In the first sentence, it is stated : "I beg to resign my office as Judge, High Court of Judicature at Allahabad." Had this sentence stood alone, or been the only content to his letter, it would operate as a complete resignation in praesenti, involving immediate relinquishment of the office and termination of his tenure as Judge. But this is not so. The first sentence is immediately followed by two more, which read : "I will be on leave till July 31, 1977. My resignation shall be effective on August 1, 1977." The first sentence cannot be divorced from the context of the other two sentences and construed in isolation. It has to be read along with the succeeding two which qualify it. Construed as a whole according to its tenor, the letter dated May 7, 1977, is merely an (@page- SC881) intimation or notice of the writers intention to resign his office as Judge, on a future date, viz., August 1, 1977."

99. In that case, thus, a resignation which was not in praesenti has been held to be capable of being withdrawn. It did not constitute a juristic act.

100. We may notice that in Jai Ram v. Union of India (AIR 1954 SC 584) it was held : para 7 "It may be conceded that it is open to a servant, who has expressed a desire to retire from service and applied to his superior officer, to give him the requisite permission, to change his mind subsequently and ask for cancellation of the permission thus obtained; but, he can be allowed to do so as long as he continues in service and not after it has terminated."

Yet again in Raj Kumar v. Union of India ((1968) 3 SCR 857) it was held :

"When a public servant has invited by his letter of resignation determination of his employment, his services normally stand terminated from the date on which the letter of resignation is accepted by the appropriate authority, and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority. Till the resignation is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has locus poenitentiae but not thereafter."

101. In Balram Guptas case this Court was dealing with Central Civil Services (Pension) Rules, 1972 which is a statutory rule. Sub-rule (4) of R. 48-A prevented withdrawal of resignation letter except with the approval of the authority. The validity of the said rule was not in question. In that case the approval of the authority to withdraw was not given. It was in the aforementioned situation observed : AIR 1987 SC 2354 : 1988 Lab IC 46 "That has been done. The approval of the authority was, however, not given. Therefore, the normal rule which prevails in certain cases that a person can withdraw his resignation before it is effective would not apply in full force to a case of this nature because here the Government servant cannot withdraw except with the approval of such authority."

102. Having regard to the fact that the issue involved therein stood on a different footing, this Court made a mere observation to the following effect :

"It may be a salutary requirement that a Government servant cannot withdraw a letter of resignation or of voluntary retirement at his sweet will and put the Government into difficulties by writing letters of resignation or retirement and withdrawing the same immediately without rhyme or reason. Therefore, for the purpose of appeal we do not propose to consider the question whether sub-rule (4) of R. 48-A of the Pension Rules is valid or not."

103. Validity of such a rule was, therefore, not in question. As indicated herein before, the bar of withdrawing the resignation was contained in the statutory rule and, thus S. 5 of the Indian Contract Act would not have been applicable in that case. However, it is advantageous to notice the following observations made in the said decision :

"We do not see how this could not be a good and valid reason. It is true that he was resigning and in the notice for resignation he had not given any reason except to state that he sought voluntary retirement. We see nothing wrong in this. In the modern age we should not put embargo upon peoples choice or freedom. If, however, the administration had made arrangements acting on his resignation or letter of retirement to make other employee available for his job, that would be another matter but the appellants offer to retire and withdrawal of the same happened in such quick succession that it cannot be said that any administrative set up or arrangement was affected."

104. It was further observed :

"In the modern and uncertain age it is very difficult to arrange ones future with any amount of certainty; a certain amount (@page-SC882) of flexibility is required, and if such flexibility does not jeopardize Government or administration, administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the appellant to withdraw his letter of retirement in the facts and circumstances of this case."

105. In P. K. Mittals case (supra), a question arose as to whether in contravention of R. 20 of the Punjab National Bank (Officers) Service Rules, 1979, the bank can reduce the notice period. Ranganathan, J. speaking for the Bench held that the same could not have been done and the concerned employee was entitled to withdraw his resignation before it became effective.

106. In Power Finance Corporation Ltd. v. Pramod Kumar Bhatia ((1997) 4 SCC 280) a scheme of voluntary retirement was floated and pursuant thereto the respondents therein had applied for voluntary retirement but subsequently the Corporation had withdrawn the scheme although the offer had been accepted. Such acceptance was to take effect from 31-12-1994. This Court held that the acceptance of his offer to voluntarily retire being subject to adjustment of the amount payable to him, the same did not attain finality. It was held :

It is now settled legal position that unless the employee is relieved of the duty, after acceptance of the offer of voluntary retirement or resignation, jural relationship of the employee and the employer does not come to an end. Since the order accepting the voluntary retirement was a conditional one, the conditions ought to have been complied with. Before the conditions could be complied with, the appellant withdrew the scheme. Consequently, the order accepting voluntary retirement did not become effective. Thereby no vested right has been created in favour of the

respondent. The High Court, therefore, was not right in holding that the respondent has acquired a vested right and, therefore, the appellant has no right to withdraw the scheme subsequently."

107. This decision is an authority for the proposition that even after acceptance of the offer made by the employee, the scheme can be withdrawn and, if it is so done, the employee does not acquire any vested right.

108. In J. N. Srivastavas case it was held

"It is now well settled that even if the voluntary retirement notice is moved by an employee and gets accepted by the authority within the time fixed,before the date of retirement is reached, the employee has locus poenitentiae to withdraw the proposal for voluntary retirement.

109. In Wg. Cdr. T. Parthasarathys case the fact of the matter was as follows : AIR 2001 SC 158 : The respondent submitted an application on 21-7-1983 praying for premature retirement with effect from 31-8-1986. He also furnished a certificate stating that he was aware that any request made by him for cancellation of his application for premature retirement would not be accepted. On 6-11-1985 he moved an amendment to earlier application stating that the actual date of his release could be decided taking into account the pensionary recommendations/requirements of the Fourth Pay Commissions report which was expected to come in November, 1985. He subsequently withdrew his offer on 19-2-1986.

. The respondent received a letter dated 20th February, 1986 that he would prematurely retire from service with effect from 31-8-1986. On a writ petition moved by the respondent before the Karnataka High Court, it was held that having regard to the offer made on 19-2-1986, the subsequent action taken by the Department on 20th February, 1986 had no effect. In this Court an argument was advanced that having regard to the policy decision to which the respondent was aware and having given a certificate at the time of submission of application for premature retirement that he was aware of the fact that his request for withdrawal or cancellation subsequently would not be accepted, the impugned judgment of the High Court was erroneous but rejecting the same this Court held :

We have carefully considered the submissions of the learned counsel appearing on either side. The reliance placed for the appellants on the decision reported in Raj Kumar case is in appropriate to the facts of this case. In that case this Court merely emphasised the position that when a public servant has invited by his letter of resignation determination of his employment his service clearly stands terminated from the date on which the letter of resignation is accepted by the appropriate authority and in the absence of any law or rule governing the condition of the service to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority and that till the resignation is accepted by the appropriate

authority in consonance with the rules governing the acceptance, the public servant concerned had locus poenitentiae but not thereafter."

In Shambhu Murari Sinhas case it was held : "Coming to the case in hand the letter of acceptance was a conditional one inasmuch as, though option of the appellant for the voluntary retirement under the scheme was accepted but it was stated that the "release memo along with detailed particulars would follow." Before the appellant was actually released from the service, he withdrew his option for voluntary retirement by sending two letters dated 7-8-1997 and 24-9-1997, but there was no response from the respondent. By office memorandum dated 25-9-1997 the appellant was released from the service and that too from the next day. It is not disputed that the appellant was paid his salaries etc. till his date of actual release i.e. 26-9-1997, and, therefore, the jural relationship of employee and employer between the appellant and the respondents did not come to an end on the date of acceptance of the voluntary retirement and the said relationship continued till 26-9-1997. The appellant admittedly sent two letters withdrawing his voluntary retirement before his actual date of release from service. Therefore, in view of the settled position of the law and the terms of the letter of acceptance, the appellant had locus poenitentiae to withdraw his proposal for voluntary retirement before the relationship of employer and employee came to an end."

. It may be that therein there did not exist a clause to the effect that once an option to voluntary retirement is accepted, the employee cannot withdraw the same, but the law laid down therein would apply herein also.

113. The submission of learned Attorney General that as soon as an offer is made by an employee, the same would amount to resignation in praesenti cannot be accepted. The scheme was in force for a fixed period. A decision by the authority was required to be taken and till a decision was taken, the jural relationship of employer and employee continued and the concerned employees would have been entitled to payment of all salaries and allowances etc. Thus it cannot be said to be a case where the offer was given in praesenti but the same would be prospective in nature keeping in view of the fact that it was come into force at a later date and that too subject to a acceptance thereof by the employer. We, therefore, are of the opinion that the decisions of this Court, as referred to herein before, shall apply to the facts of the present case also.

"114. However, it is accepted that a group of employees accepted the ex gratia payment. Those who accepted the ex gratia payment or any other benefit under the scheme, in our considered opinion, could not have resiled therefrom (Emphasis supplied)

115. The scheme is contractual in nature. The contractual right derived by the concerned employees, therefore, could be waived. The employees concerned having accepted a part of the benefit could not be permitted to approbate and reprobate nor can they be permitted to resile from their earlier stand.

116. In Lachoo Mals case (supra) the law is stated in following terms :

"The general principle is that every one has a right to waive and to agree to waive the advantage of a law or rule made solely for the benefit and protection of the individual (@page-SC884) in his private capacity which may be dispensed with without infringing any public right or public policy. Thus the maxim which sanctions the non-observance of the statutory provision is cuilibet licet renuntiare juri pro se introducto. (See Maxwell on Interpretation of Statutes, Eleventh Edition, pages 375 and 376). If there is any express prohibition against contracting out of a statute in it then no question can arise of any one entering into a contract which is so prohibited but where there is no such prohibition it will have to be seen whether an Act is intended to have a more extensive operation as a matter of public policy. In Halsburys Laws of England, Volume 8, Third Edition, it is stated in paragraph 248 at page 1432 :

As a general rule, any person can enter into a binding contract to waive the benefits conferred upon him by an Act of Parliament, or, as it is said, can contract himself out of the Act, unless it can be shown that such an agreement is in the circumstances of the particular case contrary to public policy. Statutory conditions may, however, be imposed in such terms that they cannot be waived by agreement, and, in certain circumstances, the Legislature has expressly provided that any such agreement shall be void."

117. In Brijendra Nath Bhargavas case (supra), the law is stated in following terms : AIR 1988 SC 293 : para 10.

"It clearly goes to show that if a party gives up the advantage he could take of a position of law it is not open to him to change and say that he can avail of that ground. In Dawsons Banks Ltd. case their Lordships were considering the question of waiver as a little different from estoppel and they observed as under :

On the other hand, waiver is contractual, and may constitute a cause of action; it is an agreement to release or not to assert a right. If an agent, with authority to make such an agreement on behalf of his principal agrees to waive his principals rights then (subject to any other question such as consideration) the principal will be bound, but he will be bound by contract. But in the context of the conclusion that we have reached on the basis of circumstances indicated above that it could not be held that the tenant had constructed his dochatti or balcony a wooden piece without the consent express or implied of the landlord, in our opinion, it is not necessary for us to dilate on the question of waiver any further and in this view of the matter we are not referring to the other decisions on the question of waiver."

118. In Halsburys Laws of England 4th Edition, Vol. 16 (Reissue) para 957 at page 844 it is stated :

"On the principle that a person may not approbate and reprobate a special species of estoppel has arisen. The principle that a person may not approbate and reprobate express two propositions :

(1) That the person in question, having a choice between two courses of conduct is to be treated as having made an election from which he cannot resile.

(2) That he will be regarded, in general at any rate, as having so elected unless he has taken a benefit under or arising out of the course of conduct, which he has first pursued and with which his subsequent conduct is inconsistent."

119. In American Jurisprudence, 2nd Edition. Volume 28, 1966, pages 677-680 it is stated : "Estoppel by the acceptance of benefits : Estoppel is frequently based upon the acceptance and retention, by one having knowledge or notice of the facts, of benefits from a transaction, contract, instrument, regulation which he might have rejected or contested. This doctrine is obviously a branch of the rule against assuming inconsistent positions.

As a general principle, one who knowingly accepts the benefits of a contract or conveyance is estopped to deny the validity or binding effect on him of such contract or conveyance.

This rule has to be applied to do equity and must not be applied in such a manner as to violate the principles of right and good conscience."

120. We also accept the contention raised by the learned counsel for the respondents that the concerned appellants could not have accepted the offer of voluntary retirement after expiry of the scheme. All actions by the Banks were required to be taken strictly in terms of the said scheme.

130. For the reasons aforementioned, we direct that :

1. The appeals preferred by the Nationalised Banks arising from the High Courts are dismissed except the cases where the concerned employees have accepted a part of the benefit under the scheme. However, in respect of such of the employees who despite acceptance

of a part of the retirement benefit under the scheme had continued under the orders of the High Court and has retired on attaining the age of superannuation, this order shall not apply;

2. The appeals filed by the State Bank of India are allowed;

3. The appeals arising from the judgments of the Uttaranchal High Court are allowed and the judgments of the said High Court are set aside;

4. The appeals arising from the judgments of the Punjab and Haryana High Court in relation to ten writ petitions which were filed by the employees for a direction upon the Bank that the benefits under the scheme be paid to them are set aside and the matters are remitted to the High Court for consideration thereof afresh on merits and in accordance with law;

131. These appeals are disposed of on the above terms. However, in the facts and circumstances of the case, the parties shall pay and bear their own costs throughout."(emphasis supplied)

34.Thus the decision of O.P.Swarankara (supra) in fact refers to almost all the major decisions of the apex court touching the controversy in question. At the cost of repetition also some of the decisions on the point deserve to be discussed.

35. The apex Court in case of Shambhu Murari Sinha Vs. Project & Development India Ltd and another reported in (2002) 3 SCC 437 the Apex Court held that when the relevant VRS SCHEME did not contain any stipulations that an employee opting for VRS would be disentitled to withdraw from VRS even then in such circumstances the employee has locus poententuiae to withdraw after acceptance of his offer but before the date of actual release from services.

36. The apex court in case of Shambhu Murari Sinha versus Project & development India reported in (2000) 5 SCC 621 held that when the applicants application for VRS was accepted on 30.07.1997 with further intimation that release memo along with detailed particulars will follow and when the applicant was relieved on 26.09.1997 but before that date application dated 18.10.1995 was withdrawn by him on 07.08.1997 the effective date of voluntary retirement was 26.09.1997 and the withdrawal prior there to entitled him to be treat as if he did not retire as such.

37. The apex court in case of Union of India Vs. Wing Commander T. Parthsarathy reported in (2001) 1 SCC 158 held that where withdrawal was sought even prior to acceptance of

resignation which was to be effective from a future date in absence of any contrary statutory provisions or rule held right to withdraw cannot be denied.

38. The Apex Court has in case of State of Punjab vs. Khemi Ram reported in AIR 1970 SC 214 and in case of State of Punjab vs. Amar Singh Harika reported in AIR 1966 SC 1313 has discussed in detail as to what is "communication" and which orders are required to be communicated and the effect of its invalid communication. In a given set of rules and circumstances communication of orders are essential for it becoming effective. While in some circumstances mere sending or dispatching of the orders make it effective.

39. The facts and circumstances of instant case if examined in light of the law as crystallized in the aforesaid decisions then following would emerge ;

(1)The VSS dated 6/3/2007 was an invitation to Offer only and it cannot be said to be an offer itself. Or in other words it could be said to be an invitation to treat. But this invitation to offer was in detail and did contain elaborate principles and promises to employees opting for VSS and procedure for processing the application.

(2) The applications made by employees like petitioners opting for VSS constituted valid offer to separate from the company as envisaged therein.

(3) The short duration for which the VSS was to remain open did contribute in creating more confusion amongst employees but that in itself was not so sufficient as to partake of threat or coercion goading employees to opt for VSS against their free will.

(4) It deserve to be noted that petitioners could not point out as to what did they do pursuant to the invitation of Management dated 15.03.2007 calling upon employee to point out any incidence of threat or coercion.

(5)The rumors of likelihood of transfer to far flung places like Jamnagar or retrenchment at meager amount of compensation if not opted for VSS and future uncertainty of employment and its conditions appeared to have mainly induced the petitioners for opting for VSS but these apprehension alone without any further positive act or omission on the part of employer would not be considered threat or coercion as to make the action of opting for VSS an act under threat or coercion so as to say that it lacked volition.

(6) The Court is unable to accept submission of learned counsel for the petitioner that the offer of VSS was just sham or bogus

(7) The scheme for voluntary retirement in facts and circumstances of present case could well be said to be a contract only.

(8)As it was a contract the law of contract would govern the parties.

(9) The facts and circumstances of the present case go to show that the instant scheme of VSS was akin to that of SBI Scheme which was subject matter of Swarankara case (supra).

(10)Under the present VSS employees opting for the same did have right to withdraw from it before its acceptance.

(11)The facts and circumstances of this case indicate that usual mode of communicating the managements decisions effecting large number of employees was to display the same on Notice Board. In view of this practice the factum of acceptance deserve to be examined.

(12) The petitioners admittedly have not made any formal attempts to withdraw from the VSS by making written application during the stipulated time as they have stated time and again that written request for withdrawal was submitted only on 21.03.2007 or 22.03.2007.

(13) As against this the Respondent No.1 and 2 have come out on record of this petition that they had received only 110 written applications for withdrawal from the VSS that too only after closing of the VSS and after the competent authority accepted the offers which acceptance was communicated by displaying the same on notice board and by sending it through emails to the concerned department heads. This aspect has though challenged by the petitioners need not be brush aside as it is stated herein above their subsequent conduct of accepting monetary benefits flowing from VSS and making positive efforts for getting other benefits on the basis of VSS like pension mediclaim, etc would militate against them in seeking any relief in these petition.

(14) Let us assume for examining the contention that theory of acceptance of offer or application for VSS in the night of 20.03.2007 by the whole time Director does not inspire any confidence in respect of its veracity about the timings of acceptance but that in itself would not be sufficient to infuse life in to the otherwise snapped relationship of master and servant so as to persuade the competent authority of appropriate Government for reference to appropriate forum under the I.D. Act as by their subsequent conduct the petitioners have given ample indications that right to resile from contract had been waived by them as they accepted the monetary benefit flowing from the scheme.

(15) The petitioners have themselves stated in their written submission in paragraph (h) on type internal page 8 as under " Up to date 04.04.2007 there was no diversion of amount (even unilaterally) and the petitioners were not relieved from service till then." The Statement produced by the Respondent on page 374 indicates name of the applicant opted for VSS, their number in petition, their P.L. Number, dates of VRS application, Date of VRS applications acceptance, Date of actual withdrawal applications, Date of relieving , Amount of monetary Compensation as per VSS, transferred into the bank accounts of each of the applicants, Date on which the said amount was transferred to the applicants bank account, Date of PF Forms received from the applicants, Dates of PF released in case of the applicants, Date of pension forms submitted to RPFC showing ground as VSS, details of pension released by RPFC, It is most important to note that petitioner out of details in 15 column disputed only details mentioned in 3 columns only and accepted other details as such. The petitioner disputed only Column No. 6 containing details of acceptance of VRS application by the management, Column No. 7 containing details of dates of submissions of actual withdrawal applications, and Column no. of 13 containing details of letters claiming to be reminders of withdrawal applications. It may be noted that Column No. 1 contains serial number that has not been disputed, Column No. 2 contains names of the applicants that has not been disputed Column No. 3 contains applicants number in the petition that has not been disputed Column No.4 contains PL number of the applicant that has not been disputed, Column no. 5 contains Date of applicants VRS applications that has not been disputed, Column No. 6 Contain Dates of acceptance of VSS application by Management which is disputed by the petitioner as stated herein above, Column No. 7 contains Dates on which applicants in fact actually submitted their application for withdrawal from the VSS and it was contended that only those applicant submitted these applications against whose names the date of submissions are mentioned in this column the petitioners have disputed this details as stated herein above, Column No. 8 contains actual date of reliving the applicant which has not been disputed by the applicants petitioners , Column No. 9 contains figures of amount transferred into the accounts of applicants on the basis of VSS this has also not been disputed by the applicant petitioners, Column no. 10 contains actual dates on which the said amounts of VSS compensation was transferred into the bank accounts of respective applicants the petitioners have not disputed these details, the column no.11 contains dates of PF Forms received from the applicant employees containing their signature and showing VSS as ground for the same this has not been disputed by the applicants petitioners, Column No 12 contains actual date of PF released this has also not been disputed by the applicants petitioners, Column No.13 contains three sub-columns regarding dates of reminders for so called withdrawal applications this details have been disputed by the petitioners, Column No. 14 and 15 contains details of dates of submissions of pension forms and actual pension released respectively petitioners have not disputed these details.

(16) It has also come on record that un-disputably that petitioners have also pursuant to valid operation of VSS opted and received medical benefits under the mediclaim scheme which was part of the VSS benefit where under the employees and its family were to be covered by mediclaims premium where of was be borne by the respondent company.

(17) Thus the details mentioned herein above go to unequivocally show that all the applicant petitioners have received the VSS amounts and benefits and after thus receiving the said benefits for the first time a legal remedy was resorted to by way filing writ petitions being Spl.C.A. No. 20727 of 2007, and 20731 to 21201 of 2007 filed only on in the month of August or September 2007 that is only after the dates of received the monetary compensation flowing from VSS and after their actual relieving from services in the 1st, week of April 2007. The other benefits like pension and mediclaim appears to have been opted and received by the petitioners only after filing of these petitions.

(18) In view of the above assuming for the sake of examining without concluding that petitioners right to withdraw from the VSS existed till their actual relieving from services and receiving monetary benefits than also their conduct indicate that they waived their right to enforce that right as they have accepted monetary and other benefits flowing from the VSS. As per the observations of the apex court in para no. 114 to 120 in case of Bank of India Vs. O.P. Swarankaer (supra) the petitioner could be said to have waived that right and now therefore they cannot seek any relief on that basis.

(19) The willingness of the petitioners to refund the monetary benefits would not revive their right to enforce the withdrawal as facts go to show that VSS amount was deposited though unilaterally since 3.04.2007 and petitioners have not produced any documents suggesting that they in all earnestness ever made such efforts prior tot heir approaching this Court by filing earlier writ petitions in the month of August 2007 as stated herein above.

(20) The petitioners all along from 6.03.2007 till filing of the earlier petition in the month of August 2007 have indicated that they have waived their right to enforce withdrawal and accepted the VSS the respondent no.1 and 2 have acted upon such waiver and therefore now its not open to the petitioners to seek any relief against the in this petitions.

40. Against this backdrop the impugned order dated 11.04.2008 deserves to be viewed. Under the scheme of Section 10 of the I.D. Act the appropriate Government is not merely to act as postman and make reference to adjudicating authorities. The Government has to form an opinion from the material before it as to whether there exists an Industrial Disputes between the Workman and Employer warranting its reference to adjudicatory machinery. The impugned order contains cogent reasons indicating that the same is passed in accordance with law and hence it does not warrant any interference under article 226 of the Constitution of India.

41. In the result these petitions deserve to be rejected and accordingly they are hereby rejected. Rule Discharged. However there shall be no order as to costs.

42. The Registry is to keep copy of this judgment and order in each of the petitions.

Order accordingly