

(2014) 05 DEL CK 0204

In the Delhi High Court

Case No : LPA 786/2013 & CMs 16643/2013, 5110-5112/2014

P.P. Vaidya and Others

APPELLANT

Vs

IFCI Ltd. and Others

RESPONDENT

Date of Decision : 06-05-2014

Acts Referred:

Constitution of India, 1950 — Article 12, 14
Industrial Disputes Act, 1947 — Section 33C, 33C(2)

Citation : (2014) 209 DLT 628 : (2014) 2 ESC 1084 : (2014) 2 LLJ 721

Hon'ble Judges : P.K. Bhasin, J;J.R. Midha, J

Bench : Division Bench

Advocate : Vishnu Mehra and Ms. Sakshi Mittal, Advocate for the Appellant;
Dinkar Singh, Advocate for the Respondent

Judgement

J.R. Midha, J.—The appellants are the erstwhile officers of the respondent who opted for voluntary retirement under the Voluntary Retirement Scheme-2008 dated 1st February, 2008 (hereinafter referred to as "VR Scheme") on 25th February, 2008.

2. On 19th February, 2011, i.e. almost three years of taking voluntary retirement, the appellants filed the writ petition to claim an incentive under Scheme of Performance Linked Incentive (hereinafter referred to as "SPLI") for the financial year 2007-08 which was dismissed by the learned Single Judge and is under challenge in this appeal.

Factual matrix

3. The salient features of VR Scheme of the respondent are as under:-

3.1. The employees are entitled to the benefits mentioned in Clause 7 only.

3.2. SPLI is not mentioned in Clause 7 of VR Scheme.

3.3. Clause 7.7 clarifies that no other benefit shall be available to the employees opting for voluntary retirement under the VR Scheme.

3.4. Clause 9.4 further specifies that the benefits payable under the VR Scheme shall be in full and final settlement of all claims whatsoever arising under the Scheme or otherwise and the employee will not have any claim whatsoever against the respondent and no demand or dispute will be raised by him whether for re-employment or compensation or back wages.

3.5. Clause 9.12 further clarifies that there will be no revision of the voluntary retirement amount on account of pay revision or any other account in future.

3.6. Clause 9.13 further clarifies that the VR Scheme is not negotiable.

4. The relevant clauses of the VR Scheme are reproduced hereunder:-

7. Benefits Under The Scheme

An employee, whose application for voluntary retirement is accepted, shall be entitled to the following:-

7.1 The balance in Provident Fund Account of the employee, payable as per the IFCI Employees' Provident Fund Regulations.

7.2 (i) Pension as per the IFCI Pension Regulations to those employees who have already opted for pension.

(ii) Pension as per the IFCI Pension Regulations to employees (in case they are not pension optees) who opt for VRS and seek pensionary benefits in lieu of contributor Provident Fund.

7.3 Payment of lumpsum amount equivalent to Pay plus allowances for the unavailed Ordinary Leave, as on the date of relieving on voluntary retirement subject to a maximum of ten months, as per rules of the IFCI.

7.4 Gratuity as admissible under the Rules of the IFCI.

7.5 Voluntary retirement amount equivalent to two months salary for each completed year of service rendered or the monthly salary at the time of relieving on voluntary retirement multiplied by the balance complete calendar months of service left or Rs. 15 lakhs whichever is less. Service rendered by an employee prior to joining the service of the IFCI shall not be reckoned for the purpose of calculating the voluntary retirement amount (Fraction of service of six months and above will be reckoned as one year and fraction of service of less than six months will be ignored for the purpose of calculating years of service rendered in IFCI).

7.6 Retirement Fare Concession on the same basis as applicable on normal retirement.

7.7 No other benefit, including the post retirement medical benefits under the Voluntary Welfare Scheme and Medical Scheme of the IFCI shall be available to the employee opting for Voluntary Retirement under the Scheme. The total amount, without interest, contributed by an employee under IFCI Voluntary

Welfare Scheme shall be refunded to him.

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 the IFCI whatsoever and no demand or dispute will be raised by him or on his behalf, whether for re-employment or compensation or back wages.

9.12 There will be no revision in the Voluntary Retirement amount on account of pay revision or any other account in future.

9.13 As the scheme is voluntary, it shall not be negotiable and shall not be deemed or construed as a subject matter of right or contract of service. It will not be a subject matter of any industrial dispute under the provisions of the Industrial Disputes Act, 1957 and shall not be cited as a precedent, custom, convention, usage or practice and time in future.

(Emphasis supplied)

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

I have read the contents of HR Circular No. 1/2008 dated February 1, 2008, and the Scheme attached thereto and hereby indicate my willingness to retire from the services of IFCI, under the "IFCI Voluntary Retirement Scheme-2008 (Scheme)".

1. My decision to retire from the services is voluntary. I undertake to abide by the terms and conditions of the Scheme, unconditionally and irrevocably....

xxx

9. I admit and undertake that, on account of my voluntary retirement from IFCI under the Scheme. I have no further claims and/or rights on IFCI, except for the payment of benefits under the Scheme.

xxx

11. I am aware that, in case of dispute as to the interpretation of any of the terms and conditions of the Scheme, the decision of CEO & MD, IFCI shall be final and binding on me.

(Emphasis supplied)

6. The learned Single Judge dismissed the writ petition on various grounds inter alia that the appellants are not entitled to the SPLI as Clause 7 of the VR Scheme

clearly specifies the benefits to which the appellants are entitled; Clause 9.4 clearly provides the benefits under the VR Scheme to be in full and final settlement of all claims whatsoever whether arising under the Scheme or otherwise to the employees; jural relationship between the employer and employee ceased on acceptance of the VR Scheme and the employees are not entitled to make any claim as held by the Supreme Court in A.K. Bindal and Another Vs. Union of India (UOI) and Others, .

Submissions of the appellants

7. The learned counsel for the appellants has urged the following grounds at the time of hearing of this appeal:-

7.1. The SPLI for the financial year 2007-08 is part of the salary which was not surrendered by the appellants by opting for the VR Scheme.

7.2. The SPLI had accrued before the announcement of VR Scheme in terms of circular dated 9th August, 2007 and cannot be taken away by the respondent.

7.3. SPLI for the financial year 2007-08 had to be worked out after 1st April, 2008 and was payable in four equal quarterly instalments during the financial year 2008-09 i.e. in June, September and December, 2008 and March, 2009 and therefore, the said amount had not become payable at the time of voluntary retirement of the appellants on 25th February, 2008.

7.4. SPLI has not been included in Clause 7 of the VR Scheme because VR Scheme was applicable to both officers as well as workmen whereas SPLI was payable only to the executive cadre of the respondent.

7.5. The VR Scheme does not exclude payment of SPLI.

7.6. The appellants demanded SPLI vide legal notice dated 28th January, 2010 which was not responded by the respondent.

7.7. The respondent has made provision for payment of SPLI to the VR Scheme optees in their books of accounts.

7.8. The appellants have paid the SPLI amount to the officers who had not taken VR Scheme which is discriminatory under Article 14 of the Constitution.

7.9. The judgment of A.K. Bindal (supra) is distinguishable and not applicable to the present case.

7.10. Reliance was placed on UCO Bank and Others Vs. Sanwar Mal, , Bank of India and Another Vs. K. Mohandas and Others, and A. Satyanarayana Reddy and Others Vs. The Presiding Officer, Labour Court, Guntur and Others, .

Submissions of the respondent

8. The learned counsel for the respondent made the following submissions at the time of hearing of this appeal:-

8.1. The respondent introduced VR Scheme to restructure its manpower to sustain itself in high competitive business environment.

8.2. Voluntary Retirement Scheme is an invitation to an offer. Employees are invited to make an offer after self analysis of the terms and conditions of the VR Scheme. Once offer is made and accepted, it results in a concluded contract under the Contract Act.

8.3. Both the parties to the contract i.e. the appellants as a proposer/offerer and the respondent as an acceptor were at consensus ad idem on the issue that the payment under the VR Scheme as mentioned in Clause 7 was towards full and final settlement of all claims against the respondent.

8.4. The appellants were well aware that the benefits under the VR Scheme as mentioned in clause 7 of the VR Scheme, were in full and final settlement of all their claims whatsoever whether arising under the Scheme or otherwise. The appellants have also, in their offer letter, acknowledged this fact by admitting and giving an undertaking that they have no further claims and/or rights against the respondent except for the payment under the VR Scheme.

8.5. The appellants, after examining the terms and conditions, took conscious decision to make an offer for taking Voluntary Retirement under the VR Scheme which was duly accepted by the competent authority whereupon the appellants were relieved w.e.f. 25th February, 2008.

8.6. Once a contract is concluded and both the parties to the contract were consensus ad idem on the issue that the payment under VR Scheme was towards full and final settlement of all the claims then the appellants have no reason to have a legitimate expectation against the respondent.

8.7. The appellants, after receipt of all their dues/benefits as it is stipulated in clause 7 of the VR Scheme cannot raise any further claim against the respondent.

8.8. On conjoint reading of clause 7.7 and 9.4 of the VR Scheme read with clause 9 of the offer, the appellants have no legal right for any other kind of benefits/claim against the respondent except what is mentioned in clause 7 of the VR Scheme. The appellants therefore, have no right to claim SPLI.

8.9. The writ petition suffered from delay and laches as the contract was concluded on 25th February, 2008 and the appellants invoked writ jurisdiction of this Court on 19th February, 2011.

Whether the appellants can maintain a claim after accepting the voluntary retirement under the VR Scheme and receiving payment under it?

9. In A.K. Bindal and Another Vs. Union of India (UOI) and Others, , the erstwhile employees of Fertilizer Corporation of India and Hindustan Fertilizer Corporation filed writ petitions before this Court for revision of pay scale, after opting the Voluntary Retirement Scheme. The writ petitions were later transferred to the Supreme Court. The Supreme Court dismissed the petitions

holding that the VRS resulted in complete cessation of jural relationship between the employer and the employees, and the employees cannot thereafter agitate for any kind of their past rights including any claim with respect to the enhancement of the pay scale. The Supreme Court further held that the whole purpose of the VRS would be frustrated if the employee is permitted to raise a grievance regarding enhancement of the pay scale after opting for VRS. The relevant portion of the said judgment is reproduced hereunder:-

28.... Learned counsel has submitted that the employees of both the Companies having taken advantage of VRS and having taken the amount without any demur, the relationship of employer and employee had ceased to exist. They cannot therefore raise any grievance regarding the non-revision of pay scale at this stage and consequently the writ petitions have become infructuous. Even Shri A.K. Bindal who filed the writ petition in his capacity as the President of the Federation of Officers' Association had also taken voluntary retirement and after acceptance of the amount had left the Company and had gone out.

32....The employees accepted VRS with their eyes open without making any kind of protest regarding their past rights...

33. The Voluntary Retirement Scheme (VRS) which is sometimes called Voluntary Separation Scheme (VSS) is introduced by companies and industrial establishments in order to reduce the surplus staff and to bring in financial efficiency...

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

35. The contention that the employees opted for VRS under any kind of compulsion is not worthy of acceptance. The petitioners are officers of the two Companies and are mature enough to weigh the pros and cons of the options which were available to them. They could have waited and pursued their claim

for revision of pay scale without opting for VRS. However, they in their wisdom thought that in the fact situation VRS was a better option available and chose the same. After having applied for VRS and taken the money it is not open to them to contend that they exercised the option under any kind of compulsion. In view of the fact that nearly ninety-nine per cent of employees have availed of the VRS Scheme and have left the Companies (FCI and HFC), the writ petition no longer survives and has become infructuous.

(Emphasis supplied)

10. In HEC Voluntary Retd. Emps. Welfare Soc. and Another Vs. Heavy Engineering Corporation Ltd. and Others, , the employees of Heavy Engineering Corporation Ltd. (HEC Ltd.) opted for VRS and retired during the period 1st January, 1992 to 31st December, 1996. Vide circular dated 9th October, 1997, HEC Ltd. revised the pay scale of the employees on the rolls of the company with retrospective effect from 1992. The erstwhile employees who had taken VRS, filed the writ petition before Patna High Court to seek the revision of their pay scale which was dismissed. The Division Bench in appeal upheld the dismissal of the writ petition. The Supreme Court, relying upon A.K. Bindal (supra), dismissed the SLP holding that an employee after taking the VRS cannot raise claim for higher salary unless by reason of a statute he becomes entitled thereto. The relevant portion of the said judgment is reproduced hereunder:-

11. An offer for voluntary retirement in terms of a scheme, when accepted, leads to a concluded contract between the employer and the employee. In terms of such a scheme, an employee has an option either to accept or not to opt therefore the scheme is purely voluntary, in terms whereof the tenure of service is curtailed, which is permissible in law. Such a scheme is ordinarily floated with a purpose of downsizing the employees. It is beneficial both to the employees as well as to the employer. Such a scheme is issued for effective functioning of the industrial undertakings. Although the Company is "State" within the meaning of Article 12 of the Constitution, the terms and conditions of service would be governed by the contract of employment. Thus, unless the terms and conditions of such a contract are governed by a statute or statutory rules, the provisions of the Contract Act would be applicable both at the formulation of the contract as also the determination thereof. By reason of such a scheme only is an invitation of offer floated. When pursuant to or in furtherance of such a Voluntary Retirement Scheme an employee opts therefor, he makes an offer which upon acceptance by the employer gives rise to a contract. Thus, as the matter relating to voluntary retirement is not governed by any statute, the provisions of the Contract Act, 1872, therefore, would be applicable too. (See Bank of India and Others Vs. O.P. Swarnakar etc., .)

12. It is also common knowledge that a scheme of voluntary retirement is preceded by financial planning. Finances for such purpose, either in full or in part, might have been provided for by the Central Government. Thus financial implications arising out of implementation of a scheme must have been borne in

mind by the Company, particularly when it is a sick industrial undertaking. Offers of such number of employees for voluntary retirement, in that view of the matter, were to be accepted by the Company only to the extent of finances available therefor.

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

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

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

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

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

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

discharged employees.

21. We have noticed that admittedly thousands of employees had opted for voluntary retirement during the period in question. They indisputably form a distinct and different class. Having given our anxious consideration thereto, we are of the opinion that neither are they discharged employees nor are they superannuated employees. The expression "superannuation" connotes a distinct meaning. It ordinarily means, unless otherwise provided for in the statute, that not only he reaches the age of superannuation prescribed therefor, but also becomes entitled to the retiral benefits thereof including pension. "Voluntary retirement" could have fallen within the aforementioned expression, provided it was so stated expressly in the Scheme.

22. Financial considerations are, thus, a relevant factor both for floating a scheme of voluntary retirement as well as for revision of pay. Those employees who opted for voluntary retirement, make a planning for the future. At the time of giving option, they know where they stand. At that point of time they did not anticipate that they would get the benefit of revision in the scales of pay. They prepared themselves to contract out of the jural relationship by resorting to "golden handshake". They are bound by their own act. The parties are bound by the terms of contract of voluntary retirement. We have noticed hereinbefore that unless a statute or statutory provision interdicts, the relationship between the parties to act pursuant to or in furtherance of the Voluntary Retirement Scheme is governed by contract. By such contract, they can opt out of such other terms and conditions as may be agreed upon. In this case the terms and conditions of the contract are not governed by a statute or statutory rules.

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

24. In State of A.P. and Another Vs. A.P. Pensioners Association and Others, this Court categorically held that the financial implication is a relevant criterion for the State Government to determine as to what benefits can be granted pursuant to or in furtherance of the recommendations of a Pay Revision Committee. A fortiori while taking that factor into account, an employer indisputably would also take into consideration the number of employees to whom such benefit can be extended.

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

26. Considering the matter from that context, we are of the opinion that it cannot be said that the Company intended to extend the said benefits to those who had opted for voluntary retirement. Clause 3.2 of the circular includes only those who were on the rolls of the Corporation as on 1-1-1992, as also those who ceased to be in service on that date on account of superannuation or death. The appellants do not come in the said category. In view of the fact that they have not been expressly included within the purview thereof, we are of the opinion that although they have not been excluded by clause 3.3, they would be deemed to be automatically excluded.

(Emphasis Supplied)

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

4. The short question involved in these appeals is "whether after an employee has accepted the VRS Scheme and received payment under it, can he subsequently claim a higher amount because of subsequent wage revision with retrospective effect by the employer".

5. This Court in *HEC Voluntary Retd. Emps. Welfare Soc. and Another Vs. Heavy Engineering Corporation Ltd. and Others*, , vide paras 11 and 12, observed as under at p. 248 of LLJ: (SCC p. 715, paras 11-12).

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6. Learned counsel for the appellant hence, submitted that the High Court was in error in granting the amounts over and above the amounts which were paid to the employee under the VRS Scheme.

7. Learned counsel for the respondents, however, relied on Circular No. 409 dated 6-9-1995, a copy of which is annexed as Annexure P-2 to these appeals. The relevant Clause 1.2 reads as under:

1.2. Officers who have ceased to be in service on or after 1-1-1992 due to resignation, superannuation, voluntary retirement or death, will be eligible to arrears on a pro-rata basis wherever due.

8. Per contra, learned counsel for the appellant has invited our attention to another clause of the same circular viz. Clause 23.1 which states as follows:

23.1. ... Calculations related to compensation paid under the Voluntary Retirement Scheme, incentive for not availing house building advance/interest subsidy for housing loan and/or vehicle advance shall not be reopened.

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

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

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

(Emphasis supplied)

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

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

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

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

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

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

We may also note that in *Repakula Vidya Sagar Vs. State Bank of Hyderabad, Hyd. and Another*, the Andhra Pradesh High Court summarised the general principles pertaining to voluntary retirement and held that the voluntary retirement under the rules is different from the voluntary retirement under the Voluntary Retirement Scheme. The relevant portion of the judgment is as under:-

7. In the field of public services, once a person joins any public service, he is required to serve such service till he attains the age of superannuation in normal course and he cannot claim that he is entitled to retire from service at any time according to his wish and will before he attains the age of superannuation. However, the rules governing such public service may provide for voluntary retirement of an employee before he attains the age of superannuation. If such rules exist, then, voluntary retirement becomes a condition of service. For example, rule 56(k) of the Fundamental Rules provides that any Government servant may, by giving notice of not less than 3 months in writing to the appropriate authority, retire from service after he has attained a particular age (ranging from 52 to 55 years depending upon the group to which he belongs) and subject to various other stipulations contained in the proviso to that rule. The provision for voluntary retirement, being a condition of service, gives an option in absolute terms to a public servant to voluntarily retire after giving the requisite notice and after he has reached the qualifying age or rendered qualifying service, as the case may be. In such a case, when the employee makes a request for voluntary retirement, there is no question of acceptance of the request by the employer. In the absence of rules providing for voluntary retirement, however, no employee could insist, as a matter of course or as a

matter of right, that the employer should permit him to retire voluntarily before attaining the age of superannuation keeping the service benefits and conditions intact. The rules providing for voluntary retirement may be of two kinds, namely:

- (i) a rule providing an option in absolute terms to a public servant to voluntarily retire on attaining a particular age or after putting in a specified number of years of service and after giving notice; or
- (ii) a rule merely prescribing eligibilities to seek voluntary retirement and not providing for voluntary retirement as such.

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

(Emphasis supplied)

13. The learned counsel for the appellants next relied upon Bank of India and Another Vs. K. Mohandas and Others, in which Bank of India floated a Voluntary Retirement Scheme. The salient features of the Voluntary Retirement Scheme are given in para 8 of the judgment. The employees opting for VRS were entitled to gratuity, provident fund, leave encashment and pension in terms of Employees Pension Regulations, 1995. However, the optees for VRS were denied the pension whereupon petitions were filed before different High Courts to seek the pension. The bank contended that the employees cannot be allowed to resile from the VRS. The Supreme Court rejected the argument and held that the employees were not seeking to resile from the Scheme. The Supreme Court further held that the employees are actually seeking for enforcement of the clause of the Voluntary Retirement Scheme that provides that the optees will be eligible for pension under the Pension Regulations, 1995 and therefore, the plea of estoppel does not at all arise in the facts and circumstances of this case. The Supreme Court further held that the optees of VRS are entitled to the pension under the Pension Regulations, 1995. The relevant portion of the said judgment is as under:-

24. The principal question that falls for our determination is: whether the employees (having completed 20 years of service) of these banks (Bank of India, Punjab National Bank, Punjab and Sind Bank, Union Bank of India and United Bank of India) who had opted for voluntary retirement under VRS 2000 are entitled to addition of five years of notional service in calculating the length of service for the purpose of the said Scheme as per Regulation 29(5) of the Pension Regulations, 1995?

27. In view of the admitted position that VRS 2000 was a contractual scheme; that it was an invitation to offer containing a term that the optee will also be eligible for pension as per the Pension Regulations; that an application by an employee for voluntary retirement was a proposal or offer and that upon acceptance of the application for voluntary retirement made by the employee and a communication of acceptance to him, the concluded contract came into existence and the offeree was relieved from the employment. For consideration of the question posed herein, the Court needs to examine the contract and the circumstances in which it was made in order to see whether or not from the nature of it, the parties must have made their bargain on the footing that a particular thing or state of things would continue to exist.

64. On behalf of banks it was submitted that the employees, having taken benefits under the Scheme (VRS 2000), are estopped from raising any issue that their entitlement to pension would not be covered by amended Regulation 28. It was suggested that the employees having taken benefit of the Scheme cannot insist for pension under Regulation 29(5). Bank of India and Others Vs. O.P. Swaranakar etc., was relied upon in this regard wherein it has been held that an employee, having taken the ex gratia payment, or any other benefit under the Scheme cannot be allowed to resile from the Scheme.

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

(Emphasis supplied)

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

14. The learned counsel for the appellants next relied upon A. Satyanarayana Reddy and Others Vs. The Presiding Officer, Labour Court, Guntur and Others, in

which the optees of Voluntary Retirement Scheme filed the writ petition to seek lay-off compensation u/s 33C(2) of the Industrial Dispute Act, 1947 on the ground that the lay-off compensation u/s 33C(2) is a statutory right. The Supreme Court, in para 17 of the judgment, held that there cannot be any doubt whatsoever that ordinarily upon opting for a voluntary retirement under a scheme framed in that behalf, the workman would cease to have any claim against the management. However, the position with respect to the statutory right of opting for lay-off compensation may be different. The Supreme Court further observed that in Smt. Rohini Kumari Vs. Narendra Singh, , it was held that the proceedings u/s 33C(2) would be maintainable after discharge and the case was therefore referred to a larger Bench. The relevant portion of the said judgment is reproduced hereunder:-

17. There cannot be any doubt whatsoever that ordinarily upon opting for a voluntary retirement under a scheme framed in that behalf, the workmen would cease to have any claim against the management. However, the same prima facie in our opinion would not mean that a statutory right of opting for lay-off compensation, unless expressly waived, may continue to remain within the realm of legal right, so as to enforce the same before a forum constituted under the Act. The Bombay High Court in Premier Automobiles Ltd. Vs. PAL VRS Employees Welfare Association and Another, as also this Court in A.K. Bindal and Another Vs. Union of India (UOI) and Others, proceeded on the basis that an employee having received the amount of compensation without any demur whatsoever would be estopped and precluded from raising any other or further claim stating: (A.K. Bindal and Another Vs. Union of India (UOI) and Others,)

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

18. The said decision moreover proceeded on the basis that when the parties enter into a transaction known as "golden handshake", the jural relationship between the employer and the employee comes to an end. It was opined: (A.K. Bindal and Another Vs. Union of India (UOI) and Others,)

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

19. The claim of the appellants in A.K. Bindal and Another Vs. Union of India (UOI) and Others, was based on the revision in the scale of pay. It was in that

context, the aforementioned observations were made.

23. The decision of this Court in National Building Construction Corporation Vs. Pritam Singh Gill and Others, was not noticed in the aforementioned decision. The question which arose for consideration therein was as to whether a workman even after an order of discharge could maintain an application u/s 33C(2) of the Act claiming lay-off compensation, in response whereeto this Court held: (SCC p. 7, para 9)

9. In U.P. Electric Supply Co. Ltd. Vs. R.K. Shukla and Another, etc., this Court approvingly referred to a passage from the judgment in Chief Mining Engineer, East India Coal Co. Ltd. [Chief Mining Engineer East India Coal Co. Ltd. Vs. Rameswar and Others,] already reproduced by us, in which, inter alia, it was emphasised that Labour Court had jurisdiction to entertain a claim in respect of an existing right arising from the relationship of an industrial workman and his employer. Again in R.B. Bansilal Abirchand Mills Co. Ltd. Vs. The Labour Court, Nagpur and Others, , this Court, after a review of its previous decisions, upheld the jurisdiction of the Labour Court to entertain application for lay-off compensation u/s 33C observing that such jurisdiction could not be ousted by a mere plea denying the workman's claim to computation of the benefit in terms of money, adding that the Labour Court had to go into the question and determine whether on the facts it had jurisdiction to make the computation.

24. Noticing a large number of decisions of the High Courts on the said subject, this Court held: (National Building Construction Corporation Vs. Pritam Singh Gill and Others,)

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

25. The right of the workman to claim payment of lay-off compensation is not denied or disputed. If the said claim has no nexus with the voluntary retirement scheme, in our opinion, in a given case, like the present one, it is possible to hold that a proceeding u/s 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 of National Building Construction Corporation Vs. Pritam Singh Gill and Others, and A.K. Bindal and Another Vs. Union of India (UOI) and Others, .

(Emphasis supplied)

The issue referred to the larger Bench specifically relates to the maintainability of a statutory right of a workman u/s 33C(2) of the Industrial Disputes Act which has not been waived. This judgment does not help the appellants in the present case who are not claiming any statutory right. With respect to the claims other than Section 33C(2), the Supreme Court has clearly observed in para 17 that there cannot be any doubt whatsoever that ordinarily upon opting for a voluntary retirement under a Voluntary Retirement Scheme, the workmen would cease to have any claim against the management. As such, this judgment does not deviate from the law laid down in HEC Voluntary Retired Employees Welfare Society (supra) that an employee after taking the VRS, cannot raise a claim unless by reason of a statute he is entitled thereto.

Judicial precedents

15. It is well settled that judicial precedent cannot be followed as a statute and has to be applied with reference to the facts of the case involved in it. The ratio of any decision has to be understood in the background of the facts of that case. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It has to be remembered that a decision is only an authority for what it actually decides. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The ratio of one case cannot be mechanically applied to another case without regard to the factual situation and circumstances of the two cases. In *Bharat Petroleum Corporation Ltd. and Another Vs. N.R. Vairamani and Another*, , the Supreme Court had held that a decision cannot be relied on without considering the factual situation. The Supreme Court observed as under:-

9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton* [1951 AC 737: (1951) 2 All ER 1 (HL)] (AC at p. 761) Lord Mac Dermott observed: (All ER p. 14 C-D)

The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge...

This extract is taken from Bharat Petroleum Corporation Ltd. and Another Vs. N.R. Vairamani and Another,

10. In *Home Office v. Dorset Yacht Co.*, 1970 (2) All ER 294 Lord Reid said, "Lord Atkin's speech ... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances". Megarry, J. in *Shepherd Homes Ltd. v. Sandham* (No. 2) [(1971) 1 WLR 1062: (1971) 2 All ER 1267] observed: "One must not, of course, construe even a reserved judgment of Russell, L.J. as if it were an Act of Parliament." And, in *Herrington v. British Railways Board* [(1972) 2 WLR 537: (1972) 1 All ER 749 (HL)] Lord Morris said: (All ER p. 761c)

There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case.

This extract is taken from Bharat Petroleum Corporation Ltd. and Another Vs. N.R. Vairamani and Another,

11. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

This extract is taken from Bharat Petroleum Corporation Ltd. and Another Vs. N.R. Vairamani and Another,

12. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

* * *

Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.

Delay and Laches

16. The dismissal of a writ petition on the ground of delay and laches is not an absolute rule of law and the Court can, upon sufficient cause being shown, entertain the writ petition in spite of delay and laches. However, the Court has to take into consideration the principles laid down by the Supreme Court with respect to belated service related claims and stale claims.

Belated service related claim

17. In Union of India (UOI) and Others Vs. Tarsem Singh, , the Supreme Court held that a belated service related claim is to be rejected on the ground of delay and laches except in the case of a continuing wrong. The Supreme Court further carved out an exception to the above exception by holding that if the grievance is in respect of any order or administrative decision which related to or affected several others also and if the opening of the issue would affect the settled rights of the third party, then the claim would not be entertained. The relevant portion of the said judgment is reproduced hereunder:

7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

(Emphasis supplied)

Stale Claims

18. It has been held in a number of cases by the Supreme Court as also this Court that stale claims of failure to make out grounds for condonation of delay in seeking remedy in law should not be entertained by the Courts.

19. In K.V. Rajalakshmiah Setty and Another Vs. State of Mysore and Another, , the Supreme Court held the delay of 13 years in filing the writ petition on the ground that the petitioner had been writing letters from time to time was not sufficient to condone the delay.

20. In Jagdish Narain Maltiar Vs. The State of Bihar and Others, , the Supreme Court held the delay of three years in filing the writ petition to challenge the order of removal to be fatal. The relevant portion of the judgment is reproduced hereunder:

8. Thus it was in August, 1963 that the appellant discovered that his services were really determined for gross misconduct. For nearly 3 years thereafter he kept on submitting one memorandum after another to the Government and it was not until late in 1966 that he filed a writ petition in High Court to challenge the order of removal. The memorials presented by him to the Government were in the nature of mercy petitions and he should have realised that in pursuing a remedy which was not duly appointed under the law he was putting in peril a right of high value and significance. By his conduct he disabled the High Court from exercising its extraordinary powers in his favour. We are therefore of the opinion that the High Court was justified in refusing to entertain the petition."

(Emphasis supplied)

21. In C.B.S.E. Vs. B.R. Uppal and Others, , the Division Bench of this Court held that the writ petition to challenge the seniority list after six years to be a stale claim. This Court further held that merely making representations is not a good ground for condoning the delay unless it is a statutory representation.

22. In Savitri Sahni Vs. Lt. Governor, NCT of Delhi and Others, , the Division Bench of this Court again held the delay of eight years in filing the writ petition to claim the parity in emoluments to be a stale claim. This Court rejected the ground that the appellant had been making representations. The relevant portion of the said judgment is reproduced hereunder:

11. Equally untenable is the contention urged by Mr. Datar that since the appellant had been making representations, the delay of nearly 8 years between the date when the appellant first had the cause of action to file the petition and the date when the petition was filed stood explained. Just because successive representations are made for years on end does not necessarily mean that the aggrieved person is acting diligently. The aggrieved person cannot keep hoping against hope and delay approaching the court indefinitely. A writ court is not bound to entertain a stale claim for adjudication. Due diligence on the part of the petitioner is a condition precedent for the exercise of the extra ordinary writ jurisdiction of the court. If the appellant indeed was wronged on account of refusal of salary for nearly 9 years during which she served the school, there was no reason why she should have waited for another 7 years thereafter before coming to the Court to seek redress. The learned Single Judge could have, in that view, passed no order other than the one passed by him in the present case. This appeal accordingly fails and is hereby dismissed but in the circumstances without any orders as to costs.

(Emphasis supplied)

23. Summary of principles

23.1 Voluntary Retirement Schemes-Voluntary Retirement Schemes (VR Scheme) are ordinarily floated with a purpose of downsizing the employees. A considerable voluntary retirement amount is offered to the employees for voluntary

retirement, not for doing any work or rendering any service but in lieu of their leaving the service and foregoing all their claims or rights in the same. It is a package deal of give and take. It is beneficial both to the employees as well as the employers and, therefore, known as "Golden Handshake". The main purpose of paying this amount is to bring about a complete cessation of the jural relationship between the employer and the employee.

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

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

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

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

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

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

23.7 Waiver-Having taken advantage of VRS and having taken the amount without any demur, the employees cannot raise a claim for past rights or non-

revision of pay scale. Such claims are also barred by the principle of waiver. The plea of waiver is closely connected with the plea of estoppel, the object of both being to ensure bona fides in day to day transactions.

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

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

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

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

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

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

24. Findings

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

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

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

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

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

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

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

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

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

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

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

24.12 The appellants did not raise the claim of SPLI either in the application form for VRS or at the time of receiving the voluntary retirement amount under the Scheme knowing fully well that if they raised any such objection, the respondent would have certainly rejected their application as the Scheme was not

negotiable. Thus, having taken the advantage of the VRS and having taken the amount without any protest, the appellants cannot now raise a claim for SPLI which is clearly barred by the principle of estoppel as well as waiver.

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

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

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

24.16 It is not disputed that all the amounts specified in clauses 7.1 to 7.6 of the VR Scheme have been received by the appellants. No other benefit is available to the appellants in view of clause 7.7 of the VR Scheme. Clause 9.4 clarifies that benefits under the VRS shall be in full and final settlement of all claims whatsoever, whether arising under the scheme or otherwise and an employee who voluntarily retires under the scheme, will not have any additional claim whatsoever and no demand or dispute will be raised by him in this behalf whether for re-employment, or compensation or back wages against the respondent.

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

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

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

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

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

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

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

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

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

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

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

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

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

24.30 Notwithstanding the appellants' claim being barred by law, the writ petition also suffered from delay and laches. The appellants filed the writ petitions after almost three years of taking voluntary retirement. The appellants took voluntary retirement on 25th February, 2008. The first demand for SPLI was made by the appellants by a legal notice dated 28th January, 2010 and the writ petition was filed after a year on 19th February, 2011. Along with CM No. 5111/2014, the appellants have attached three e-mails dated 18th July, 2008, 1st October, 2008 and 27th January, 2009 addressed by appellant no. 1 only to the respondent. These documents were not placed on record before the learned writ Court. Secondly, these three documents are not mentioned in the legal notice dated 28th January, 2010 and therefore, do not inspire confidence. Be that as it may, the three e-mails are addressed by appellant no. 1 only in his personal capacity and the other appellants cannot draw any assistance from it. Even otherwise, it is well settled that merely making representations is not a good ground for condoning the delay unless it is a statutory representation. The appellants' case is a stale claim and falls in the exception to the exception discussed in Tarsem Singh (supra) as the jural relationship ceased upon the appellants taking VRS. In view of the unexplained delay of more than 35 months in filing the writ petition, it is too late in the day for the appellants to agitate their claim for SPLI.

Conclusion

25. On careful consideration of the rival contentions of the parties, we hold that the appellants are not entitled to the SPLI in view of the voluntary retirement and acceptance of all the benefits mentioned in Clause 7 of the VR Scheme in full and final settlement as back as on 25th February, 2008 which resulted in cessation of jural relationship. The principles of estoppel and waiver are applicable to the present case. There is no merit in the writ petition which has been rightly dismissed by the learned Single Judge. That apart, the appellants' claim suffered from delay and laches as there is abnormal delay in filing the writ petition and there is no plausible explanation for the same.

26. This appeal, being an abuse of the process of law, is dismissed with costs of Rs. 25,000/-. The respondent can recover the costs in accordance with law. The pending applications are also dismissed.