HIGH COURT OF GUJARAT

GOHIL RAMESHBHAI AMARSINH

Versus

INDIAN PETROCHEMICALS CORPORATION LTD

Date of Decision: 15 September 2022

Citation: 2022 LawSuit(Guj) 6609

Hon'ble Judges: Biren Vaishnav

Case Type: Special Civil Application; Civil Application (For Direction); Civil Application (For Orders); Civil Application (For Bringing Heirs)

Case No: 13747 of 2021, 13748 of 2021, 13749 of 2021, 13750 of 2021, 13751 of 2021, 13752 of 2021, 13753 of 2021, 13754 of 2021, 13755 of 2021, 13756 of 2021, 13757 of 2021, 13758 of 2021, 13759 of 2021, 13761 of 2021, 13762 of 2021, 13764 of 2021, 13765 of 2021, 13766 of 2021, 13767 of 2021, 13768 of 2021, 13769 of 2021, 13770 of 2021, 13771 of 2021, 13772 of 2021, 13773 of 2021, 13774 of 2021, 13775 of 2021, 13776 of 2021, 13777 of 2021, 13778 of 2021, 13779 of 2021, 13780 of 2021, 13781 of 2021, 13782 of 2021, 13783 of 2021, 13784 of 2021, 13785 of 2021, 13786 of 2021, 13787 of 2021, 13788 of 2021, 13789 of 2021, 13790 of 2021, 13791 of 2021, 13792 of 2021, 13793 of 2021, 13794 of 2021, 13795 of 2021, 13796 of 2021, 13797 of 2021, 13798 of 2021, 13799 of 2021, 13800 of 2021, 13801 of 2021, 13802 of 2021, 13803 of 2021, 13804 of 2021, 13805 of 2021, 13806 of 2021, 13807 of 2021, 13808 of 2021, 13810 of 2021, 13816 of 2021, 13817 of 2021, 13818 of 2021, 13819 of 2021, 13820 of 2021, 13821 of 2021, 13822 of 2021, 13823 of 2021, 13824 of 2021, 13825 of 2021, 13826 of 2021, 13827 of 2021, 13828 of 2021, 13829 of 2021, 13830 of 2021, 13831 of 2021, 13833 of 2021, 13834 of 2021, 13835 of 2021, 13836 of 2021, 13837 of 2021, 13838 of 2021, 13839 of 2021, 13840 of 2021, 13841 of 2021, 13842 of 2021, 13843 of 2021, 13844 of 2021, 13845 of 2021, 13846 of 2021, 13847 of 2021, 13848 of 2021, 13849 of 2021, 13850 of 2021, 13851 of 2021, 13852 of 2021, 13853 of 2021, 13854 of 2021, 13856 of 2021, 13857 of 2021, 13858 of 2021, 13859 of 2021, 13860 of 2021, 13861 of 2021, 13862 of 2021, 13863 of 2021, 13864 of 2021, 13865 of 2021, 13866 of 2021, 13867 of 2021, 13868 of 2021, 13869 of 2021, 13870 of 2021, 13871 of 2021, 13872 of 2021, 13873 of 2021, 13874 of 2021, 13875 of 2021, 13876 of 2021, 13877 of 2021, 13879 of 2021, 13880 of 2021, 13881 of 2021, 13882 of 2021, 13883 of 2021, 13883 of 2021, 13884 of 2021, 13885 of 2021, 13887 of 2021, 13888 of 2021, 13889 of 2021, 13890 of 2021, 13891 of 2021, 13892 of 2021, 13893 of 2021, 13894 of 2021, 13895 of 2021, 13896 of 2021, 13897 of 2021, 13899 of 2021, 13900 of 2021, 13901 of 2021, 13902 of 2021, 13903 of 2021, 13904 of 2021, 13905 of 2021, 13906 of 2021, 13907 of 2021, 13908 of 2021, 13909 of 2021, 13910 of 2021, 13911 of 2021, 13912 of 2021, 13913 of 2021, 13914 of 2021, 13915 of 2021, 13916 of 2021, 13917 of 2021, 13918 of 2021, 13919 of 2021, 13920 of 2021, 13921 of 2021, 13922 of 2021, 13923 of 2021, 13924 of 2021, 13925 of 2021, 13926 of 2021, 13927 of 2021, 13928 of 2021, 13929 of 2021, 13930 of 2021, 13931 of 2021, 13932 of 2021, 13933 of 2021, 13934

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14223 of 2021, 14224 of 2021, 14225 of 2021, 14228 of 2021, 14229 of 2021, 14230 of 2021, 14231 of 2021, 14233 of 2021; 1 of 2022; 2 of 2022; 1 of 2022

Subject: Constitution

Acts Referred:
Constitution Of India Art 227, Art 226

Final Decision: Application dismissed

Advocates: P R Thakkar, J P Thakkar, K S Nanavati, Pratik Bhatia, M/S Nanavati Associates

Cases Referred in (+): 36

Biren Vaishnav, J.

[1] Challenge in these petitions, under Articles 226 and 227 of the Constitution of India at the instance of the employees is to the awards passed by the Labour Court, Vadodara. The Labour Court rejected the References. Briefly stated, it held that the workmen / employees had withdrawn their applications for Voluntary Retirement Scheme (for short 'VRS') after they had been accepted and also after the amounts under the Scheme were paid and accepted by them.

[2] Both parties to these petitions referred to the lead matter being Special Civil Application No.13803 of 2021 and made their submissions.

The facts in brief are as under:

[3]

3.1. The Indian Petrochemicals Corporation Limited which was originally owned and managed by the Central Government, in the course of implementing the policy of disinvestment diverted its share capital to Reliance Industries Limited which became a major stake holder of the Company. The Company promoted two schemes namely; the Voluntary Separation Scheme (for short 'VSS') and Special Separation Scheme (for short 'SSS') in order to downsize its staff. The scheme was floated by a Circular dated 06.03.2007. Under the scheme, regular employees of the Vadodara Complex were eligible to apply which was in operation from 06.03.2007 to 20.03.2007. It is the case of the petitioners that about 2400 employees applied under the scheme. In the scheme, no period had been mentioned providing an opportunity to an employee to withdraw himself from the scheme. Under the threat of being transferred to either Nagothane or its project at Jamnagar, the petitioners were compelled to apply under the scheme, which they

did on the last date i.e. 20.03.2007 in the evening. According to the Statement of Claim filed by the petitioners before the Labour Court, it was their case that they were compelled to apply under coercion and threat of transfer. Having so applied, on 20.03.2007, they orally in the late evening of 20.03.2007 requested for withdrawal of their Voluntary Retirement Applications. It is their case that the Officer of the Company refused such request on the ground that the data was already locked in their computer and reconsideration / withdrawal was not possible.

3.2. It is the case of the petitioners that on 21.03.2007 they requested for withdrawal of their applications, however, an endorsement was made on such letters that the competent authority shall take a decision. According to the petitioners, in the Statement of Claim so filed, letters dated 20.03.2007 were posted on 26.03.2007 informing the petitioners of the acceptance of their applications. It was a deceptive show that the offer of the employees was accepted and that there was concluded contract and, therefore, no withdrawal can be permitted. The case of the petitioners was that despite letters in June and August, 2007, no decision was taken and, therefore, the action of the Company in accepting their applications be declared as illegal and the petitioners be reinstated in service.
3.3. Briefly stated, the stand of the Company before the Labour Court was that the VSS / SSS was open upto 20.03.2007.

19 employees who made applications for withdrawal on or before 20.03.2007 were considered by the Company and such employees were allowed to withdraw their applications. The present petitioners did not withdraw their applications before acceptance. Moreover, they accepted all the benefits flowing from the scheme and after receiving all the benefits raised an industrial dispute. The Company highlight1ed the past history by submitting that in the first round, the Assistant Commissioner of Labour had refused to refer the dispute which was a subject matter of challenge and ultimately the Division Bench directed the authority to refer the dispute which was referred for adjudication to the Labour Court.

3.4. The stand of the Company was that once having accepted the amounts under the Scheme, it was not open for them to turn around and claim benefits of reinstatement.

3.5. Oral and documentary evidences were led by the respective parties. Based on legal contentions and such evidence, the Labour Court rejected the References giving rise to these petitions.

Brief summary of conclusions reached by the Labour Court:

(i). Workmen have not been able to establish by way of evidence that they were threatened to be transferred to Jamnagar if they did not take VRS.

(ii). The Labour Court did not accept the plea of the employees that they had orally withdrawn their applications for Voluntary Separation.

(iii). Written applications were received from some of the petitioners after the acceptance by the Company and after the expiry of the validity period. They were received on 21.3.2007 after the Scheme had closed on 20.3.2007.

(iv). All the employees had applied for withdrawal after having enjoyed the benefits and after being silent for a period of three months,have objected to the VSS/SSS without refunding the benefits. The Labour Court therefore held that they had no right to challenge their termination now.

Submissions made on behalf of the petitioners:

[4] Mr. P. R. Thakkar, learned counsel appearing for the workmen / employees made the following submissions:

4.1. The Separation Scheme was notified on the notice board by way of a Circular which is on record before the Labour Court at Exhs.23 and Exh.24 respectively.

4.2. Mr. Thakkar would submit that the petitioners were compelled to opt for the scheme as had they not done so, they would have been transferred to Jamnagar or any other place.

4.3. Mr. Thakkar submitted that the three unions had issued a joint Circular which was on record before the Labour Court which made it evident that there was threat from the employer and therefore applications had to be made and accordingly, the employees made such applications late in the evening on the last day i.e. 20.03.2007. Subsequently, when they went to withdraw the applications at around 8-00 pm, the concerned Officer informed them that since they were already locked in the computer and therefore they should come next day in the morning.

4.4. Mr. Thakkar would submit that accordingly on 21.03.2007, as is evident from applications Exh.29 before the Labour Court, the petitioners requested that they may be permitted to withdraw the applications. An endorsement was made by the Management that the withdrawal can be allowed as per Management. A back dated letter dated 20.03.2007 was issued by the Management which was dispatched on 26.03.2007, which is evident from postal slip and it was therefore evident that nothing but a fraud had been committed by the Management. It was humanly impossible for the Management to have accepted so many applications on the very

date i.e. 20.03.2007. Even otherwise, the scheme was open till 20.03.2007 and no decision could be taken on the very date accepting the applications.

4.5. Mr. Thakkar would further submit that the Company behind the back of the petitioners deposited the benefits under the scheme directly to the Bank accounts of the respective applicants / petitioners. The petitioners had continuously protested upto June, 2007 and having had no other alternative raised the present dispute.

4.6. Mr. Thakkar would submit that in the first round, on the scheme being floated and the petitioners having been denied withdrawal they had approached this Court by filing Special Civil Application No.20727 of 2007 and allied matters which the Court dismissed on the ground that it involved disputed questions of facts. The petitioners therefore approached the Assistant Labour Commissioner by raising a dispute and seeking a Reference. On 11.04.2008, the Assistant Labour Commissioner refused to refer the dispute which again made the petitioners prefer Special Civil Application No.7102 of 2008 which was rejected on 13.03.2009. On a challenge before the Division Bench in Appeal, the Division Bench in LPA No.418 of 2009 directed the Labour Commissioner to refer the dispute. The Management challenged the same before the Hon'ble Supreme Court, the Appeal was dismissed. An application for consolidation of References was made which was also a subject matter of challenge till the Hon'ble Supreme Court. On applications made by the Company that the References must not proceed till the employees are directed to deposit the amounts accepted the matter was carried to the Hon'ble Supreme Court and on a consensus it was decided that the References should proceed on merits.

4.7. Mr. Thakkar would submit that though there was corroborative evidence on record to show that oral request for withdrawal was made on 20.03.2007, applications for withdrawal were filed on 21.03.2007 and before there was an effective acceptance by the Company the Labour Court did not consider the same and passed the impugned award.

4.8. During the course of submissions, Mr. Thakkar, learned counsel for the petitioners would refer to the paper book supplied to the Court wherein important exhibits produced before the Labour Court were placed for perusal of the Court. By referring extensively to these documents, Mr. Thakkar would submit that if it was the case of the Officer of the Company that the applications made were locked in the computer, the Labour Court in addition to the defence of the employer that acceptances were done by email, in order to support the assertions of the petitioners of it being fraudulent, should have required the employer to prove such

document by way of completing the formalities under the provisions of Section 65(B) of the Evidence Act. He would submit that the Labour Court ought to have held that the Company had never taken a decision on the midnight of 20.03.2007 or had sent an email to the units on 21.03.2007. The Email was an electronic evidence and had to be proved in compliance of Section 65(B) of the Evidence Act.

4.9. Mr. Thakkar reading the deposition of Mr. H. R. Desai at Exh.94 would submit that he was a reliable witness and could not have been discarded by the Labour Court as being an interested witness. The witness had clearly deposed that the petitioners had approached the Officer for oral withdrawal in the evening on 20.3.2007 and which was not challenged in cross examination.

4.10. Mr. Thakkar would submit that reading of Sections 4 & 5 of the Indian Contract Act, 1872 would make it evident that the scheme remained in operation upto 20.03.2007, therefore, the occasion to decide the application was available with the Management only from 21.03.2007. The operation of the Scheme continued and letters were dispatched only on 26.03.2007 and, therefore, the offers made by the petitioners were withdrawn before it was accepted on 26.03.2007. He would submit that Section 4 of the Act would indicate that the communication of an acceptance is complete as against the proposal when it is put in a course of transmission to him so as to be out of the power of the acceptance which was on 26.03.2007 and therefore, there was no concluded contract inasmuch as, the withdrawal was much before such acceptance.

4.11. Mr. Thakkar would also submit that even if the Scheme is read it is evident that the orders of relieving were to be made only in April, 2007, therefore, the employer-employee relationship continued till such date and admittedly, before such severance, the applications were withdrawn. During the course of his submissions, Mr. Thakkar would rely upon the Circular of VSS, the deposition of the workmen namely; Punambhai Vaghela, the Circular dated 20.03.2007 the RPAD slips dated 26.03.2007, deposition of witness Hareshbhai Desai at Exh.94 etc. in support of his submissions to assail the awards of the Labour Court.

4.12. Mr. Thakkar would rely on the following decisions on the topic wise submissions made by him:

(A) On the aspect of withdrawal of VRS application before the date of acceptance and before the date of passing consideration, Mr. Thakkar would rely on the following decisions:

(1) Food Corporation of India v. Ramesh Kumar, 2007 AIR(SC) 2864.

(2) National Textile Corporation (MP) Limited v. M.R. Jadav, 2008 AIR(SC) 2449

(3) Bank of India and others v. O.P. Swarankar, 2003 AIR(SC) 858

(4) Indian Oversead Bank v. Ratan Singh,2018 Supp AIR(SC) 561

(5) Madhya Pradesh State Road Transport Corporation v. Manoj Kumar, 2016 9 SCC 375 &

(6) M.D. Orissa S.H.W. Co.Op. So. Ltd. v. Satyanarayn Pattnaik, 2014 3 SCC 218.

(B) On the issue of withdrawal of VRS applications before the date of acceptance and the before the date of release from service, Mr. Thakkar would rely on the following decisions:

(1) Poonam Garg v. IFCI Venture Capital Funds Limited, decision of Delhi High Court dated 27.9.2019 passed in C.M. No.38360/2019 and W.P. (C) No.9304/2019

(2) Sambhu Morari Sinha v. Project and Development India Limited, 2003 2 SCC 721

(3) Sambhu Morari Sinha v. Project and Development India Limited, 2000 5 SCC 621

(4) N.A. Vasava v. Chief Refinery Co-Ordinator IOC, 1997 3 GLR 2397 &

(5) P. Kasilingam v. PSG College of Technology, 1981 AIR(SC) 789.

(C) On the question of withdrawal of Voluntary Retirement before date of acceptance, he would rely on the following decisions:

(1) Union of India and other v. Wing Commander T. Parth Sarthi, 2001 1 SCC 158

(2) J.N. Srivastava v. Union of India, 1999 AIR(SC) 1571 &

(3) Balram Gupta v. Union of India, 1987 AIR(SC) 2354.

(D) On the aspect of premature acceptance of Voluntary Retirement, he would rely on the following decisions:

(1) KLE Society v. Dr. R.R. Patel and others, 2002 5 SCC 278

(2) Jayantkumar Atmaram Bhatt v. Gujarat State Road Transport Corporation, 1998 2 GLR 1001 &

(3) Tekchand v. Dileram, 2001 3 SCC 290.

(E) In support of his submission that the decision of the authority becomes effective only, when the employee is relieved from duty, he would rely on the following decisions:

(1) Power Finance Corporation Limited v. Pramod Kumar Bhatia, 1997 4 SCC 280

(2) State of Punjab v. Khemiram, 1970 AIR(SC) 214

(3) State of Pujab v. Amarsingh, 1966 AIR(SC) 1313 &

(4) National Textile Corporation (MP) v. M.R. Jadav, 2008 AIR(SC) 2449.

(F) On the admissibility of electronic evidence of Sec. 65(B) of the Act, Mr. Thakkar would rely on the following decisions:

(1) Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, 2020 7 SCC 1: 2020 0 AIJEL SC 66369 &

(2) Anvar P.V. v. P.K. Basheer and others Judgment delivered by Hon'ble Supreme Court in Civil Appeal No.4226 / 2012 dated 18.9.2004.

(G) On the aspect of validity of Reference u/s.10 of the ID Act, Mr. Thakkar would rely on the following decision:

Raijibhai Bhikhabhai Parmar v. IPCL Now known as Reliance Industries Limited, a judgment of Gujarat High Court decided on 29.1.2016 in SCA No.5491/2014 and allied matters.

(H) On the aspect of documentary evidence to prevail over oral evidence, he would rely on the following decision:

Nek Ram v. Union of India of Punjab and Haryana High Court in RSA No.2773/2008 dated 10.03.2009.

(I) On the aspect of the burden on the employer to prove by way of evidence, Mr. Thakkar would rely on the following decision:

Bhuvesh Kumar Dwivedi v. Hindalco Industries Limited,2014 0 GLHELSC 55379

Submissions made on behalf the Respondent Company:

[5] Mr. K. S. Nanavati, learned Senior Advocate assisted by Mr. Pratik Bhatia, learned advocate for the respondents would make the following submissions:

5.1. Mr. Nanavati, learned Senior Counsel would submit that it is well settled that this Court would not sit in appeal over the award of the Labour Court, even if, two views are possible.

5.2. Mr. Nanavati would submit that the petitioners had never challenged the validity of the scheme and after having taken the benefits of the scheme it is not open for them to turn around and challenge the same.

5.3. Mr. Nanavati would submit that only two contentions were raised before the Labour Court. It was the case of the petitioners that they were under compulsion forced to accept the scheme and that they had withdrawn the application before it was accepted. He would submit that on both these counts, the Labour Court had refused to entertain their Claim.

5.4. Mr. Nanavati would submit that the Company had paid total compensation of approximately Rs.78 crores to the 464 employees who were part of the dispute under the VSS / SSS scheme. In addition Rs.20 crores were paid towards retiral dues.

5.5. Mr. Nanavati would submit further that there were two schemes,namely, Voluntary Separation Scheme and Special Separation Scheme. The contention of the petitioners that they were pressurized to accept the scheme has rightly not been believed by the Labour Court. The stand of the petitioners that they had approached the office late evening on 20.3.2007 and they were told to go back and come on the next day is also not supported by any evidence. He would submit that the competent authority had communicated on 21.3.2007 to accept the decision and a Circular was issued and it was specifically stated therein that those who had not collected their acceptance letters should do so. About 110 employees who had not collected the acceptance letters were sent the same by RPAD on 26.3.2007. What has also come on record is that none of the employees had protested and it was only after June 2007, especially as is evident from a letter dated 29.9.2007 (Exh.80) that an objection to the acceptance of VSS was made. This was done after having accepted the additional amount of compensation. The withdrawal applications and the stand taken in June, 2007 was clearly an after thought.

5.6. Mr. Nanavati would further submit that the Labour Court rightly held that it cannot be accepted that the petitioners had applied under the VSS under coercion, threat of compulsion. In fact, it had come on record through the evidence of Shri Patel that those employees who had not accepted the VSS were not transferred. The Labour Court rightly held that once having accepted the amount it is not open for them to withdraw from the Scheme. The scheme documents clearly mention

that the operative period of the VSS / SSS scheme is from 06.03.2007 to 20.03.2007 which implies that the acceptance / withdrawal from the scheme has to take place during the operative period. This is supported by the fact that 19 employees who had applied for VSS / SSS and subsequently submitted withdrawal applications before 20.03.2007 were allowed to withdraw.

5.7. Mr. Nanavati would draw the attention of the Court to the evidence of the employee Punam Vaghela and also to that of Haresh Desai and correlated the same to the findings arrived at by the Labour Court which indicate that the evidence of Punambhai clearly indicated that admittedly, there was no coercion and that Hareshbhai was treated as interested witness because he had specifically stated that he had sympathy for the workmen.

5.8. Mr. Nanavati would submit that the legal position is very clear that the application for VRS can be withdrawn only before it is accepted. Provisions of Sections 4 and 5 of the Contract Act are clear that once the employer accepts the application under VRS it is final against the person who has submitted it. He would submit that once the petitioners had accepted the benefits under the Scheme they were estopped from challenging the same and therefore the Labour Court did not commit any error in rejecting the stand of the petitioners and holding in favour of the Company.

5.9. Mr. Nanavati would take the Court through the VRS scheme which is at Exhs.23 and 24 of the award of the Labour Court and read the relevant Clauses of the Scheme.

5.10. Mr. Nanavati would submit that under the Scheme the Company is still paying premium for medical insurance which was part of the package and therefore having accepted the scheme and the benefits thereunder which is established by the evidence of the Company including that of the witness Shri R. A. Patel. No interference is called for in the award of the Labour Court.

5.11. In support of his submissions, Mr. Nanavati would rely upon the following decisions:

(1) Shalini Shyam Shetty and Anr v. Rajemdra Shankar Patil, 2010 8 SCC 329

(2) K.V.S. Ram v. Bangalore Metropolitan Transport Corporation, 2015 12 SCC 39

(3) Punjab National Bank v. Virender Kumar Goel and others, 2004 2 SCC 193

(4) New India Assurance Co. Ltd. v. Raghuvir Singh Narang and others, 2010 5 SCC 335

(5) North Zone Cultural Centre and Another v. Vedpathi Dineshkumar, 2003 5 SCC 455

(6) Modern School v. Shashipal Sharma and others, 2007 8 SCC 540

(7) Air India Express Limited and others v. Captain Gurudarshan Kaur Sandhu, 2019 17 SCC 129

(8) Rajesh Kumar Balak Ram Chandrakar v. Information and Library Network Centre (Inflibnet) decided on 10.06.2022 passed in SCA No.2720 of 2013 of Gujarat High Court &

(9) Raj Kumar v. Union of India, 1969 AIR(SC) 180.

ANALYSIS:

Before getting into the assessment and analyzing the Labour Court Award, the relevant dates that need to be kept in mind are are as under:

Dates And Events:

06.03.2007:

The Respondent Company i.e. IPCL now known as Reliance Industries Ltd. issued Voluntary Separation Scheme / Special Separation Scheme for its regular Supervisory and non-Supervisory employees.

The Scheme was to remain in force from 06.03.2007 to 20.03.2007. (Clause 6).

15.03.2007:

Respondent issued a Circular stating that the Scheme being Voluntary, no coercion is intended and any such instances may be brought to the notice of the Whole Time Director.

20.03.2007:

Respondent Company issued Office Order wherein, it accepted the Application for VSS/SSS Scheme.

The employees who had opted for the VSS/SSS Scheme were asked to collect their Office Orders accepting their application.

21.03.2007:

Respondent issued a Circular on its Notice Board stating that Applications for VSS / SSS Scheme have been accepted by the Competent Authority and all optees are requested to collect letter of acceptance from concerned Field Personnel Unit.

21.03.2007:

Respondent Company wrote an email to its Heads of various Departments attaching the above-mentioned Circular.

21.03.2007:

After the period of VSS/SSS Scheme came to an end and after acceptance of the application for VSS/SSS, 110 petitioners submitted written application for withdrawal of VSS/SSS.

26.03.2007:

Around 99 petitioners out of 449 petitioners did not collect the Office Orders dated 20.03.2007 in person, the Respondent Company was constrained to send the same through Registered Post A.D.

26.03.2007:

The Respondent Company issued a Circular wherein it stated that relief under Section 89 of Income Tax Act can be claimed by filing of Form 10E and relevant supporting documents under Compensation received under VSS/SSS Scheme during the Financial Year 2007-2008.

29.03.2007:

Certain petitioners filed Applications for claiming relief in terms of the above-mentioned Circular.

It is pertinent to note that in the said Application, the employees have accepted that the VRS has been accepted by the Company.

03.04.2007:

Majority of the petitioners came to be relieved from services by the Respondent Company.

.04.2007:

One of the petitioners i.e. Gohil Himmatbhai Bhagvansinh filed application for claiming gratuity and submitted the same to the Respondent Company.

.08.2011:

The petitioners - workmen filed their Statement of Claim in respective References for declaring the action of Respondent Company of giving retirement from service as illegal and for appropriate directions to the Respondent Company to reinstate the petitioners - workmen with back-wages and all consequential benefits.

19.10.2013:

The Respondent Company filed its Written Statement in the various References denying the contents of the Statement of Claim stating that applications for VSS had been submitted by employees on their own will without any duress, coercion or compulsion and that the Respondent Workmen had submitted their application for withdrawal after the resignation came to be accepted and have taken and enjoyed the benefits of the Scheme and therefore, the References required to be rejected. 2016:

The petitioner - Punambhai Waghela filed his examinationin-chief.

13.10.2016:

The petitioner was cross-examined by the Respondent Company.

03.10.2019:

The petitioner submitted the Written Submissions before the learned Labour Court.

The Respondent Company filed Legal Submissions before the learned Labour Court. (The same is annexed as Annexure-I to this Submissions)

21.03.2020:

The learned Presiding Officer, Labour Court-1, passed the impugned award in the References whereby it rejected and dismissed the Reference filed by the petitioner - workman on the ground that:

1. Allegation of the petitioner that he was threatened to be transferred to Jamnagar is erroneous as he had not made any complaint before Union Police, Labour Commissioner or any other authority and also the petitioner has nor produced any evidence to this effect and also the petitioner has not mentioned this fact of his transfer to Jamnagar in his withdrawal application under Exhibit-29.

2. The learned Labour Court also held that the petitioner had submitted his withdrawal application for VSS Scheme after the expiry of time period of VSS

Scheme and after his application for VSS was already accepted. Thus his withdrawal application was not accepted.

3. It was also held that it is clear from the conduct of the petitioner that he had not refunded the amount of retirement benefits under VSS Scheme and same had been deposited in his bank account in first week of April, 2007 and he has not stopped claiming medical benefits and other benefits.

4. It was further held that the petitioner had raised his objection after period of 3 months from the date of receiving retirement benefits under VSS Scheme and he had accepted those retirement benefits under VSS Scheme and hence he was not entitled to withdraw his application for Voluntary Separation Scheme.

[6] Considering the submissions made by the learned advocates for the respective parties, the reasonings of the Labour Court and the facts on hand need to be briefly set out.

6.1. Perusing the Statement of Claim and the reply thereof the Labour Court has found that there was no dispute or a challenge by the workmen to the scheme. The Labour Court therefore could not and did not to go into the same.

6.2. On the issue of the petitioners' contention that they were compelled to accept the scheme, the Labour Court assessed the evidence.

6.3. While assessing the evidence of Punambhai Vaghela, the employee at Exh.13 the Labour Court found that it was on the lines as set out in the Statement of Claim. The scheme was in operation from 06.03.2007 to 20.03.2007. The witness had stated that there was no withdrawal clause in the scheme. It was his case that had they not accepted it, they would have been transferred. Moreover, when they went to withdraw orally on 20.03.2007, they were told it was locked in the computer. They therefore tendered the written request on the next date i.e. on 21.03.2007. The letter of 20.03.2007 was concocted and back dated as it was posted on 26.03.2007. In the cross examination of this claimant, it had come on record that he was shown the Circular Exh.65 dated 21.03.2007. He had admitted that the workmen had withdrawn the amount of PF and gratuity and also accepted the additional amount of Rs.1,50,000/-. The conduct of the petitioners having accepted the VSS/SSS by submitting individual applications followed by filling up the withdrawal forms for PF, Gratuity, Pension etc. and also submitting the Section 10E for availing Income Tax Relief established the unconditional consent. The workmen had admitted that they had worked upto 03.04.2007 and it was only in June, 2007, a registered letter was written objecting to the acceptance of Voluntary Retirement. No letter was written between 21.03.2007 and June, 2007. He had

admitted in his evidence that those employees who had not accepted the benefits of the scheme were not transferred and that 19 employees had accepted VRS as their applications for withdrawal were before 20.03.2007.

6.4. The Labour Court further found from the evidence of one Shri Haresh Ramanlal Desai at Exh.94 that he had stated that workmen came at around 8.30 pm on 20.03.2007 asking for withdrawing their VSS. The Labour Court on assessment of evidence of this witness Hareshbhai found that he had a long pending dispute with the Company and it was out of interest and sympathy that he was giving his evidence. This led the Labour Court to discard the evidence of this witness on the ground that he could be termed as an interested witness.

6.5. On behalf of the employer, one Ramesh A. Patel was examined at Exh.109 who in his cross examination stated that he had discouraged the employees from taking VRS. Based on the documentary evidence at Exhs.75 and 29 together with evidence Exh.31/137 and Exh.31/138 the Labour Court found that it was only on 14.06.2007 that the workmen had written letters for withdrawing from the scheme and a letter of 29.09.2007 was written to the General Manager (Finance). That letter was at Exh.82. There was inherent contradiction in the evidence of the workman Punambhai Vaghela, when at the first instance he had stated that it was Shri R. A. Patel who went around with a transfer list threatening transfer. Whereas, in the cross examination, he had stated that one Mr. Anand had threatened the Union. It has also come on record that those who did not apply for VRS were never transferred to Jamnagar. It was in light of this set of evidences that the Labour Court did not believe the case of the petitioners that there was coercion on part of the Management to accept VSS.

Moreover, the VSS/SSS applicants had accepted full benefits available to them under the Scheme which was in the range of Rs.15 to 16 lacs plus retiral benefits and having not refunded the same and also having continued to avail the benefits of medical insurance scheme and also their nominees having accepted the benefits which had come out in the cross-examination of the witness it was rightly held by the Labour Court that there was no coercion on the employees to accept the VRS/VSS and the stand of the petitioners was rightly rejected.

6.6. Coming to the argument and the stand of the petitioners that they had withdrawn their applications for Voluntary Retirement before it was accepted, the Labour Court, based on the documents and the question of law set out by the Hon'ble Supreme Court, came to the conclusion that there was no withdrawal before the closure of the scheme. Once the scheme had closed on 20.03.2007 and there was no evidence to suggest a written request of withdrawal before it was

accepted. Once the acceptance was communicated before it was withdrawn the contract was complete.

During the course of submissions it was argued that looking to the number of applications made on 20.3.2007 it was not possible for the Company to pass Office Orders accepting the Applications the very same day it was the stand of the Company and evidence was accepted by the Labour Court that applications were handled through computerized system and all the employees were required to submit their applications to the concerned field personnel units who were required to feed the data in the computer system. It has been established during evidence that the process of acceptance of VRS/VSS/SSS Application was through online system which was connected through multiple computers having a provision to complete the process expeditiously.

6.7. The Labour Court reproduced the Circular at Exh.57 and the application made by the petitioners to opt for VRS and found that the period of the operation of the Scheme was from 06.03.2007 to 20.03.2007. To the letters written by the employees on 21.03.2007 (Exh.29), and the communication dated 20.03.2007 sent by the Management, which according to the workmen were back dated and in fact dispatched on 26.03.2007, the Labour Court found that the workmen had never stated in their applications on 21.03.2007 that they had orally requested for withdrawal on 20.03.2007. Moreover, the Labour Court found, reading the scheme Circular that there was no clause permitting oral withdrawal and the story of the workmen that they had requested for oral withdrawal was not believed. Considering Exh.75 where applications were made for withdrawal of VRS and the Circular dated 21.03.2007 at Exh.60, the Labour Court found that the applications for withdrawal was made after the scheme had closed. Also it has come on record at Exh.63 that 19 employees who had made applications for withdrawal before the validity of the scheme closed on 20.03.2007 were continued in service.

6.8. It has come on record that the petitioners were relieved in April, 2007 and had accepted the amount of gratuity and PF. The reminders to their withdrawal letter dated 21.03.2007 was only written by mark 29/24 in June, 2007.

6.9. The Labour Court further found that the letter therefore written three months after they having been relieved and, therefore, in light of the decisions of the Hon'ble Supreme Court the Labour Court opined that in light of a clear assertion by the workmen in his letter dated 29.09.2007 at Exh.80 to object to the VRS scheme it was rightly held by the Labour Court that it was an after thought to say that the amounts were accepted with objection.

[7] The VRS scheme which was the subject matter of dispute is on record before the Labour Court at Exh.24. The period of operation of the scheme was that it was to remain open upto 20.03.2007. The date of relieving was to be at the discretion of the Management but the likely date of relieving was to be of 01.04.2007. The Management had a right to reject the request of the employee without assigning any reason. The optees were to have a mediclaim policy, insurance coverage of which has the responsibility of Management. Exh.29 is a letter dated 21.04.2007 of 5-00 pm written by one of the employees stating that he would like to withdraw the application. Such applications of all employees are at Exh.29 which would indicate that the withdrawal was sought on the ground that it was necessary to maintain the family and therefore it was requested that they be permitted to withdraw their applications for Voluntary Separation. 20.03.2007 an Office Order was passed accepting their applications. It was not their case even in the applications so made that such applications for VSS were made under coercion.

[8] On 21.03.2007, a Circular was put on the notice board by the Company informing of the acceptance of VRS applications tendered by the employees. The Labour Court has referred to that Circular. The same is also on record. It is specifically pointed out that the Circular at Exh.61 was displayed on the notice board and it stated that all the optees are requested to collect the letter of acceptance from concerned field personnel unit. At Exh.63 is a list of 19 employees who, on withdrawal of their VSS applications, were permitted to continue in service. On 24.03.2007, another Circular was issued by the employer informing the applicants that pursuant to the Circular dated 21.03.2007, some employees have not collected their acceptance letter which must be collected. Exh.67 is a communication informing the retirees with regard to filing of Form 10(E) under the Income Tax Act.

[9] The Labour Court in its award has reproduced the format of the application made by the petitioners which indicate that the application was made free from coercion and signed by two witnesses.

[10] Reading of the evidence of Punambhai Vaghela at Exh.13 and that of Hareshbhai Desai at Exh.94 which has been done by the Labour Court indicates that it was only after the Scheme had closed that applications for withdrawal were made. There is no evidence to support the claim of the workmen that they had orally requested for withdrawal. In fact, it has come on record from the cross examination of Punambhai that upto 20.06.2007 that is three months after the acceptance of VRS and after being relieved, no written communication was made by the petitioners with the Company on the aspect of accepting VRS and objecting to it. Admittedly, all the moneys were paid. The amounts were received in April, 2007 and it was only three months thereafter the petitioner had sought to object to the Scheme. In light of this set of evidences on

record and the position of law that, the Labour Court came to the conclusion that having once accepted the amounts from the employer, it was not open for the employees to challenge the scheme and contend that once having withdrawn they should be permitted to be continued in service.

[11] The decisions cited by learned counsel Mr. Thakkar for the petitioners with regard to the withdrawal of VRS before its acceptance and before it having become effective, especially, in the case of National Textile Corporation (MP) Ltd. v. M.R. Jadav, 2003 AIR(SC) 858 and Madhya Pradesh State Road Transport Corporation v. Manoj Kumar, 2016 9 SCC 375 , these decisions were considered in **Manoj Kumar (Supra)**, wherein, the Hon'ble Supreme Court opined that if the contractual scheme gives the option to an employee to voluntarily retire in terms of the scheme and if there is no condition that it will be effective only on acceptance of the employer, the scheme gives an enforceable right to the employee to retire by exercising his option in such a situation a provision in the contractual scheme that the employee will not be entitled to withdraw the option once made will be valid and binding and consequently an employee will not be entitled to withdraw from the option exercise.

[12] Even in the case of **Raghuvir Singh Narang (Supra)**, paragraph No.10 of the decision reads as under:

> "10. It is true that the principles of Contract Law relating to offer and acceptance enables the person making the offer to withdraw the offer any time before its acceptance; and that any subsequent acceptance of the offer by the offeree, after such withdrawal, will not result in a binding contract. Where the voluntary retirement is governed by a contractual scheme, as contrasted from a statutory scheme, the said principle of Contract will apply and consequently the letter of voluntary retirement will be considered as an offer by the employee and therefore any time before its acceptance, the employee could withdraw the offer. But the said general principle of Contract will be inapplicable where the voluntary retirement is under a statutory scheme which categorically bars the employee, from withdrawing the option once exercised. The terms of the statutory scheme will prevail over the general principles of contract. This distinction has been recognized by a series of decisions of this Court. We may refer to a few of them."

[13] In the decision in the case of **Vedpathi Dineshkumar (Supra)**, considering the question of the effective date, the Hon'ble Supreme Court held that non communication of acceptance does not make the resignation inoperative provided there is in fact an acceptance before withdrawal. Paragraph Nos.10 to 23 reads as under:

"10. It is true as contended by Shri D.S. Bali, learned senior counsel that if actually the appellant had accepted the resignation only on 1.12.1988 then in view of the fact that the respondent had in between withdrawn his resignation, the resignation would not become effective and such withdrawn resignation cannot be accepted subsequently.

11. The question, therefore, for our consideration is whether the resignation of the respondent was accepted by the appellant on 18.11.1988 or not.

12. The respondent had denied this factum of the acceptance of resignation on 18.11.1988. In the writ petition filed by the respondent, he had stated that the resignation was accepted only on 1.12.1988.

13. But the appellant in their reply to the said allegation of the respondent in the writ petition, filed a counter affidavit specifically denying the allegation of the writ petitioner/respondent herein and had contended that the resignation was accepted on 18.11.1988 itself giving certain particulars of the said fact. The appellant herein in the said writ petition also filed two affidavits of the officials of the organization in support of its stand that the resignation in question was actually accepted on 18.11.1988 itself.

14. No rejoinder was filed as against said reply nor the contents of the affidavits denied. Further from a perusal of the judgment of the learned Single Judge, it is seen that he also accepted the statement in the affidavit of the Director of the appellant Organization that the resignation was accepted on 18.11.1988 but he held that because said acceptance was communicated only on 1.12.1988, and in the meanwhile the respondent had withdrawn the resignation the subsequent communication of acceptance had become redundant. He further held that permitting the respondent to attend duty till 1.12.1988 also showed that the resignation had not taken effect thus the learned Single Judge gave two reasons for holding that the resignation had not become effective.

(i) The acceptance was not communicated till the withdrawal.

(ii) Respondent was permitted to attend duty even after the acceptance of resignation.

15. In our opinion, both these grounds are unsustainable in law. This Court in Raj Kumar's case (supra) held:

"When a public servant has invited by his letter of resignation the determination of his employment, his service normally 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 statutory 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. Undue delay, in intimating to the public servant concerned the action taken on the letter of resignation, may justify an inference that the resignation had not been accepted."

16. Therefore, it is clear that non-communication of the acceptance does not make the resignation inoperative provided there is in fact an acceptance before the withdrawal.

17. We will consider the effect of delayed communication of the acceptance of resignation separately hereinafter.

18. It is an admitted fact that so far as the appellant - Organization is concerned, there is no rule which requires the acceptance of the resignation to be communicated before the resignation could become effective. But the Division Bench in appeal has relied upon a consolidated guidelines and instructions issued by the Government of India vide letter of February 11, 1988 dealing with the subject of acceptance and withdrawal of resignation. We see that these guidelines state that in the case of a resignation which has been accepted by the appointing authority with effect from a future date and if in the meantime the concerned Government servant withdraws his resignation before he is actually relieved of his duties, the normal principle should be to allow the request of the Government servant to withdraw the resignation. In these guidelines, we do not see any requirement which states that even in cases where the resignation is accepted with immediate effect, the same can be withdrawn before such acceptance is communicated to the Government servant concerned. On the contrary, in our opinion, these guidelines also indicate that the resignation takes effect the moment the same is accepted.

19. The courts below then relied upon a judgment of this Court in the case of Ravinder Singh (supra) where a Division Bench of two-Judges of this Court in a very short order based on the facts of that case held that the resignation of an officer in question was obtained by threat and coercion, therefore, that was an appropriate case where the appellant should continue in service. It is on that factual basis acceptance of resignation was quashed. However, there is a stray observation that "obviously to get over the situation, he might have tendered resignation on January 3, 1991 but he had withdrawn it on February 2, 1991 before the acceptance was communicated to him. (emphasis supplied). On the same day, the resignation was accepted." From this observation, we cannot hold that the ratio

disendi of that decision is that the resignation does not become effective until the acceptance is communicated. Assuming that this Court in Ravinder Singh's case has held so then the same would run directly counter to the ratio laid down by this Court in the three-Judge Bench judgment in Raj Kumar's case (supra), hence, we think the High Court was wrong in placing reliance on the judgment of **Ravinder Singh's case (Supra)** which was done without considering the case of Raj Kumar (supra).

20. This takes us to consider the observations of this Court in the case of **Raj Kumar** wherein this Court stated:-

"Undue delay in intimating to the public servant concerned, the action taken on the letter of resignation, may justify an inference that the resignation has not been accepted".

21. It is to seen that this observation was made in the context of finding out whether there was an acceptance at all.

22. Be that as it may, in that case, the resignation in question was dated 30th August, 1964 and the same was accepted on 31st of October, 1964 after a gap of nearly two months even then this Court thought on the facts of that case there was no undue delay in accepting the resignation so as to vitiate the same. On the contrary, this is what the court observed in the said case of Raj Kumar that:

"In the present case the resignation was accepted within a short time after it was received by the Government of India. Apparently the state of Rajasthan did not immediately implement the order and relieve the appellant of his duties, but the appellant cannot profit by the delay in intimating acceptance or in relieving him of his duties".

23. As noticed above, in the present case the resignation is dated 18.11.1988 and the same as found by us is accepted on 18.11.1988 itself. The communication was on 1.12.1988 about 13 days thereafter which delay, in our opinion, is not an undue delay so as to make us draw an inference that there has been no acceptance of the resignation. Even the fact that in the meantime the respondent either attended duty or signed the attendant register will be of no assistance to claim his resignation had not taken effect. Even otherwise the appellant shave urged that because there was no responsible officer in the headquarter from 18.12.1988 after respondent's resignation was accepted till 1.12.1988 and the respondent took advantage of the same and marked his attendance and such attendance cannot be treated as lawful attendance in view of the acceptance of his resignation on 18.11.1988. We agree with this contention of the appellant."

[14] In the case of **Air India Express Ltd. (Supra)** considering various decisions on the question, the Hon'ble Supreme Court held as under:

"11. The circumstances under which an employee can withdraw the resignation tendered by him and what are the limitations to the exercise of such right, have been dealt by this Court in a number of decisions.

11.2 In Raj Kumar v. Union of India, 1968 3 SCR 857 an officer belonging to the Indian Administrative Service tendered resignation and addressed a letter to the Chief Secretary to the Government of Rajasthan on 30.08.1964 that it may be forwarded to the Government of India with remarks of the State Government. The State Government recommended that the resignation be accepted and on 31.10.1964 the Government of India requested the Chief Secretary to the State Government "to intimate the date on which the appellant was relieved of his duties so that a formal notification could be issued in that behalf". Before the date could be intimated and formal notification could be issued, the officer withdrew his resignation by letter dated 27.11.1964. On 29.03.1965 an order accepting his resignation was issued. The challenge raised by the officer was rejected and the High Court held that the resignation became effective on the date the Civil Appeal No. **6567 of 2019 @ SLP (Civil) No.28182 of 2018 Air India Express Ltd. and Others Vs. Capt. Gurdarshan Kaur Sandhu** Government of India had accepted it. While dismissing the appeal, a Bench of three Judges of this Court observed:-

"The letters written by the appellant on August 21, 1964, and August 30, 1964, did not indicate that the resignation was not to become effective until acceptances thereof was intimated to the appellant. The appellant informed the authorities of the State of Rajasthan that his resignation may be forwarded for early acceptance. On the plain terms of the letters, the resignation was to become effective as soon as it was accepted by the appointing authority. No rule has been framed under Article 309 of the Constitution which enacts that for an order accepting the resignation to be effective, it must be communicated to the person submitting his resignation.

Our attention was invited to a judgment of this Court in State of Punjab v. Amar Singh Harika,1966 AIR(SCR) 1313 in which it was held that an order of dismissal passed by an authority and kept on its file without communicating it to the officer concerned or otherwise publishing it did not take effect as from the date on which the order was actually written out by the said authority; such an order could only be effective after it was communicated to the Officer concerned or was otherwise published. The principle of that case has no application here. Termination of

employment by order passed by the Government does not become effective until the order is intimated to the employee. But where 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. Undue delay in intimating to the public servant concerned the action taken on the letter Civil Appeal No. 6567 of 2019 @ SLP (Civil) No.28182 of 2018 Air India Express Ltd. and Others Vs. Capt. Gurdarshan Kaur Sandhu of resignation may justify an inference that resignation has not been accepted. In the present case the resignation was accepted within a short time after it was received by the Government of India. Apparently the State of Rajasthan did not immediately implement the order, and relieve the appellant of his duties, but the appellant cannot profit by the delay in intimating acceptance or in relieving him of his duties."

12. It is thus well settled that normally, until the resignation becomes effective, it is open to an employee to withdraw his resignation. When would the resignation become effective may depend upon the governing service regulations and/or the terms and conditions of the office/post. As stated in paragraphs 41 and 50 in Gopal Chandra Misra4, "in the absence of anything to the contrary in the provisions governing the terms and Civil Appeal No. 6567 of 2019 @ SLP (Civil) No.28182 of 2018 Air India Express Ltd. and Others Vs. Capt. Gurdarshan Kaur Sandhu conditions of the office/post" or "in the absence of a legal contractual or constitutional bar, a 'prospective resignation' can be withdrawn at any time before it becomes effective". Further, as laid down in Balram Gupta, "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."

[15] Even in the case of **New India Assurance (Supra)** the Hon'ble Supreme Court in Paragraph Nos.9, 15, 17, 18 & 24 held as under:

"9. The Special Voluntary Retirement Package was a part of the General Insurance (Rationalization of Pay Scales and Other Conditions of Service of Development Staff) Amendment Scheme 2003 framed by the Central Government in exercise of the powers in Section 17A of the General Insurance Business (Nationalization) Act 1972. The said Scheme is a delegated Legislation which is statutory in character.

The validity of the said statutory scheme has been upheld by this Court (with reference to other provisions in the Scheme) in National Insurance Co. Ltd. v. General Insurance Development Officers Association, 2008 5 SCC 472 **following** Kishan Prakash Sharma v. Union of India, 2001 5 SCC 212. Paragraph 5(4) of the Special Voluntary Retirement Package categorically states that a Development Officer shall not be eligible to withdraw the option once made for the Special Voluntary Retirement Package.

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

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

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

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

[16] What has come on record from the facts on hand is that the VRS scheme was open from 06.03.2007 to 20.03.2007. Nothing has come on record to show that even oral request for withdrawal was made even before the scheme closed. The withdrawal was made only on 21.03.2007 by which time a Circular was issued accepting the separation. That apart, it has come on record as is evident from reading the award of the Labour Court that the Labour Court, considering the evidence of workmen at Exh.13 and the documentary evidence came to the conclusion that it was only three months after the employee was relieved and had accepted the amount of benefits available under the VRS, did he object to the scheme and on 29.09.2007, the letter which the Labour Court has referred to and which is at Exh.80 that more than five months thereafter did the employee lodge his protest to say that he had accepted the amounts subject to his objection. This clearly was an after thought as opined by the Labour Court and also as held by the decision of the Hon'ble Supreme Court especially referred to by the Labour Court in the operative portion of the awards under challenge. That decision of the Hon'ble Supreme Court is also a question of law which has been decided in the case of Punjab National Bank v. Virenter Kumar Goyal and others, 2004 2 SCC 193 which held accordingly.

[17] With regard to the contention of the learned advocate Shri P. R. Thakkar in context of compliance of Section 65B of the Evidence Act is concerned what has come on record that the Circular dated 21.03.2007 was exhibited without any objection from the petitioners. Even otherwise the strict provisions of the Indian Evidence act would not apply to the proceedings under the Industrial Disputes Act, 1947. The Supreme

Court in the case of Bareilly Electricity Supply Company Ltd. versus Workman, 1971 2 SCC 617 in paragraph No.14 has held as under:

"14. An attempt is however made by the learned Advocate for the Appellant to persuade us that as the Evidence Act does not strictly apply the calling for of the several documents particularly after the employees were given inspection and the reference to these by the witness Ghosh in his evidence should be taken as proof thereof The observations of Venkatram Iyer J, in Union of India v. Varma, (1) to which our attention was invited do not justify the submission that in labour matters where issues are seriously contested and have to be established and proved the requirements relating to proof can be dispensed with. The case referred to above was dealing with an enquiry into the misconduct of the Public Servant in which he complained he was not permitted to cross-examine. It however turned out that he was allowed to put questions and that the evidence was recorded in his presence. No doubt the procedure prescribed in the Evidence Act by first requiring his chief-examination then to allow the delinquent to exercise his right to cross-examine him was not followed, but that ,the Enquiry Officer, took upon himself to cross-examine the witnesses from the very start. It was contended that this method would violate the well recognized rules of procedure. In these circumstances it was observed at page 264:

"Now it is no doubt true that the evidence of the Respondent and his witnesses was not taken in the mode prescribed in the Evidence Act; but that Act has no application to inquiries conducted by Tribunal even though they may be judicial in character. The law requires that such Tribunals should observe rules of natural justice in the conduct of the enquiry and if they do so their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that which obtains in a Court of Law".

But the application of principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied upon to establish a contested fact which are not (1) [1958] 2 L.L.J. 259, 263-264. spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used. When a document is produced in a Court or a Tribunal the questions that naturally arise is, is it a genuine document, what are its contents and are the statements contained therein true. When the Appellant produced the balance-sheet and profit and loss account of the Company, it does not by its mere production amount to a proof of it or of the truth of the entries therein. If these entries are challenged the Appellant must prove each of such entries by producing the books and speaking from the entries made therein. If a letter or other document is

produced to establish some fact which is relevant to the enquiry the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact. This is both in accord with principles of natural justice as also according to the procedure -under Order XIX Civil Procedure Code and the Evidence Act both of which incorporate these general principles. Even if all tech- nicalities of the Evidence Act are not strictly applicable except in so far as Section 11 of the Industrial Disputes Act 1947 and the rules prescribed therein permit it is inconceivable that the Tribunal can act on what is not evidence such as hearsay, nor can it justify the Tribunal in basing its award on copies of documents when the originals which are in existence are not produced and proved by one of the methods either by affidavit or by witnesses who have executed them, if they are alive and can be produced. Again if a party wants an inspection, it is incumbent on the Tribunal to give inspection in so far as that is relevant to the enquiry. The applicability of these principles are well recognized and admit of no doubt."

[18] Even in the case of R.M. Yellati versus Asst. Executive Engineer, 2006 1 SCC 106 that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. Relevant paragraph No.17 of the decision is reproduced hereunder:

"17. Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments

lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case."

[19] The Delhi High Court in the case of **Millennium School versus Pawan Daba,2002 SCCOnlineDel 1390** in paragraph Nos.37 to 44 held as under:

"37. Mr Sinha had contended that the Arbitral Tribunal had erred in rejecting the evidence on the ground that requirements under Section 65-B of the Evidence Act were not satisfied.

38. The Arbitral Tribunal had rejected several e-mails (RW1/3 to RW1/63) on the ground that the requirements under Section 65-B of the Evidence Act were not complied with. The Principal of the petitioner school had issued the said certificate (Ex.RW1/64), in support of the said e-mails sent from the petitioner.

39. It is material to note that there was no objection to the certificate under Section 65-B of the Evidence Act at the time when the same was produced. It was also duly exhibited and marked as Ex. RW1/64. Notwithstanding the same, the Arbitral Tribunal held that the said certificate was inadmissible as it was defective. And, an objection to admissibility of evidence could be taken at any stage.

40. In R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple And Anr., 2003 8 SCC 752, the Supreme Court held that an objection with regard to a certificate of Section 65-B of the Evidence Act is not available if it is not taken at the material time. The court had also explained the distinction regarding evidence that is inherently not admissible and a defect in the manner of proving the same. The requirement of Section 65-B of the Evidence Act relates to the mode and manner of leading evidence and if no objection as to the same is taken at the material time, it would not be open for a party to Signature Not Verified Digitally Signed Signing Date:10.05.2022 raise it at a later stage. The relevant extract of the said decision is set out below:

"20. ... Ordinarily, an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes : (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as "an exhibit", an objection as to its admissibility is not excluded and is available to be

raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The later proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons : firstly, it enables the court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the court on the mode of proof sought to be adopted Signature Not Verified Digitally Signed Signing Date:10.05.2022 going against the party tendering the evidence, the opportunity of seeking indulgence of the court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the latter case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in superior court."

(emphasis supplied)

41. In Sonu v. State of Haryana, 2017 8 SCC 570, the Supreme Court referred to its earlier decisions and held as under:

"32. It is nobody's case that CDRs which are a form of electronic record are not inherently admissible in evidence. The objection is that they were marked before the trial court without a certificate as required by Section 65-B(4). It is clear from the judgments referred to supra that an objection relating to the mode or method of proof has to be raised at the time of marking of the document as an exhibit and not later. The crucial test, as affirmed by this Court, is whether the defect could have been cured at the stage of marking the document. Applying this test to the present case, if an objection was taken to the CDRs being marked without a certificate, the Court could have given the prosecution an opportunity to rectify the deficiency. It is also clear from the above judgments that objections regarding

admissibility of documents which are per se inadmissible can be taken even at the appellate stage. Admissibility of a document which is inherently inadmissible is an issue which can Signature Not Verified Digitally Signed Signing Date:10.05.2022 be taken up at the appellate stage because it is a fundamental issue. The mode or method of proof is procedural and objections, if not taken at the trial, cannot be permitted at the appellate stage. If the objections to the mode of proof are permitted to be taken at the appellate stage by a party, the other side does not have an opportunity of rectifying the deficiencies. The learned Senior Counsel for the State referred to statements under Section 161 CrPC, 1973 as an example of documents falling under the said category of inherently inadmissible evidence. CDRs do not fall in the said category of documents. We are satisfied that an objection that CDRs are unreliable due to violation of the procedure prescribed in Section 65-B(4) cannot be permitted to be raised at this stage as the objection relates to the mode or method of proof."

42. In **Om Prakash v Central Bureau of Investigation,2017 SCCOnlineDel 10249**, a Coordinate Bench of this Court held as under: -

"25....Thus if a document is admissible in evidence and no objection to the mode of proof is taken thereof at the stage of tendering the same in trial, the party is estopped to challenge the same before the Appellate Court or thereafter, however if the document is per-se inadmissible then even if marked as an exhibit the same cannot be read in evidence."

43. It is also relevant to note that by virtue of Section 1 of the Evidence Act, it does not apply to arbitration. Although, the principles of the Evidence Act are usually applied in arbitral proceedings, sensu stricto, the said Act is not applicable. Section 65-B of the Evidence Act is not applicable to arbitral proceedings, yet the Arbitral Tribunal has disregarded the entire evidence led by the petitioner regarding Signature Not Verified Digitally Signed Signing Date:10.05.2022 deficiency of service solely on the ground that the certificate under Section 65-B of the Evidence Act was defective.

44. It is material to note that the receipt of several communications relied upon, on behalf of the petitioner, were admitted. Notwithstanding the same, the said communications were rejected as not admissible on the ground that the certificate under Section 65-B of the Evidence Act was not furnished. In the circumstances, the decision of the Arbitral Tribunal to completely ignore the said e-mails, is manifestly erroneous."

[20] Therefore, once the Labour Court has exercised the jurisdiction judicially, the High Court can interfere with the Award, only if it is satisfied that the award of the Labour Court is vitiated by any fundamental flaws. Findings of the Labour Court in the present petitions do not present any such case where it can be said that the awards of the Labour Court suffer from any such flaws.

[21] Accordingly, in light of the above discussion, all these petitions are dismissed with no order as to costs.

[22] In view of dismissal of the main matters, no orders on connected Civil Applications.