
(2003) 03 MP CK 0090
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1270 of 2003

S.P. Jauhari

APPELLANT

Vs

Madhya Pradesh Laghu Udyog Nigam Maryadit

RESPONDENT

Date of Decision : 20-03-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2004) 2 MPHT 533 : (2003) 3 MPLJ 481

Hon'ble Judges : Dipak Misra, J;A.K. Shrivastava, J

Bench : Division Bench

Advocate : V.S. Shrotri and Ashish Shrotri, for the Appellant; Sanjay K. Agrawal, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.

Invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner has prayed for issue of a writ of certiorari for quashment of order dated 31-12-2002, Annexure P-3, passed by the sole respondent, namely, Madhya Pradesh Laghu Udyog Nigam Maryadit (in short "the Corporation") and further for quashment of order dated 3-3-2003, Annexure P-5, and to issue a writ of mandamus by commanding the sole respondent to allow the petitioner who had sought withdrawal of his option by his application dated 13-2-2003, Annexure P-4, to continue in his post.

Sans unnecessary details, the essential facts which are necessitous to be stated for disposal of the present controversy are that the petitioner was appointed as Technical Advisor in the Corporation on 29-3-1984. The nomenclature of the post had undergone a transformation and he was designated as General Manager (Technical). The respondent-Corporation, a State undertaking floated a voluntary retirement scheme known as Madhya Pradesh Laghu Udyog Nigam Voluntary Retirement Scheme, 1999 (for brevity "the Scheme") on 7-10-2002, Annexure P-

I. The scheme was to remain operative from 16-10-2002 to 15-11-2002. The scheme was applicable to all employees and officers including the workers and executives of the Corporation. Certain conditions precedent were provided for exercising option under the aforesaid scheme. On acceptance of the voluntary retirement, certain benefits were to be conferred on the employees and the officers. Clause-4 of the scheme stipulates that option shall be available to the eligible employees opting for voluntary retirement under the scheme but the Management has the exclusive right not to grant the said privilege.

According to the writ petitioner, he submitted option in the prescribed proforma for seeking voluntary retirement under the scheme on 14-11-2002. It was specifically mentioned in the application that voluntary retirement may be granted to him by the end of financial year 2002-2003 i.e., 31-3-2003. A copy of the application so submitted has been brought on record as Annexure P-2. As putforth by the petitioner, he had harbored an apprehension that if he did not submit an application, he might be compulsorily retired. The Management vide letter dated 31-12-2002, Annexure P-3, accepted the option of voluntary retirement with effect from 31-3-2003. It is pleaded that as the application was submitted by the petitioner on a serious mis-apprehension; he submitted an application on 13-2-2003, Annexure P-4 withdrawing his option as the date of voluntary retirement indicated by him had not come into effect. The Management rejected the said application by order dated 3-3-2003, Annexure P-5. In the aforesaid letter of rejection, reference was made to the decision rendered by the Apex Court in the case of Bank of India and Ors. v. O.P. Swarnakar etc. AIR 2003 SC 313. That apart, it was mentioned the application was made after the expiry of two months.

It is averred in the petition that the rejection of the application for withdrawal is arbitrary, unreasonable and based upon an unacceptable provision contained in Clause 4 (3) of the Scheme which postulates that option once given by an employee cannot be changed or withdrawn. It is putforth that the aforesaid clause in the scheme is not only arbitrary but is totally unreasonable. It is contended in the petition that once the employee had submitted an application for voluntary retirement from a perspective date, it was within his domain to withdraw the same prior to the expiry of that date and it was not within the province of the employer to accept the voluntary retirement as the prayer in the application was futuristic in nature. It is urged in the petition that the acceptance by the Management does clearly project that such acceptance is from the future date and by such an act the Management has curtailed the right of the employee seeking withdrawal of his voluntary retirement thereby excising the jural relationship of employer and employee though the same had not been ceased in law. Therefore, the whole action of the respondent is unsustainable and sensitively susceptible.

A counter affidavit has been filed by the answering respondent contending, inter alia, that the stipulation contained in Clause 4 (3) of the Scheme is just and

proper and does not suffer from any constitutional vice. It is putforth that once an application was submitted and the same was accepted by the employer, the question of withdrawing the same is totally impermissible as the act had attained the fate accompli. It is setforth in the reply that the order of rejection of the prayer for withdrawal cannot be flawed as the same was sent after acceptance and such rejection is in consonance with the stipulation contained in the voluntary retirement scheme. Various other aspects have been putforth which need not to be stated in detail. It is also averred that the acceptance of the application for voluntary retirement was communicated to the petitioner vide memorandum dated 31-12-2002 and in the said memo the petitioner was given one month notice as required under Clause 13 (b) of the M.P. Laghu Udyog Nigam Employees Service Rules, 1969 and, therefore, the action of the Corporation by no stretch of imagination can be flawed. It has also been putforth that the jural relationship of master and servant between the petitioner and the respondent had already come to an end as on 31-1-2003 on the date the retirement notice was accepted and, therefore, there is no question of putting the clock back. The authority of the petitioner to withdraw the application has been seriously criticized in the return on the ground that the petitioner had already stood retired from the service of the Corporation with effect from 31-1-2003 and hence, revival of any jural relationship is unwarranted in law.

We have heard Mr. V.S. Shorti, learned Senior Advocate with Mr. Ashish Shrotri for the petitioner and Mr. Sanjay K. Agrawal, learned Counsel for the respondent.

It is submitted by Mr. Shrotri that the submission of application for voluntary retirement by the petitioner was neither categorical or unequivocal. On the contrary, canvassed Mr. Shrotri, it was not in praesenti but futuristic. It is urged by him that once an application is submitted under the scheme by giving a future date, it is not open to the employer to act on it immediately or in quite promptitude as such an action by the Management does not have the sanction of law as the time, as mentioned in the letter, has not come into existence and there is no machinery to advance "time". It is urged by him that the matter would have been totally different if 31st March, 2003 had expired and in that event despite the non-acceptance or acceptance by the employer, the communication by the employee would not have saved the situation as communication in that regard or on that score would not have been available. It is contended by him that the condition incorporated in the scheme that once a request is made for voluntary retirement under the scheme the same cannot be changed or withdrawn is totally arbitrary and unreasonable as that abridges and smothers the right of an employee to withdraw unless he had abandoned his right in toto by using the word "immediately" or "forthwith". It is also propounded by him that the scheme is a policy decision of the employer and by employing such language the employer cannot impede or whittle down the right of the employee to withdraw the application as by such an incorporation there is abrogation for substantive right of the employee. To buttress his submission from various facets, Mr. Shrotri had placed reliance on the decisions rendered in the

cases of Union of India v. T. Parthasarthy AIR 2001 SC 158, O.P. Swaranakar (supra), Union of India v. Gopal Chandra Misra and Ors. AIR 1918 SC 694, Balram Gupta Vs. Union of India (UOI) and Anr, , Punjab National Bank Vs. P.K. Mittal, , Power Finance Corporation Ltd. Vs. Pramod Kumar Bhatia, , J.N. Srivastava Vs. Union of India (UOI) and Another, , Shambhu Murari Sinha Vs. Project and Development India and Another, , Shambhu Murari Sinha Vs. Project and Development India Ltd. and Another, .

Mr. S.K. Agrawal, learned Counsel for the Corporation, sounding a contra note, has submitted that though similar clauses have been declared ultra vires by the Apex Court in the decision rendered in the case of O.P. Swaranakar (supra) yet the case of the petitioner stands on a different footing altogether. It is submitted by him that if the ratio of the aforesaid decision is appreciated in proper perspective, it would be clear as noon day that once there is acceptance of the offer by the employee, nothing remains with the employee to be done and the order of voluntary retirement comes into effect immediately. The learned Counsel has placed reliance on the decision rendered in the case of P. Lal v. Union of India and Ors. AIR 2003 SC 849 to pyramid the submission that acceptance is the sine qua non for effectuating the order of voluntary retirement and once the order is passed, the action at the hand of the employee to withdraw his application dies a natural death and his rights get snapped.

Before we enter into the debate pertaining to rival submissions, we think it appropriate to have a glance at the scheme in question. After defining certain aspects under Clause 2 of the scheme, the Part A of the scheme deals with eligibility, mode of operation, tax benefits. Clause 4 which occurs in Part-A stipulates the essential nature of the scheme. Clause 4 covers a wide spectrum and for our present purpose Sub-clauses (1) to (3) are relevant. Hence, we reproduce the same.

"4. Scheme :

(1) All eligible employees are allowed to give option within the period of validity of the scheme. The management will have right not to grant voluntary retirement for reasons, to be recorded in writing."

(2) Option of voluntary Retirement will not be accepted in the following cases:--

(a) Where disciplinary proceedings are either pending or are contemplated against the employee concerned.

(b) Where prosecution in a Criminal Court is contemplated or may have already been launched in a Court of law.

(c) Employee who resigns from the services of the MPLUN in a normal manner.

(3) Once option is given by a employee, it can not be changed, or withdrawn."

On a scanning of the aforesaid scheme, it is perceptible that once the option is given by an employee it cannot be changed or withdrawn. It is not disputed at

the Bar, as indicated earlier, such type of clauses in the voluntary scheme have been regarded as unconstitutional being violative of Article 14 of the Constitution. The same has been held in the case of O.P. Swarnakar (supra). As the aforesaid controversy has been put to rest, we need not dilate on the same.

The hub of the matter is whether the petitioner stood retired voluntarily by his action or he had some life spark left to rise like a phoenix because the date of giving effect to the voluntary retirement has not yet come into existence. Before we refer to the decisions cited by Mr. Shrotri, we think it appropriate to refer to the decisions cited by Mr. Agrawal as they have been placed heavy reliance upon by him to fortify the submission that once there is acceptance by the employer, all rights of the employee stand extinguished. Mr. Agrawal has referred to Paragraphs 43, 46, 49 and 59 from the case of O.P. Swarnakar (supra). In Paragraph 43, their Lordships posed the legal issues for determination. We think it apposite to reproduce the same.

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

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

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

In Paragraphs 49 and 59, the Apex Court expressed the view as under :--

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

The request of employees seeking voluntary retirement was not to take effect until and unless it was accepted in writing by the Competent Authority. The Competent Authority had the absolute discretion whether to accept or reject the request of the employee seeking voluntary retirement under the scheme. A procedure has been laid down for considering the provisions of the said scheme to the effect that an employee who intends to seek voluntary retirement would submit duly completed application in duplicate in the prescribed form marked "offer to seek voluntary retirement" and the application so received would be considered by the competent authority on first come first serve basis. The

procedure laid down therefore suggests that the applications of the employee would be an offer which could be considered by the bank in terms of the procedure laid down therefor. There is no assurance that such an application would be accepted without any consideration."

In this context, we may profitably refer to Paragraph 16 of the aforesaid decision wherein their Lordships referred to the judgment rendered by the Bombay High Court. We think condign to reproduce the same.

"16. The Bombay High Court and the other High Courts, on the other hand, held that Clause 10.5 of the Scheme or the scheme framed by the other banks is not operative as the employees have indefeasible rights to withdraw their offer before the same is accepted. In arriving at its aforementioned finding, the High Courts, inter alia, relied on the following decisions of this Court in *Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others*, *Balram Gupta v. Union of India and Anr.* [(1987) SCC 228], *Punjab National Bank Vs. P.K. Mittal, Union of India and Anr. v. Wing Commander T. Parthasarathy* (2001) 1 SCC 158 and *Shambhu Murari Sinha Vs. Project and Development India Ltd. and Another*, ."

Eventually, in this regard in paragraph 113 their Lordships expressed the view as under :

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

We have referred to the aforesaid paragraph in extenso as it was seriously urged by Mr. Sanjay K. Agrawal that the scheme floated by the Corporation is in the realm of contract and once a concluded contract comes into existence either party to the contract cannot pave the path of deviancy. In this context, we may also refer to the other decision of the Apex Court rendered in the case of *P. Lal (Supra)* on which Mr. Agrawal has placed immense emphasis. He has drawn inspiration from Paragraphs 24 and 26 of the aforesaid judgment. In Paragraph 24, submissions of the learned Counsel for the petitioner was referred to and in Paragraph 26 their Lordships held as under :

"26. We have considered the submissions of both the parties. As has been set out, in *Shambhu Murari* 's case and *Bank of India*'s case, an employee can withdraw his application for voluntary retirement before the effective date. The effective date would necessarily be the date on which the retirement takes effect.

The request, which Respondent No. 3 had made by his letter dated 5th May, 1993, was to be allowed to retire voluntarily with immediate effect. He has also deposited p.s. 30,870/- in lieu of three months' notice. Thus so far as Respondent No. 3 was concerned the effective date as 5th May, 1993. Of course Rule 16 (2A) of the All India Services (Death-cum-Retirement) Rules, 1958 provides that a notice of retirement had to be accepted by the Government of India. In this case, the Government of India accepted the request on 2nd March, 1995 and permitted Respondent No. 3 to retire with effect from May 1993. The moment Government of India accepted the notice the retirement became effective. The relationship of master and servant came to an end. We are unable to accept the submission that the relationship of master and servant did not terminate till the acceptance was communicated to respondent No. 3. It must be remembered that Rules 16 (2) and 16 (2A) enable a member to retire from service on giving the required notice. Once such a notice is given it merely has to be accepted by the Government of India. The moment it is accepted the retirement would become effective. If any other view is taken it would lead to absurd results. Such a view would mean that even though a member had given a notice for voluntary retirement stopped attending office and/or gone away abroad and/or taken up some other employment after a number of years of absence the member could claim to come back into service because the Government, for some unforeseen reasons, had not communicated its acceptance. Taken to its absurd length such a member could after superannuation claim that, as the services were not terminated, he was entitled to pension and gratuity on the basis that he had continued in service. The requirement of communication of acceptance would only arise in cases where, even after giving of a notice of voluntary retirement the member continues to work/perform his duties. In such cases the member would need to know from what date he can stop attending office. In cases where the member has by his own conduct abandoned service the severance of the relationship of master and servant takes place immediately on acceptance of notice. We are unable to accept the submission that the severance of relationship of master and servant cannot take effect until there is an Order by the President of India and the same is duly notified in the Gazette. Rules 16 (2) and 16 (2A) have been set out hereinabove. All that it requires is acceptance by the Government of India and not by the President of India. Admittedly the request for voluntary retirement has been accepted by the Government of India on 2nd March, 1995. No provision or rule could be shown which requires such acceptance to be gazetted. On the contrary, as has been set out hereinabove, in its affidavit before the Punjab and Haryana High Court, the Government of Punjab had categorically stated that there was no provision for gazetting such an order."

Now we shall advert to the decision cited by Mr. Shrotri. Though the learned Senior Counsel has referred to many a decision, we think it seems only to notice a few. Before we proceed to do that, we may state here that in the case of State of Haryana and Others Vs. S.K. Singhal, two decisions, namely, Dr. Baljit Singh

Vs. State of Haryana, and the decision rendered in the case of Power Finance Corporation (supra) were distinguished on the ground that in these two decisions a larger Bench decision rendered in the case of Dinesh Chandra Sangma Vs. State of Assam and Others, was not kept in view. We have carefully perused the aforesaid decision rendered in the case of Dinesh Chandra Sangma (supra) as well as the decision rendered in the case of Power Finance Corporation Ltd. (supra) and S.K. Singhal (supra). In our considered opinion, the controversy which was the subject matter in the case of Dinesh Chandra Sangma (supra) and S.K. Singhal (supra) was totally different and we do not have to really dwell upon whether the case S.K. Singhal (supra) would cover the case or the other decisions. We may profitably refer to the decision rendered in the case of Gopal Chandra Misra (supra) wherein a Constitution Bench while dealing with the concept of resignation and the right of the employee, in Paragraph 51 held as under :--

"51. It will bear repetition that the general principle is that, in the absence of a legal, contractual or constitutional bar, a "prospective" resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office-tenure of the resignor. This general rule is equally applicable to Government servants and constitutional functionaries. In the case of a Government servant or functionary who cannot, under the conditions of his service/or office, by his own unilateral act of tendering resignation, give up his service/or office, normally, the tender of resignation becomes effective and his service/or office-tenure terminated, when it is accepted by the Competent Authority. In the case of a Judge of a High Court, who is a constitutional functionary and under Proviso (a) to Article 217(1) has a unilateral right or privilege to resign his office, his resignation becomes effective and tenure terminated on the date from which he, of his own volition, chooses to quit office. If in terms of the writing under his hand addressed to the President, he resigns in praesenti the resignation terminates his office-tenure forthwith, and can not therefore, be withdrawn or revoked thereafter. But, if he by such writing, chooses to resign from a future date, the act of resigning office is not complete because it does not terminate his tenure before such date and the Judge can at any time before the arrival of that prospective date on which it was intended to be effective withdraw it, because the Constitution does not bar such withdrawal."

In the case of T. Parthasarthy (supra), their Lordships referred to the case of P.K. Mittal (supra), Balram Gupta (supra), Gopal Chandra Misra (supra) and Raj Kumar Vs. Union of India (UOI), and in Paragraphs 8 and 9 held as under :--

"8. So far as the case in hand is concerned, nothing in the form of any statutory rules or any provision of any Act has been brought to our notice which could be said to impede or deny this right of the appellants. On the other hand, not only the acceptance of the request by the Headquarters, the appropriate authority, was said to have been made only on 20-2-86, a day after the respondent withdrew his request for pre-mature retirement but even such acceptance in this

case was to be effective from a future date namely 31-8-1986. Consequently, it could not be legitimately contended by the appellants that there was any cessation of the relationship of master and servant between the Department and the respondent at any rate before 31-8-1986. While that be the position inevitably the respondent had a right and was entitled to withdraw or revoke his request earlier made before it ever really and effectively became effective.

The reliance placed upon the so-called policy decision which obligated the respondent to furnish a certificate to the extent that he was fully aware of the fact that he cannot later seek for cancellation of the application once made for premature retirement cannot, in our view, be destructive of the right of the respondent, in law, to withdraw his request for pre-mature retirement, before it ever became operative and effective and effected termination of his status and relation with the Department. Whom the legal position is that much clear it would be futile for the appellants to base their rights on some policy decision of the Department or a mere certificate of the respondent being aware of a particular position which has no sanctity or basis in law to destroy such rights which otherwise inhered in him and available in law. No such deprivation of a substantive right of a person can be denied except on the basis of any statutory provision or rule or regulation. There being none brought to our notice in this case, the claim of the appellants cannot be countenanced in our hands. Even that apart, the reasoning of the High Court that the case of the respondent will not be covered by the type or nature of the mischief sought to be curbed by the so-called policy decision also cannot be said to suffer any conformity (sic infirmity) in law, to warrant our interference."

Recently in the case of Shambhu Murari Sinha (1) (supra), the Apex Court dealt with the concept of voluntary retirement and various stages, In that case, the appellant had submitted an application on 18-10-1995 seeking voluntary retirement. The aforesaid was accepted by the Management on 30-7-1997. The appellant had submitted a letter to the respondent on 7-8-1997 withdrawing his letter dated 18-10-1995 by which he had sought voluntary retirement. In that context, in Para 5 their Lordships expressed the view as under:--

"5. From the facts stated above, it would be seen that though the option of voluntary retirement exercised by the appellant by his letter dated 18-10-1995 was accepted by the respondent Management by their letter dated 30-7-1997, the appellant was not relieved from service and he was allowed to continue in service till 26-9-1997, which, for all practical purposes, would be the "effective date" as it was on this date that he was relieved from service. In the meantime, as pointed out above, the appellant had already withdrawn the offer of voluntary retirement vide his letter dated 7-8-1997. The question which, therefore, arises in this appeal is whether it is open to a person having exercised option of voluntary retirement to withdraw the said offer after its acceptance but before it is made effective. The question is squarely answered by three decisions, namely Balram Gupta v. Union of India, J.N. Shrivastava v. Union of India and Power

Finance Corporation Ltd., v. Pramod Kumar Bhatia in which it was held that the resignation, in spite of its acceptance, can be withdrawn before the "effective date". That being so, the appeal is allowed. The impugned judgment of the High Court is set aside with the direction that the appellant shall be allowed to continue in service with all consequential benefits. There will, however, be no order as to costs."

Thus, the emphasis was laid down on the concept of the effective date. It is worth noting here that in the case of Shambhu Murari Sinha Vs. Project and Development India Ltd. and Another, . In Paragraph 6, the Apex Court posed the question as under :--

"6. The short question to be decided is what was the effective date in the case in hand, before which the appellant could have, withdrawn his offer of voluntary retirement under the Scheme."

Their Lordships referred to the decisions rendered in the cases of Balram Gupta (supra), Gopal Chandra (supra), J.N. Shrivastava (supra), Nand Keshwar Prasad Vs. Indian Farmers Fertilizers Cooperative Ltd. and Others, and Power Finance Corporation Ltd., (supra) and eventually in Para 18 held as under :--

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

Thus, in this case, the Apex Court laid emphasis on the concept of locus poenitentiae. The principles which are really applicable to the case at hand are whether there has been a concluded contract so as to debar the petitioner to withdraw his letter of voluntary retirement and whether by such acceptance by the Management, the locus poenitentiae of the employer has been curbed or destroyed. The whole thing, in our considered opinion, would depend upon the language in which the prayer for voluntary retirement was couched. The said document has been brought on record as Annexure P-2. In the letter dated

14-11-2002 it has been motioned therein as under :--

^^eSa LosfPNd Isokfuo`f?k dk ;g vkosnu bl fuosnu ds lkFk izLrqr dj jgk gwa fd O;f?xr dkj.kksa ls blds vUrxZr esjh Isokfuof?k fo?kh; o"kZ 2002&2003 dh lekfiR ij ekpZ 2003 esa Lohdkj dh tk;sA**

The literal translation of the same which is accepted by the learned Counsel for both the parties would be as under :--

"I am presenting this application for voluntary retirement with a request that for personal reasons my request under VRS be accepted on the expiry of the financial year 2002-2003 i.e., March, 2003."

Submission of Mr. Agrawal is that the petitioner had really prayed for acceptance of the voluntary retirement from 31st January, 2003 and, therefore, it was within the discretion of the Management to accept the same by making it prospective. To substantiate the aforesaid stand, he has referred to the order dated 31-12-2002 passed by the Management vide Annexure P-3 wherein the voluntary retirement was accepted. It is interesting to note that Mr. Agrawal has submitted that the petitioner himself had given a notice of voluntary retirement under the Scheme. He does not dispute that the scheme postulates a notice of voluntary retirement can be given by fixing a date of one month. Reversibly, it is contended by him that a concluded contract had come by acceptance of the voluntary retirement of the petitioner by the Management. To appreciate the aforesaid submission of Mr. Agrawal, it is noticeable that the petitioner had not given one month notice but, in fact, he had indicated the date of 31st March, 2003. Thus, it can be said with certitude that this letter was not one in consonance with the scheme. Regarding the other stand of Mr. Agrawal the facet of concluded contract would not get attracted as the petitioner had stated that his prayer for voluntary retirement was to be given effect to after the end of the financial year. When the offer was a conditional one, a futuristic one, the management could not have acted prior to that. It is also perceptible that employer vide Annexure P-3 had accepted from 31-3-2003 but the said exercise could not have been taken on 31-12-2002 as the petitioner had not shown any kind of desire or inclination in that regard. The decision rendered in the case of P. Lal (supra) is distinguishable as in that case the petitioner had sent the letter of voluntary retirement with immediate effect. There is a sea of difference between the immediate effect or forthwith and when a date is given three months after. In view of the language used in Annexure P-2, we are of the considered view, the law laid down in the case of Gopal Chandra (supra), Shambhu Murari Sinha (supra), T. Parthasarthy (supra) would be applicable and the petitioner still have the locus poenitentiae to recall his request of voluntary retirement and once he had the locus to recall, the Management was under the obligation to honour it. The Management cannot fall back on the plea that it had already acted on 31-12-2002 as a consequence of which a concluded contract had come into existence. When the offer was a conditional one and futuristic in nature, such an exercise, in our considered opinion, could not have been preponed. In view of

above, the letter of acceptance contained in Annexure P-3 is devoid of merit and similarly, the order of rejection contained in Annexure P-5 is unsustainable in law. Hence we have no hesitation quashing both of them. We may hasten to add as the similar postulations and regulations have been declared as ultra vires by the Apex Court in the case of O.P. Swarnakar (supra) we also declare Clause 4 (3) of the scheme as ultra vires. The petitioner would be deemed to be in service and would reap all consequential benefits.

The writ petition is accordingly allowed without any order as to costs.