



2024:DHC:7648-DB



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

*Reserved on: 30 September 2024*

*Pronounced on: 4 October 2024*

+ LPA 221/2020, CM APPL. 16153/2023

BSES RAJDHANI POWER LTD. ....Appellant

Through: Mr. Sandeep Prabhakar, Mr. Amit Kumar, Mr. Vikas Mehta, Mr. Pratap Behra and Mr. Shaswat Jena, Advs.

versus

D.P. SHARMA ....Respondent

Through: Mr. Anuj Aggarwal, Ms. Divya Aggarwal, Mr. Manas Verma, Mr. Pradeep Kumar and Mr. Avinash Kumar, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE C. HARI SHANKAR**

**HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN**

**JUDGMENT**

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**04.10.2024**

**C. HARI SHANKAR, J.**

1. The respondent D P Sharma was employed as a Meter Reader in the Delhi Electric Supply Undertaking<sup>1</sup>, which was taken over by the appellant BSES Rajdhani Power Ltd in 2002.

2. On 24 October 1990, the petitioner received a memo/charge-sheet, alleging that he had committed a misconduct by favouring a particular consumer in June 1980 and October 1982. An inquiry was



conducted, resulting in the submission of an Inquiry Report by the Inquiry Officer<sup>2</sup> in December 1997, exonerating the respondent from the charges against him. The Disciplinary Authority<sup>3</sup> disagreed with the findings of the IO and issued a disagreement note to the respondent on 28 May 1998, opining that, according to him, the charge against the respondent was fully proved. The memo also called upon the respondent to show cause against imposition, on him, of a penalty of reduction by three stages in the time-scale of pay for a period of three years with the further stipulation that he would not earn any increments of pay during the period of reduction. The respondent replied on 26 June 1998. The DA, *vide* order dated 12 August 1998, imposed, on the respondent, the punishment proposed in the disagreement memo dated 28 May 1998. The respondent appealed, on 2 September 1998, to the Chairman of the erstwhile DESU. By order dated 11 February 1999, the Chairman reduced the punishment imposed on the respondent to reduction by two stages in the time scale for two years with cumulative effect.

3. Aggrieved thereby, the respondent approached this Court by way of WP (C) 3069/1999<sup>4</sup>. Consequent to the appellant stepping into the shoes of DESU in 2002, the DESU was substituted by the appellant as a respondent in the said writ petition.

4. By order dated 12 August 2013, WP (C) 3069/1999 was disposed of, by this Court, by setting aside the order dated 12 August

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<sup>1</sup> “DESU”, hereinafter

<sup>2</sup> “IO”, hereinafter

<sup>3</sup> “DA”, hereinafter

<sup>4</sup> **D.P. Sharma v DVB**



1998 and directing the DA to issue, to the respondent, a fresh show cause notice as to why the inquiry report be not set aside for the reasons contained therein. The respondent was directed to respond to the said show cause notice, whereafter the DA was required to pass a speaking order, to be communicated to the respondent.

5. Much after the time granted by this Court for completion of the above process, a show cause notice dated 12 September 2014 was issued to the respondent by the DA, followed by show cause notices dated 17 November 2014, 24 April 2015 and 13 May 2015. Ultimately, by order dated 8 June 2015, the DA once again confirmed, against the respondent, the punishment earlier imposed by the order dated 11 February 1999.

6. In the interregnum, on 31 December 2003, the respondent voluntarily retired from the services of the appellant by availing the Special Voluntary Retirement Scheme<sup>5</sup> of the appellant at the time of availing the SVRS, the respondent tendered the following undertaking:

“APPLICATION FOR RETIREMENT UNDER BSES  
SPECIAL VOLUNTARY RETIREMENT SCHEME (SVRS)  
NZD 101

Addl. Vice President (HR)  
BSES Rajdhani Power Ltd.  
Nehru Place  
New Delhi - 110019

(Through Proper Channel)

Dear Sir,

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<sup>5</sup> “SVRS” hereinafter



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With reference to the circular No.SVRS-001 dated 18.12.03. I hereby apply for retirement BSES SVRS. My personal service particulars are as given hereunder:

1. Name, Emp. No. and Designation  
D.P.SHARMA  
S/o K. K. Sharma E.No. 17068-20 M R
2. Department & Section M S R SECTION NZD
3. Date of Birth & age 23-7-1951
4. Date of regular Appointment 3 OCT 1974
5. Total Period of Service 28 YEARS
6. Basic Pay & DA Rs. 6600 + DA 3894=00  
-SD- -SD-

Declaration/ Undertaking [Higher time scale under process since Oct 2003]APO(B)/AFO(A)S

1. I hereby declare that I have gone through the conditions of SVRS and have fully understood the same and undertake to fully abide by all terms and conditions of the referred scheme.
2. I understand that for calculation purpose, for benefits under SVRS, my salary as on 31.12.2003 shall be taken as last salary drawn.
3. I also understand that I shall not be eligible for re-employment, reengagement in BRPL or any of the Joint venture or subsidiaries.
4. I hereby undertake that I shall not withdraw my application for retirement under SVRS without the approval of the Competent Authority. I also understand that the application cannot be withdrawn on acceptance of the same by Competent Authority. I also request for the waive-off of the notice period.

I request that my application for voluntary retirement may be considered favorably and on acceptance of the same, my dues be settled at the earliest in line with the rules under the SVRS.

D.P. SHARMA”

7. The respondent challenged the order dated 8 June 2015, passed by the appellant, by way of appeal, which was rejected by the appellate authority on 29 February 2016. The said order was challenged before this Court by way of WP (C) 8489/2016, in which



the presently impugned order has come to be passed.

**8.** Among the contentions advanced by the appellant before the learned Single Judge, while opposing the respondent's writ petition, was the plea that, having availed SVRS, without any protest or demur, all past claims of the respondent stood washed away, as there was total severance of employee-employer relationship between the respondent and the appellant. Having accepted the lump sum compensation available under the SVRS, it was contended that the respondent could not now seek any further monetary benefits, including the benefits which would accrue to him, were the punishment imposed on him to be set aside.

**9.** By the impugned judgment dated 13 August 2019, the learned Single Judge has set aside the show cause notices issued to the respondent as well as the orders dated 8 June 2015 and 29 February 2016, whereby the respondent was imposed punishment and the appeal against the punishment was rejected. There is, however, in the impugned judgment, no finding on the appellant's submission that, having availed VRS, the respondent could not now claim any financial benefit, which would otherwise have accrued to the respondent consequent on setting aside of the order against the punishment on him.

**10.** Aggrieved by the judgment dated 13 August 2019 of the learned Single Judge, the appellant is before us in appeal.

### **Rival Contentions**



**11.** We have heard Mr. Sandeep Prabhakar, learned Counsel for the appellant and Mr. Anuj Aggarwal, learned Counsel for the respondent.

**12.** Mr. Prabhakar restricted his submission to one sole ground, which was that, having taken voluntary retirement under the SVRS, all past claims of the respondent stood extinguished. Mr. Prabhakar has drawn our attention to Clause 1.2, 2.1 and its sub-clauses 2.1.1, 2.1.2, 5.3 and 9.1 of the SVRS, which read thus:

“1.2 Any eligible employee of BRPL as at Clause 1.1 above may seek special voluntary retirement under this SVRS, by making a request in writing to the Competent Authority in the standard format enclosed herewith, within the lime limit prescribed.

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2.1 An employee, whose application for special voluntary retirement under this SVRS: 03 is accepted, will be entitled to compensation as under:

2.1.1 60 days Salary (Basic Pay plus Dearness Allowance as applicable on 31.12.2003) for each completed year of service.

OR

2.1.2 The monthly salary (Basic Pay plus Dearness Allowance as applicable on 31.12.2003) multiplied by balance months of service left before normal date of retirement.

Whichever is lower of Clause 2.1.1 or 2.1.2

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5.3 The actual Basic pay & DA 'drawn' by the employee as on 31 December 2003, shall be taken into account for calculating the compensation.

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9.1 The eligible employee who wishes to opt for voluntary retirement under this scheme shall apply for the same during the currency of the scheme in the prescribed format Application for voluntary retirement scheme from interested employees will be received in the office of their respective Asstt. Personnel Officer (Billing) - APO(B). The respective authority after checking the eligibility and other terms and conditions of SVRS. Sufficient copies of the standard application form to apply under SVRS have been provided at all District, APO(B) & Circle Offices.”

13. Mr. Prabhakar also relies on Clause 2 of the declaration/undertaking given by the respondent at the time of availing voluntary retirement and reproduced in para 6 *supra*, in which the respondent clearly undertook that his salary as on 31 December 2003 would be taken as a last salary drawn. That salary, as per the same undertaking, was reflected as “Rs. 6600 + DA 3894=00” which was after taking into account the penalty imposed on the respondent. Thus, having availed voluntary retirement under the SVRS on the basis of the salary computed after taking into account the penalty imposed on the respondent by the DA, the respondent could not now seek upward enhancement of his pay-scale, which would be the consequence if the order of punishment dated 8 June 2015 were to be set aside.

14. Mr. Prabhakar placed reliance, in this context, on the judgment of the Supreme Court in *A.K. Bindal v UOI*<sup>6</sup>. He also places reliance on the judgments of the Supreme Court in *Bank of India v O.P. Swarnakar*<sup>7</sup>, *IFCI Ltd v Sanjay Behari*<sup>8</sup> and *Maharashtra State Financial Corporation Ex-Employees Association v State of*

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<sup>6</sup> (2003) 5 SCC 163

<sup>7</sup> (2003) 2 SCC 721

<sup>8</sup> (2020) 18 SCC 511



*Maharashtra*<sup>9</sup> as well as the judgment of the Division Bench of this Court in *M S Gahlot v BSES Rajdhani Power Ltd*<sup>10</sup>.

15. Responding to Mr. Prabhakar's submissions, Mr. Anuj Aggarwal, learned Counsel for the respondent, submits that the decision in *A K Bindal* was subsequently clarified in *A Satyanarayana Reddy v Presiding Officer, Labour Court*<sup>11</sup>. *Satyanarayana Reddy*, he, submits, clearly, holds that only such claims as are specifically covered in the language of the VRS would be extinguished by its availment. In that case, the Supreme Court held that, as the claim relating to lay-off compensation payable to the appellant-workman was not covered in the VRS, the right to avail the said compensation was not extinguished, merely because of availing the VRS.

16. Mr. Aggarwal also cites the decision of a learned Single Judge of this Court in *P N Saluja v SBI*<sup>12</sup>.

17. Mr. Aggarwal has also taken exception to the appellant having raised the contention that the respondent had taken voluntary retirement under the SVRS for the first time in the arguments advanced before the learned Single Judge, never having taken this plea at the time when WP (C) 3069/1999 was disposed of by this Court on 12 August 2013 or even before the learned Single Judge by way of response to the said writ petition or the subsequent writ petition WP

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<sup>9</sup> (2023) 11 SCC 186

<sup>10</sup> Judgment dated 2 November 2022 in LPA 54/2018

<sup>11</sup> (2016) 9 SCC 462

<sup>12</sup> 2015 SCC OnLine Del 13165



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(C) 8489/2016 which has come to be allowed by the impugned order.

**18.** *Qua* the plea of the respondent that the submission regarding the respondent having taken voluntary retirement under the SVRS has been urged by the appellant belatedly, Mr. Prabhakar submits that, as the plea is purely one of law, it can be taken at any time.

**19.** On this aspect, I am inclined to entertain the submission of Mr. Prabhakar on merits, and not to non-suit him on the ground that the plea of the respondent having voluntary retirement under the SVRS was not taken earlier.

***A.K. Bindal***

**20.** The petitioners before the Supreme Court in this case were officers of the Fertilizer Corporation of India and the Hindustan Fertilizer Corporation. They are collectively referred to by the appellation “Bindal”.

**21.** Bindal filed a writ petition before this Court assailing a Memorandum dated 19 July 1995 issued by the Department of Public Enterprises, Ministry of Industries, Government of India. Additionally, it was prayed that the respondents (before the Supreme Court) be directed to pay, to Bindal, interim relief of at least 60% of the revised pay and perks given to Bindals’ counterparts, pending decision in the writ petition. Among the reliefs that Bindal sought was fair wages resulting from revision of the petitioners’ pay scale.



22. In para 18 of the report, the Supreme Court rejected the petitioners' contention that their fundamental rights had been violated on account of the failure, on the part of the respondents, to revise their pay scales in 1992. These aspects of the decision in *A.K. Bindal* are not of particular relevance to the controversy at hand.

23. What is of relevance, however, is the discussion in the report commencing from para 27, which takes note of a "subsequent development which has a serious impact on the relief claimed by the petitioners". This subsequent development pertained to a scheme announced by the Government in October 1998, whereby employees of Central Public Sector Undertakings could take voluntary retirement. The scheme was subsequently liberalised on 5 May 2000 and 6 November 2001. The respondents before the Supreme Court contended that, as Bindal had taken advantage of the VRS and accepted the *ex gratia* payment available thereunder, without any demur, no relationship of employer and employee continued to exist between Bindal and FCI. As such, it was contended that Bindal could not seek any retrospective revision of pay scale, at that stage. The writ petitions filed by Bindal and his associates were, therefore, alleged to have become infructuous.

24. Noting the fact that considerable *ex gratia* payment was disbursed to employees who availed the VRS, the Supreme Court dealt with the above issue, in paras 34 and 35 of the report thus :

"34. This shows that a considerable amount is to be paid to an employee *ex-gratia* besides the terminal benefits in case he opts for voluntary retirement under the Scheme and his option is accepted.



The amount is paid not for doing any work or rendering any service. It is paid in lieu of the employee himself leaving the services of the company or the industrial establishment and foregoing all his claims or rights in the same. It is a package deal of give and take. That is why in the business world it is known as "golden handshake". The main purpose of paying this amount is to bring about a complete cessation of the jural relationship between the employer and the employee. After the amount is paid and the employee ceases to be under the employment of the company or the undertaking, he leaves with all his rights and there is no question of his again agitating for any kind of his past rights with his erstwhile employer including making any claim with regard to enhancement of pay scale for an earlier period. If the employee is still permitted to raise a grievance regarding enhancement of pay scale from a retrospective date, even after he has opted for Voluntary Retirement Scheme and has accepted the amount paid to him, the whole purpose of introducing the Scheme would be totally frustrated.

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

25. Thus, in *A.K. Bindal*, the Supreme Court held that *ex gratia* payment disbursed to the employee, who availed the VRS was in lieu of leaving the services of the industrial establishment and foregoing all claims and rights therein. It was a package deal which, in the business world, is also known as a “golden handshake”. The concerned employee, therefore, left with all his existing rights. The Supreme Court held that having availed VRS and accepted payment thereunder, there was no question of the employee again agitating for



any of his past rights with his erstwhile employer, including any claim for enhancement of pay scales. The Supreme Court observed that if the employee was to be permitted to agitate for enhancement of pay scale from a date prior to his availing VRS, the whole purpose of introducing the VRS would be frustrated.

### ***A Satyanarayana Reddy***

26. Mr. Aggarwal, appearing for the respondent, pressed into service the subsequent judgment of the Supreme Court in ***A Satyanarayana Reddy*** to counter balance Mr. Prabhakar's reliance on ***A.K. Bindal***.

27. In ***A. Satyanarayana Reddy***, the Supreme Court was concerned with the interplay of the VRS framed by the State of Andhra Pradesh *vis-à-vis* Section 33C(2)<sup>13</sup> of the Industrial Disputes Act, 1947<sup>14</sup>. The Division Bench of the High Court, in the judgment under challenge before the Supreme Court, affirmed the decision of a learned Single Judge, to the effect that once the workmen had availed the VRS and received the special compensation package available thereunder, they could not claim lay off compensation under Section 33C(2) of the ID Act. When the matter travelled to the Supreme Court, a Bench of two Hon'ble Judges was of the opinion that, as a discordant note appear to

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<sup>13</sup> (2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months:

Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.

<sup>14</sup> "the ID Act", hereinafter



have been struck between *National Building Construction Corporation v. Pritam Singh Gill*<sup>15</sup> and *A K Bindal*, the matter was required to be referred to a larger Bench. It was thus that the matter was referred to a Bench of three Hon'ble Judges, which rendered the decision under reference.

28. While referring the issue to the Larger Bench, the two Judge Bench, in its decision in *A. Satyanarayana Reddy v. Labour Court*<sup>16</sup> observed thus:

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

29. A Satyanarayana Reddy and other appellants before the Supreme Court, who would collectively be referred to, hereinafter, as “ASR”, were employees of Nagarjuna Cooperative Sugars Limited<sup>17</sup>. NSCL declared lay off of several of its employees against payment of lay off compensation.

30. The Employees Union of NSCL filed a writ petition in the High Court of Andhra Pradesh, claiming that lay off compensation had not been paid for the entire period for which they were entitled to be so paid. During the pendency of the writ petition, NSCL was transferred

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<sup>15</sup> 1972 2 SCC 1

<sup>16</sup> 2008 5 SCC 280

<sup>17</sup> “NSCL”, hereinafter



to one SCM Sugars Limited<sup>18</sup>. SCMSL absorbed some of the workmen. Of the absorbed employees, lay off compensation was paid to some employees and not to others.

**31.** On 21 May 2001, the Government of Andhra Pradesh issued an Office Memorandum<sup>19</sup> whereby the workmen of a company were entitled to compensation in the event of their not having opted for employment with the transferee company. ASR opted for voluntary retirement and was paid special compensation in terms of the VRS.

**32.** As the VRS did not provide for payment of lay off compensation, ASR moved the High Court under Article 226 of the Constitution, seeking payment of lay off compensation. The transferee company resisted the writ petition, urging that as the workmen had accepted the benefits under VRS and there was cessation of employer-employee relationship, the writ petition was not maintainable and the workmen were not entitled to any relief.

**33.** The High Court relegated the workmen to the Industrial Tribunal, before whom the workmen filed a petition under Section 33C(2), claiming lay off compensation. The Labour Court dismissed the application as not maintainable holding that, having received all benefits under the VRS, the workmen were no longer “workmen” within the meaning of Section 2(s)<sup>20</sup> of the ID Act. Aggrieved thereby,

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<sup>18</sup> “SCMSL”, hereinafter

<sup>19</sup> “OM”, hereinafter

<sup>20</sup> (s) ‘workman’ means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled technical, sales promotion, operational, clerical or supervisory work or any work for the promotion of sales for hire or reward, whether the terms of employment be expressed or implied, and for the purposes of any proceeding 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



the workmen filed a writ petition in the High Court. A learned Single Judge of the High Court upheld the decision of the Labour Court. The decision of the learned Single Judge was affirmed by the Division Bench in writ appeal. The Single Judge and the Division Bench followed the decision in *A.K. Bindal*. The workmen appealed to the Supreme Court. As already noted, the matter was placed before a Bench of two Hon'ble Judges, who referred it to a Larger Bench of three Hon'ble Judges.

**34.** Para 9 of the report in *A. Satyanarayana Reddy* notes and discusses the decision in *A.K. Bindal*.

**35.** The Supreme Court observed that, in *Pritam Singh Gill*, it had been held that a claim for unpaid suspension allowance could be agitated under Section 33C (2) of the ID Act even after the employee had been dismissed from service. The controversy in *A.K. Bindal*, it was noted, was different. *A.K. Bindal* held that, having accepted the VRS and availed benefits thereunder, an employee could not claim higher wages. If the VRS had also covered lay-off compensation, the workman could not have thereafter staked a claim in that regard, as lay-off compensation would have also covered the amount received by the workman under the VRS. Thus, it was held that the controversy that arose in *Pritam Singh Gill* and in *A.K. Bindal* were different, and

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whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (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 a 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, functions mainly of a managerial nature.



there was no conflict between the said decisions. Paras 17 and 18 of the report thereafter went on to hold thus:

“17. We think it appropriate to say that though there is cessation of relationship between the employee and the employer in VRS but if it does not cover the past dues like lay-off compensation, subsistence allowance, etc., the workman would be entitled to approach the Labour Court under Section 33C(2) of the Act. If it is specifically covered, or the language of VRS would show that it covers the claim under the scheme, no forum will have any jurisdiction.

18. With the aforesaid clarification, we would have directed to list the matter before the two-Judge Bench. It is not so required. It is noticeable that the claim relating to lay-off compensation is not covered in VRS. The Labour Court, the learned Single Judge and the Division Bench have declined to entertain the claim on the ground that they had no jurisdiction to adjudicate the controversy. We have already held that the claim pertaining to lay-off compensation having not been part of VRS, the Labour Court has jurisdiction to adjudicate under Section 33C(2) of the Act. Therefore, we set aside the judgment and order of the High Court and that of the Labour Court.”

**36.** Thus, even while holding that avilment of the VRS resulted in cessation of employer-employee relationship, the Supreme Court held that, if the VRS did not cover past dues like lay-off compensation, subsistence allowance etc., the workman could approach the Labour Court in respect of the said dues under Section 33C (2) of the ID Act. On the other hand, if the VRS covered lay-off compensation, no forum would have any jurisdiction to grant the said amount, once VRS have been availed by the employee.

**37.** Inasmuch as lay-off compensation was factually not covered in the VRS, the Supreme Court held that the Labour Court had jurisdiction to adjudicate on the entitlement of the workman to lay-off compensation under Section 33C (2). The decision of the High Court



and the Labour Court were, therefore, set aside, and the appeal was allowed.

### Other Decisions Cited

**38.** Mr. Prabhakar also cited *Bank of India, IFCI, M S Gahlot* and *Maharashtra State Financial Corporation Ex-Employee Association*.

**39.** *O.P. Swarnakar* dealt with an entirely different controversy, viz. the right of an employee to withdraw an option for availing VRS under the “Employees Voluntary Retirement Scheme” of the State Bank of India and other Banks. The decision does not contain any authoritative declaration of the law regarding the entitlement of a person, who had availed the VRS and left the employment of the employer on that basis, to subsequently claim emoluments or financial benefits relating to a period prior to the cessation of employment.

### **40. IFCI**

**40.1** *IFCI* involved 31 employees of the Industrial Finance Corporation of India Ltd<sup>21</sup>, who availed voluntary retirement and were accordingly relieved from duty on 25 February 2008 after having been paid all the benefits available under the VRS. The pay scales of the posts held by the employees were subsequently revised with retrospective effect, dating back to a period prior to the employees

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<sup>21</sup> “IFCI”, hereinafter



availing the VRS. The employees contended that they would be entitled to the benefit of the revised pay scales and, accordingly, to enhanced pension.

**40.2** The Supreme Court was concerned with whether they were entitled to do so.

**40.3** The relevant clause of the VRS, applicable in the said case, was reproduced in para 8 of the report thus:

“8.7. The benefits payable under this Scheme shall be in full and final settlement of all claims of whatsoever nature, whether arising under the Scheme or otherwise to the officer (or to his nominee in case of death). An officer who voluntarily retired under this Scheme will not have any claim against IFCI of whatsoever nature and no demand or dispute will be raised by him or on his behalf, whether for re-employment or compensation or back wages.”

**40.4** The Supreme Court noted that, while Clause 8.7 of the VRS barred any further claim being raised against IFCI by an employee who had availed the VRS, a subsequent clarification issued on 4 January 2001 extended the benefit of future pay revision to VRS optees. The said clarification read thus:

“2. Certain queries have been received relating to the said Scheme. Accordingly, the following clarifications are issued for information of all concerned:

- (i) In regard to Para 8.7 of the Scheme, it is clarified that the officers, opting for voluntary retirement under the above Scheme, will be entitled to receive the benefit of revision in pay scales in respect of arrears of pay and allowances, gratuity, leave encashment, pension/Provident Fund, pursuant to pay revision. However, there will be no change in the voluntary retirement amount, in terms of Para 7.5 of the Scheme.



**40.5** Another VRS was floated on 1 February 2008 which is referred to, in the judgment as the “VRS-2008”. Clause 7.2 of the VRS 2008 extended, to optees thereunder, the benefit of pension as per the IFCI Pension Regulations. Clause 9.4, however, read thus:

“9.4. The benefits payable under the Scheme shall be in full and final settlement of all claims whatsoever, whether arising under the Scheme or otherwise to the employee (or to his nominee in case of death). An employee, who is voluntarily retired under the Scheme, will not have any claim against IFCI whatsoever and no demand or dispute will be raised by him or on his behalf whether for re-employment or compensation or back wages.”

**40.6** Thus, in para 13 of the report, the Supreme Court observed that the VRS-2008 envisaged full and final settlement of all claims, while retaining the entitlement to benefit of pension under the IFCI Pension Regulations.

**40.7** There was a subsequent upward revision of pay scales in the IFCI, implemented w.e.f. 1 November 2013. The respondents before the Supreme Court claimed the benefit of the said pay revision from the IFCI. The claim was rejected by the IFCI, relying on Clauses 9.4 and 9.12 of the VRS-2008. The respondents, thereupon, moved the High Court by way of a writ proceeding. The writ petition was dismissed by a learned Single Judge. The respondents filed a Letters Patent Appeal which was allowed by the Division Bench, holding that, as the revised pay scale had been made applicable from 2007, when the private respondents were still in service, they were entitled to its benefit.



**40.8** The Supreme Court, in further appeal, observed that there could be no quibble with the fundamental principle that any VRS scheme was a package deal, to which nothing could be added or subtracted, nor any concession granted which the scheme did not envisage. The clauses of the scheme were, therefore, required to be scrupulously followed. The VRS optees would be entitled only to the benefits which the VRS itself expressly provided.

**40.9** The Supreme Court thereafter referred to *A.K. Bindal* and proceeded to hold thus:

‘25. The Union of India moved an application for clarification/modification of the above order which was heard on 18-8-2000 and the following order was passed:

“Having heard learned Solicitor-General, for the applicant Union of India and learned Senior Counsel Mr Sanyal, for the contesting respondents, purely as an ad hoc measure and without prejudice to the rights and contentions of the parties in the main matter, we deem it fit in the interest of justice to modify our order dated 19-4-2000 to the following effect:

(i) The authorities shall pay as an ad hoc measure and on account Rs 1500 to Class I employees; Rs 1000 to Class II employees; Rs 750 to Class III employees and Rs 500 to Class IV employees consisting of various categories in each of the classes, per month with effect from 1-4-2000. This payment will be without prejudice to the rights and contentions of the parties in the pending matters.

(ii) We make it clear that this order will not affect whatever payment by way of HRA is being released or was released by the authorities to the employees concerned.

(iii) The direction that payments as earlier issued by us on 19-4-2000 will stand modified by the present order.



(iv) According to this order, all arrears with effect from 1-4-2000 to 31-7-2000 will be cleared within ten weeks from today and the current payment be made with effect from 1-8-2000 along with the salary payable for the month of August 2000.

(v) Future payments shall accordingly be made from month to month regularly along with usual salaries payable to them.

This order is passed purely as an ad hoc measure and will not come in the way of the ultimate decision of this Court. This order will also not be treated as a precedent in any matter in view of the special facts of the present case. We express no opinion about the nature of the order passed by the learned Single Judge of the High Court. That question will abide by the decision in the main matter. In view of the present order, IAs are disposed of.”

**40.10** Following the said decision, the Supreme Court held that the respondents before it could not claim the benefit of the revised pay scales even if they were applied retrospectively from a period prior to the respondents availing the VRS.

**41. *Maharashtra State Financial Corporation Ex-Employee Association*** merely held that VRS optees could not claim parity with others, who had retired upon achieving the age of superannuation. They were not, therefore, entitled to the benefit of pay revision to which such superannuated employees would be entitled. Paras 40 and 41 of the report in that case may be reproduced:

“40. However, in the opinion of this Court, employees who secured VRS benefits and left the service of MSFC voluntarily during this period, stand on a different footing. They cannot claim parity with those who worked continuously, discharged their functions, and thereafter superannuated. VRS employees chose to opt and leave the service of the Corporation; they found the VRS



offer beneficial to them. Apart from the normal terminal benefits they were entitled to, the additional amount each of them was given — was an *ex gratia* amount, equal to a month's salary for each completed year of service. Other retired employees were never given such amounts. This has been emphasised in **A.K. Bindal v Union of India**:

“33. The Voluntary Retirement Scheme (VRS) which is sometimes called Voluntary Separation Scheme (VSS) is introduced by companies and industrial establishments in order to reduce the surplus staff and to bring in financial efficiency. The office memorandum dated 5-5-2000 issued by the Government of India provided that for sick and unviable units, the VRS package of the Department of Heavy Industry will be adopted. Under this Scheme an employee is entitled to an *ex gratia* payment equivalent to 45 days' emoluments (pay + DA) for each completed year of service or the monthly emoluments at the time of retirement multiplied by the balance months of service left before the normal date of retirement, whichever is less. This is in addition to terminal benefits. The Government was conscious about the fact that the pay scales of some of the PSUs had not been revised with effect from 1-1-1992 and therefore it has provided adequate compensation in that regard in the second VRS which was announced for all Central public sector undertakings on 6-11-2001. Clause (a) of the Scheme reads as under:

- (a) Ex gratia payment in respect of employees on pay scales at 1-1-1987 and 1-1-1992 levels, computed on their existing pay scales in accordance with the extant Scheme, shall be increased by 100% and 50% respectively.

34. This shows that a considerable amount is to be paid to an employee *ex gratia* besides the terminal benefits in case he opts for voluntary retirement under the Scheme and his option is accepted. The amount is paid not for doing any work or rendering any service. It is paid in lieu of the employee himself leaving the services of the company or the industrial establishment and foregoing all his claims or rights in the same. It is a package deal of give and take. That is why in the business world it is known as “golden handshake”. The main purpose of paying this amount is to bring about a complete cessation of the jural relationship between the employer and the employee. After the amount is paid and the employee ceases to be under the employment of the company or the undertaking, he leaves



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

41. For the above reasons, it is held that VRS employees cannot claim parity with others who retired upon achieving the age of superannuation. Likewise, those who ceased to be in employment, for the reason of termination, or their dismissal, etc. would not be entitled to the benefit of pay revision.”

### The Sequitur

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

43. In the present case, the last salary drawn by the respondent was specifically entered, in the form under which the respondent applied for VRS, as ₹ 6600+DA 3894/-. This was the reduced pay scale to which the respondent was entitled consequent on implementation of



the punishment awarded to him by the punishment order dated 2 September 1997. Clause 2 of the declaration/undertaking provided by the respondent while availing the VRS specifically noted that, for calculation of benefits under the VRS, the respondent's salary, as on 31 December 2003, would be the last salary drawn. This salary, in the VRS, was the reduced salary after implementation of the punishment imposed on the respondent.

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

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

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



pay scale to which the respondent was entitled was, to repeat, an integral part of the SVRS package.

**47.** Having opted for the SVRS package, therefore, the respondent cannot have, at a later stage, claim any financial benefit on the basis of the impugned judgment of the learned Single Judge. The SVRS, and the benefits availed by the respondent thereunder, constituted a package deal. Elements which formed part of the package could not, thereafter, be retrospectively varied.

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

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



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favour.

**50.** The appeal stands allowed accordingly with no order as to costs.

**C.HARI SHANKAR, J.**

**DR. SUDHIR KUMAR JAIN, J.**

**OCTOBER 4, 2024**

*Dsn/yg/aky*

*Click here to check corrigendum, if any*