

A BOARD OF TRUSTEES, VISHAKHAPATNAM PORT TRUST AND ORS.

v.

T.S.N. RAJU AND ANR.

SEPTEMBER 6, 2006

B [DR. AR. LAKSHMANAN AND TARUN CHATTERJEE, JJ.]

Service law

C *Voluntary Retirement Scheme—Applicable to all Ports—Chairman of a Port Trust Board deciding that only those employees who were below age of 58 years were to be considered for benefit of scheme—Applicability to employee above that age—Port Trust rejecting their application—High Court directing acceptance of their cases—Correctness of—Held—VRS was not an offer but merely an invitation to treat—Application of employees constituted an offer which could not take effect till its acceptance in writing by Port Trust and could be rejected or accepted at absolute discretion of latter—Correctness of either the VRS or decision of Port Trust not to grant voluntary retirement to everyone was not questioned—High Court overlooked that application of concerned employees could not be considered in view of their seniority in service and it also did not find how they were discriminated against those who had been granted voluntary retirement—Direction for acceptance of their application was beyond jurisdiction of High Court.*

F With a view to reduce surplus manpower, the Ministry of Shipping, Road Transport and highways came out with a scheme of voluntary retirement (VRS) applicable to all the Ports. The Chairman of appellant decided that the VRS should be considered in the cases of those employees who are below the age of 58 years. Representation of respondent no.1 and 2 for VRS was rejected by appellant. Aggrieved by non-consideration of their cases, they filed writ petitions in High Court. Single Judge allowed both the writ petitions with direction to appellant to consider and accept their VRS applications. In writ-appeal therefrom, Division Bench of High Court dismissed the appeals with directions to appellant to pass orders on the applications of the respondents within a period of one month. Hence the present appeals.

G Appellant contended that (i) it is not mandatory for any organization to accept every application that is received from the employees seeking voluntary

H 758

retirement (ii) the VRS scheme stipulated that voluntary retirement could not be sought for as a matter of right (iii) it was authorized to take a decision to consider applications of only those employees who have not crossed 58 years of age and persons beyond that age were ineligible. A

Respondent contended that (i) the appellant had no discretion of refuse the offer to go on retirement under the voluntary retirement scheme except in cases of the exigencies of service, compelling necessity or indispensability of the employees concerned (ii) appellant having accepted the offer of similarly placed employees who had also completed 57 and 58 years of age to go on voluntary basis, declining to permit the respondent to retire on voluntary retirement basis was discriminatory (iii) appellant had no authority to modify the voluntary retirement scheme. B C

Allowing the appeals, the Court

HELD 1. The request of the employees seeking voluntary retirement was not to take effect until and unless it was accepted in writing by the Port Trust Authorities. The Port Trust Authorities had the absolute discretion whether to accept or reject the request of the employee seeking voluntary retirement under the scheme. There is no assurance that such an application would be accepted without any consideration. The process of acceptance of an offer made by an employee was in the discretion of the Port Trust. The VRS was not a proposal or an offer but merely an invitation to treat and the applications filed by the employees constituted an offer. [777-B-D] D E

Bank of India and Ors. v. O.P. Swarnakar and Ors., [2003] 2 SCC 721 and *HEC Voluntary Retd. Employees Welfare Society and Anr. v. Heavy Engineering Corpn. Ltd. and Ors.*, [2006] 3 SCC 708, relied on.

2.1. The High Court has not seen that the respondent's application for voluntary retirement cannot be considered in view of the seniority of service of the employees concerned. It also did not mention how there was discrimination between those who have been granted voluntary retirement and those who have not. [774-E; 777-A, B] F

2.2. Case of Respondent No. 1 could not be considered for VRS because several applications were pending and he was very junior in the rank of A.E. By the time, the application of senior A.E's were processed, the required number had already been arrived at and the case of respondent No.1 could not be considered. [775-C, D] G

2.3. In the case of respondent No. 2 Single Judge of High Court ought H

A to have considered his application dated 27.4.2000 by which he applied while he was in the cadre of C.T.O.W. (Class-III) to go on voluntary retirement. But by this time, the applications of other A.E's who are senior in the order of receiving, were considered and therefore, his application at this stage could not be considered as he was the juniormost A.E. among the V.R.S. applied A.E's and his application dated 29.8.2000 is least in the order of seniority of application received for V.R.S. [774-F-G]

B 2.4. Respondent No.2 was posted as A.E. for the maintenance section of C.I.S.F. residential colony consisting maintenance repairs, drains etc., including water supply to entire colony, thus his services are very much essential to the department, therefore, his application dated 28.4.2000 has not been considered keeping in view the exigencies of work essentially of cadre, feasibility of surrendering the post etc., since as per Government guidelines V.P.T. has to show appropriate surplus in the manpower in the cadre without causing hindrance to the normal operations of the department. Further as per the above circular while accepting V.R.S. the Port Trust has to ensure to surrender the vacancy caused due to retirement of the incumbent on V.R.S. [775-F-H; 776-A]

C 2.5. The V.R.S. accepted by the Chairman, VPT to some of the employees of the VPT who have completed 58 years of age is only prior to 23.8.2000 by which time the retirement age limit of 60 years was in force and the same is not relevant to the case on hand as in the case of the respondent, he was holding important works under his control and his continuance was considered necessary in VPT service and thereby VRS was not granted to him. In the respondent's case, no such decision has been taken even on his application dated 13.9.2000 addressed by him direct to Deputy Chairman. The Circular dated 29.8.2000 that the employee who was desirous to apply for retirement under voluntary retirement scheme may apply direct to Dy. Chairman was only to consolidate such application at administrative level before arriving at decision, but does not ensure ready acceptance as alleged by the respondents. [776-B-D]

D 3. The respondents have not questioned the validity and correctness of the voluntary retirement scheme introduced by the Government of India and the decision taken by the Port Trust in its meeting of the Board of Trustees held on 30.10.1991 pursuant to the decision of the Ministry in terms of which Port Trust and Dock Labour Board are not grant voluntary retirement to everyone. [776-F]

E 4. The Single Judge ought not to have issued the direction to the

Department to accept the voluntary retirement of the respondent as on the date of their application and pass appropriate order. The Judge at any rate can only direct the Port Trust to consider their application for voluntary retirement and pass appropriate orders. The order passed by the Single Judge is, therefore, beyond the jurisdiction of the Court in issuing such direction. Likewise, the Division Bench also committed the same error in issuing the directions. [774-G, H; 775-A]

5. The High Court could not entertain grievance of the respondents even on their own showing. It was based merely on a presumption that application for VRS, if filed before April, 2000, would be considered by July, 2000 when no such circular or letter had been issued by the Port Trust. The Scheme also provides that the Port Trust and Dock Labour Board will have a right not to grant voluntary retirement for the reasons recorded in writing. Such a right given to the Port Trust was not questioned in the writ petition.

[776-G; 777-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3957 of 2006.

From the Judgment and Order dated 21.11.2005 of the High Court of Andhra Pradesh at Hyderabad in W.A. Nos. 2105/2005 and 1558/2005.

Kailash Vasudev, Gopal Singh and Nishakant Pandey for the Appellants.

L.N. Rao, (N.P.), G. Ramakrishna Prasad, Mohd. Wasay Khan, K.P. Kyalasanath, Suyodhan Byrapaneni and Venkat Subramaniam T.R. for the Respondents.

The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J. Leave granted.

The Board of Trustees, Visakhapatnam Port Trust and others are the appellants before us and the respondents are employees of the said Port Trust.

The matter arises out of an insistence of two employees of the Visakhapatnam Port Trust (in short 'the VPT') to seek retirement under a voluntary retirement scheme, even though, according to the employer Port Trust they are not entitled to avail the benefit of the scheme because they have attained the cut off age of 58 years before their cases could be considered.

The learned single Judge allowed the writ petition filed by the respondents and directed the Port Trust to consider and accept the voluntary retirement scheme (hereinafter called 'VRS') of the respondents as on their

A date of application and pass appropriate orders and pay all the benefits thereunder. However, the learned single Judge held that the respondents are not entitled for pension on the ground that they have retired on attaining the age of superannuation at the age of 60 years and they shall be entitled for pension as per the date of retirement under the VRS to be extended to the respondents. The learned Single Judge further held that the salaries received by the respondents till their age of superannuation shall not be recovered if paid as they have worked. The learned Judges of the Division Bench, by their order dated 21.11.2005 dismissed the appeal filed by the VPT and directed the VPT to pass orders on the applications of the respondents for voluntary retirement within a period of one month from the date of judgment.

C According to the VPT, both the learned single Judge and the Judges of the Division Bench of the High Court have mis-read the applicability of the Scheme and directed the VPT to consider and accept the case of the respondents and that such a direction is unsustainable in law and is likely to have a cascading effect. Therefore, the VPT have come before this Court through the above civil appeals arising out of Special Leave Petition Nos. 26322-26323 of 2005.

The short facts relevant to the issue in dispute are as follows:

E With a view to reduce surplus manpower, the Union Ministry of Surface Transport (now called the Ministry of Shipping, Road Transport and Highways - Department of Shipping) came out with a scheme of voluntary retirement. This was made applicable to all the Ports. The scheme of voluntary retirement was introduced in the appellant-VPT pursuant to the direction of the Ministry of Surface Transport contained in its letter No. LB-16016/7/88-L.II dated 29.08.1991. The said scheme is annexed as Annexure-P1 which reads as under:

“GOVERNMENT OF INDIA

MINISTRY OF SURFACE TRANSPORT

(LABOUR DIVISION)

No. LB-16016/7/88-L.II New Delhi, 29th August, 1991

To

Shri P.V.R.K. Prasad
Chairman,
Vishakhapatnam Port Trust,

Vishakhapatnam-530035

A

Subject:- Voluntary Retirement Scheme for Port Trusts and Dock Labour Boards

Sir,

I am directed to say that the matter regarding introduction of a uniform Voluntary Retirement Scheme for officers, employees and workers of Port Trusts and Dock Labour Board has been under consideration of the Government. After careful consideration it has been decided that Port Trusts and Dock Labour Boards can introduce Voluntary Retirement Scheme with a view to reducing surplus manpower subject to the following terms and conditions:-

2. (a) An employee who has completed 10 years of service or completed 40 years of age may seek voluntary retirement by a written request.

(b) The Port Trust and Dock Labour Board will have the right not to grant voluntary retirement for reasons to be recorded in writing.

(c) The terminal payments available to an employee who seeks voluntary retirement would be:-

- i. the balance in his Provident Fund Account payable as per the GPF/CPF regulations applicable to him;
- ii. cash equivalent of accumulated earned leave as per the rules of the Port Trust/Dock Labour Board;
- iii. gratuity as per Gratuity Act or the Gratuity Scheme applicable to the employees;
- iv. one month's/three month's notice pay (as per the conditions of service applicable to him).
- v. pension as per the rule Port Trust/Dock Labour Board.

(d) In addition, an employee whose request for Voluntary Retirement is accepted would also be entitled to an ex-gratia payment equivalent to 1½ months emoluments (Pay+ D.A) for each completed year of service or the discounted value of the emoluments (at 12% rate of discount) that would have become payable for the balance months of service left, whichever is less. For example, an employee who has put

H

A in 24 years of service and has got only one year of service for normal retirement, he will get ex-gratia payment of only 12 months emoluments (pay+DA) discounted at 12% per annum and not 36 months emoluments.

B (e) In addition, the employee and his family would also be entitled to travel by entitled class to the place where he intends settling down.

C 3. While introducing the voluntary retirement scheme, Port Trusts and Dock Labour Boards will make an assessment of surplus man-power taking into account the present and future operational requirements. While accepting the Voluntary Retirement of the employee, the Port Trust/Dock Labour Board will also issue an order to the vacancy caused by the Voluntary retirement would not be filled up and the post is abolished.

D 4. No claim of the dependents of the employees going on voluntary retirements for any compassionate appointment under the Port Trust/ Dock Labour Board will be entertained.

E 5. The Voluntary Retirement Scheme would be financed by the Port Trusts/ Dock Labour Boards from their own resources and no budgetary support in the form of loans will be granted by the Government, after seeking approval of the Ministry.

F 6. Port Trusts and Dock Labour Boards can introduce Voluntary Retirement Scheme on the above parameters, after seeking approval of the Ministry.

Yours faithfully

F Sd/-

(P.K. MISHRA) Director"

G On 30.10.1991, the approval of the Board of Trustees of the appellant was sought for introducing the scheme of voluntary retirement. The terms and conditions of the scheme and its applicability were detailed therein. The scheme is annexed along with this appeal and marked as Annexure-P2 which is reproduced hereunder:

H

“VISHAKHAPATNAM PORT TRUST
MEETING NO. 4 OF 1991-92 OF THE BOARD OF
TRUSTEES TO BE HELD
ON 30.10.1991

AGENDA ITEM NO. 36

Sub: Voluntary Retirement Scheme for the Port Trusts and Dock Labour Boards.

The Ministry has decided that Port Trusts and Dock Labour Boards can introduce Voluntary Retirement Scheme for its officers, Employees and Workers with a view to reduce the surplus manpower subject to following terms and conditions:

- (a) An employee who has completed 10 years of service or completed 40 years of age may seek Voluntary Retirement by a written request.
- (b) The Port Trust and Dock Labour Boards will have the right not to grant Voluntary Retirement for reasons to be recorded in writing.
- (c) The terminal payments available to an employee who seeks Voluntary Retirement would be:-
 - (i) The balance in his Provident Fund Account payable as per the GPF/CPF Regulations applicable to him;
 - (ii) Cash equivalent of accumulated earned leave as per the rules of the Port Trust/Dock Labour Board;
 - (iii) Gratuity as per Gratuity Act or the Gratuity Scheme applicable to the employee;
 - (iv) One month's/ Three month's Notice Pay (as per the conditions of service applicable to him);
 - (v) Pension as per the rules of the Port Trust/ Dock Labour Board.
- (d) In addition, an employee whose request for Voluntary Retirement is accepted would also be entitled to an ex-gratia payment equivalent to 1½ months emoluments (Pay + D.A) for each completed year of service or the discounted value of the

A emoluments (at 12% rate of discount) that would have become payable for the balance months of service left, whichever is less.

(e) In addition, the employee and his family would also be entitled to travel by the entitled class to the place where he intends setting down.

B Under the above scheme while accepting the Voluntary Retirement of the employee, the Port Trust/Dock Labour Board will also issue an order that the vacancy caused by the Voluntary Retirement would not be filled up and the post is abolished and also that no claim of the dependents of the employee going on Voluntary Retirement for any compassionate appointments under the Port Trust and Dock Labour Boards will be entertained. The above scheme has to be financed by the Port Trust/ Dock Labour Board from their own resources and no budgetary support would be granted by the Government.

C
D The Ministry while communicating the above scheme, has stated that the Port Trust and Dock Labour Boards can introduce a voluntary Retirement Scheme on the above parameters, after making an assessment of surplus man power taking into account the present and future operational requirement, subject to approval of the Government.

E A copy of the Ministry's letter No. LB-16016/7/88-L.II, dt. 29.08.1991 on the above subject is enclosed for reference.

In view of the Ministry's instructions, it is proposed to introduce a Voluntary Retirement Scheme on the above parameters, in our Port also.

F Board's approval is, therefore, requested to introduce a Voluntary Retirement Scheme in our Port on the parameters prescribed by the Ministry of Surface Transport in its letter No. LB;16016/7/88-L.II, dt.29.08.1991 subject to approval of the Ministry.

Encl.: As above."

G Respondent No.1 T.S.N. Raju applied for voluntary retirement on 16.08.1999 but withdrew his application for VRS on 06.04.2000. He again applied for VRS on 27.04.2000. He averred in his writ petition that the application was made on the basis that *Port has informally alerted* that Management is serious about considering the request of the employees seeking VRS. In the

H

counter affidavit filed by the VPT, it was categorically stated that the Management had issued no letter or circular to such effect. On 26.07.2000, respondent No.1 was promoted as Assistant Engineer (Civil) on *ad hoc* basis but he did not renew his application. A

Respondent No.2 - R. Rama Rao applied for VRS on 28.04.2000. In a meeting of the Heads of Department of the VPT, the concern expressed by the Secretary, Department of Shipping, Ministry of Surface Transport about the VRS was discussed. It was decided by the Chairman that the VRS should be considered in the cases of those employees who are below the age of 58 years. The said decision is annexed along with the appeal as Annexure-P3 which reads as under: B

“VISHAKHAPATNAM PORT TRUST C

ADMINISTRATION DEPARTMENT

No. ADMN/VRS/2000 Date: 23.08.2000 D

C.E./C.M.E./D.C./T.M./F.A.&C.A.O

C.M.O/C.M.M./DIRECTOR (R&P)

MANAGER (OP) E

ORDER

Sub: Grant of Voluntary Retirement under V.R. Scheme to the employees- M.O.S.T. Letter No. LB-16016/7/94-L-II, dt.29.08.1991-Reg.

During the daily HODs Meeting held on 23.08.2000, keeping in view the concern expressed by the Secretary (Dept. of Shipping), M.O.S.T, Govt of India, a review has been made by the Chairman on the implementation of voluntary retirement under the scheme to the employees of V.P.T. and it has been decided that the Voluntary Retirement Scheme should be considered in the case of those employees who are below the age of 58 years. F G

All the HODs are, therefore, requested to forward the V.R.S. cases of only those employees who have not attained the age of 58 years.

This issues with the approval of the Chairman. H

A

SECRETARY

VISHAKHAPATNAM PORT TRUST

B On 29.08.2000, respondent No.1 made a representation to the Chairman of the VPT to consider his application dated 27.04.2000 which he had made before being promoted as Assistant Engineer. However, his case could not be considered for VRS because there were several applications pending and he was very junior in rank of A.E.(C). By the time the applications of senior A.E.s were processed, the required number had already been arrived at and the case of respondent No.1 could not be considered.

C

Being aggrieved by non-consideration of his case, respondent No.1 filed Writ Petition No. 17697 of 2000 before the High Court of Andhra Pradesh on 03.09.2000 with the following prayers:

D

“For the reasons and in the circumstances stated in the accompanying affidavit, the petitioners herein pray that this Hon’ble Court in the interest of justice be pleased to issue a writ or direction more particularly one in the nature of writ of *Mandamus*

E

(i) declaring the action of the respondents in not accepting the offer of the writ petitioner to retire from the service of the Vishakhapatnam Port Trust on Voluntary retirement basis as unjust and illegal; and

F

(ii) consequently direct the respondents to treat the writ petitioner to have retired from its service on voluntary retirement basis with immediate effect by extending all the terminal benefits that flow therefrom and pass such order or further order or orders as are deemed fit and proper in the circumstances of the case.”

G

Being aggrieved by non-consideration of his case, respondent No.2 Rama Rao filed Writ Petition No. 23543 of 2000 before the High Court on 18.09.2000 with the following prayers:

H

(i) declaring the action of the respondents in not accepting the offer of the writ petitioner to retire from the service of the Vishakhapatnam Port Trust on Voluntary retirement basis as unjust and illegal; and

(ii) consequently direct the respondents to treat the writ petitioner to

have retired from its service on voluntary retirement basis with immediate effect by extending all the terminal benefits that flow therefrom and pass such order or further order or orders as are deemed fit and proper in the circumstances of the case.” A

Both these writ petitions were heard together. The VPT filed a detailed counter affidavit denying the allegations of the respondents that cases of others similarly situate had been considered and they had been discriminated against by the VPT. B

The retirement age of the employees of the VPT was rolled back from 60 years to 58 years. Respondent No. 1 (Born on 01.08.1942) and Respondent No. 2 (Born on 23.09.1941) were superannuated from service on 30.11.2000. The learned single Judge passed a common judgment and allowed both the writ petitions and directed the VPT to consider and accept the VRS of the respondents herein with certain other directions. Being aggrieved, the VPT preferred two separate Letter Patent Appeals being Writ Appeal Nos. 2105 and 1558 of 2005. By the impugned common final judgment, both the appeals had been dismissed with a direction to the VPT to pass orders on the applications of the respondents within a period of one month. Aggrieved by the above common judgment, the VPT has come before us by filing the above civil appeals. C D

We heard Mr. Kailash Vasudev, learned senior counsel assisted by Mr. Gopal Singh, learned counsel for the appellants and Mr. L.N. Rao, learned senior counsel assisted by Mr. G. Ramakrishna Prasad, learned counsel for the respondents. E

Mr. Kailash Vasudev, learned senior counsel has submitted that the Division Bench has not appreciated the contentions of the VPT against the order of the learned single Judge. According to him, it was specifically argued that undeniably it is not mandatory for any organization to accept every application that is received from the employees seeking voluntary retirement and that the VPT was authorized to take a decision on 23.08.2000 to consider applications of only those employees who have not crossed 58 years of age. It is further submitted that the learned single Judge and of the Division Bench of the High Court have failed to appreciate that the scheme clearly stipulates of basic condition that voluntary retirement under a scheme cannot be sought for as a matter of right. The factual position with regard to the other employees whose cases for voluntary retirement were considered had been placed by filing a counter affidavit but has been overlooked by the High Court. Learned F G H

A senior counsel further submits that the High Court has erred in directing that even though the writ petitioners had continued in service beyond 58 years till their superannuation and had received salary they would not be required to refund the excess amount received and that they shall be extended benefits under the VRS as on the date of their applications. It is further urged that a person who has crossed the age of 58 years is not eligible to be considered for retirement under the VRS. Respondent No.2 had in fact completed the age of 58 years by 23.09.1999. Therefore, learned senior counsel would submit that the orders of the learned single Judge as well as the Division Bench are arbitrary and have been passed without taking into consideration these vital facts.

C Learned senior counsel appearing for the respondents/writ petitioners submitted that the Port Trust has no discretion to refuse the offer to go on retirement under the voluntary retirement scheme except in cases of the exigencies of service or the compelling necessity or the indispensability of the employees concerned.

D The Port Trust having accepted the offer of similarly placed employees who have also completed 57 years of age and also 58 years of age to go on voluntary basis, declining to permit the respondents to retire on voluntary retirement basis is clearly discriminatory.

E The Port Trust has committed illegality in not passing any orders on the application dated 13.9.2000 to retire from its service on voluntary retirement basis though the application has been forwarded for acceptance by the Head of the Department, Financial Advisor & Chief Accounts Officer and the Vigilance Department. It is, therefore, contended that the Port Trust has not acted fairly and justly in the case of respondent - Sri Rama Rao.

F In *Bank of India & Ors. v. O.P. Swarnakar & Ors.*, [2003] 2 SCC 721, the moot question posed and answered by this judgment was whether the VRS is an offer/proposal or merely an invitation to offer. The question was whether the Banks intended to make an offer or merely issued an invitation to treat is essentially a question of fact. In paragraph 49, this Court held as under:

H "49. An offer indisputably can be made to a group of persons collectively which is capable of being accepted individually but the question which has to be posed and answered is as to whether having regard to the service jurisprudence: the principles of Indian Contract

Act would be applicable in the instant case. It is the specific case of the "Banks" that the schemes had been floated by way of contract. It does not have any statutory flavour. Reference to the pension scheme framed under the regulations was made for computation of the pension." A

The learned Judges of the Bench have also elaborately discussed the use of the term "offer" or "proposal" and held in paragraphs 59, 60, 61, 62 and 74 as under: B

"59. 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 therefor 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." C D E

"60. Acceptance or otherwise of the request of an employee seeking voluntary retirement is required to be communicated to him in writing. This clause is crucial in view of the fact that therein the acceptance or rejection of such request has been provided. The decision of the authority rejecting the request is applicable to the Appellate authority. The application made by an employee as an offer as well as the decision of the bank thereupon would be communicated to the respective General Managers. The decisions making process shall take place at various levels of the banks." F G

"61. The following, therefore, can be deduced:

(i) The banks treated the application from the employees as an offer which could be accepted or rejected.

- A (ii) Acceptance of such an offer is required to be communicated in writing.
- (iii) The decision making process involved application of mind on the part of several authorities.
- B (iv) Decision making process was to be formed at various levels.
- (v) The process of acceptance of an offer made by an employee was in the discretion of competent authority.
- (vi) The request of voluntary retirement would not take effect *in praesenti* but in future.
- C (vii) The Bank reserved its right to alter/rescind the conditions of the scheme.”
- “62. From what has been noticed before, it is apparent that the Nationalized banks in terms of the scheme had secured for themselves an unfettered and unguided right to deal with the jural relationship between themselves and their employees”
- D “74. We, therefore, have no hesitation in coming to the conclusion that the voluntary scheme was not a proposal or an offer but merely an invitation to treat and the applications filed by the employees constituted an ‘offer’.”
- E

In *HEC Voluntary Retd. Employees Welfare Society & Anr. v. Heavy Engineering Corpn. Ltd. & Ors.*, [2006] 3 SCC 708, this Court in paragraph 11 held as under:

- F “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 therefor. 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,
- G unless the terms and conditions of such a contract are governed by
- H

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 therefore, 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 v. O.P. Swarnakar*, [2003] 2 SCC 721.”

We have carefully considered the rival submissions made by the respective parties. We have also perused the pleadings, judgments delivered by the learned single Judge and the Division Bench, voluntary retirement scheme, annexures and documents.

In our opinion, under the Scheme, the Chairman of the Port Trust has an absolute right either to accept or not to accept the applications filed by the employees for retirement under the voluntary retirement scheme. We have already reproduced the entire scheme dated 29.8.1991 of the Government of India, Ministry of Surface Transport. The Government of India has decided that Port Trust and Dock Labour Board can introduce voluntary retirement scheme with a view to reduce surplus manpower subject to the terms and conditions set out in the voluntary retirement scheme. Clauses 2(a) and 2(b) of the Scheme are very relevant for the present purpose. Clause 2(a) clearly stipulates that an employee who has completed ten years of service or completed 40 years of age may seek voluntary retirement by a written request. Clause 2(b) clearly stipulates that the Port Trust and Dock Labour Board will have a right not to grant voluntary retirement for reasons to be recorded in writing. Clause 6 of the said Scheme provides that the Port Trust and Dock Labour Board can introduce a voluntary retirement scheme on the parameters mentioned in the scheme framed by the Government of India after seeking approval of the Ministry.

A meeting of the Board of Trustees of the VPT was held on 30.10.1991. In the said meeting, the Trustees considered the VRS formulated by the Government of India and decided to introduce the voluntary retirement scheme on the parameters suggested by the Government of India in VPT also. Board's approval was, therefore, sought to introduce the VRS in the VPT on the parameters prescribed by the Ministry of Surface Transport in its letter No.

A LB-16016/7/88-L.II, dated 29.8.1991 subject to approval of the Ministry.

B Annexure P-3 is relevant to be considered in the present context. By the said order, VPT, Administration Department, passed an order stating that a review has been made by the Chairman on the implementation of voluntary retirement under the scheme to the employees of VPT and that it has been decided that the voluntary retirement scheme should be considered in the cases of those employees who are below the age of 58 years. In view of the said decision, the Heads of the Department were requested to forward the voluntary retirement scheme cases of only those employees who have not attained the age of 58 years. Though it is contended that the Port Trust had no authority to modify the voluntary retirement scheme, we are unable to accept the said submission made by the respondent in view of clause 2(b) of the Scheme which enable the Port Trust and Dock Labour Board to alter the scheme and also have a right not to grant voluntary retirement for the reasons to be recorded in writing.

D We have perused the order passed by the learned single Judge. In our view, the order of the learned single Judge is without jurisdiction and beset with material irregularities. The learned single Judge ought to have seen that under the scheme the Chairman of VPT has absolute right either to accept or not to accept the applications filed by the employees for retirement under the voluntary retirement scheme. The learned single Judge also did not mention how there was discrimination between those who have been granted voluntary retirement and those who have not. The learned single Judge in the case of *Sri Rama Rao* (respondent No.2 herein) has not noticed that he had made a representation on 29.8.2000 addressed to the Chairman while he was in the category of CTOW and his application was not considered as he was the junior most Assistant Engineer. The learned single Judge ought to have considered his application dated 27.4.2000 by which he applied while he was in the cadre of C.T.O.W. (Class-III) to go on voluntary retirement. But by this time, the applications of other A.E's who are senior in the order of receiving, were considered and therefore, his application at this stage could not be considered as Sri Rama Rao being the junior most A.E. among the V.R.S. applied A.E's and his application dated 29.8.2000 is least in the order of seniority of application received for V.R.S. In any event, the learned single Judge ought not to have issued the direction to the Department to accept the voluntary retirement of the respondent as on the date of their application and pass appropriate order. The learned Judge at any rate can only direct the Port Trust to consider their applications for voluntary retirement and pass

appropriate orders. The order passed by the learned single Judge is, therefore, beyond the jurisdiction of the Court in issuing such direction. Likewise, the Division Bench also committed the same error in issuing the directions. A

Respondent No.1 T.S.N. Raju applied for voluntary retirement on 16.08.1999 but withdrew his application for VRS on 06.04.2000. He again applied for VRS on 27.04.2000. He averred in his writ petition that the application was made on the basis that *Port has informally alerted* that Management is serious about considering the request of the employees seeking VRS. In the counter affidavit filed by the VPT, it was categorically stated that the Management had issued no letter or circular to such effect. On 26.07.2000, respondent No.1 was promoted as Assistant Engineer (Civil) on *ad hoc* basis but he did not renew his application. B C

On 29.8.2000, respondent No.1 made a representation to the Chairman of the VPT to consider his application dated 27.4.2000 which he had made before being promoted as A.E. However, his case could not be considered for VRS because several applications were pending and he was very junior in the rank of A.E. By the time, the applications of senior A.E's were processed, the required number had already been arrived at and the case of respondent No.1 could not be considered. D

As already noticed, Sri Rama Rao (respondent No.2) was appointed as sub-overseer on 2.1.1969 in the Civil Engineering Department of VPT and completed about 31 years of service as on date of his retirement on superannuation by 30.11.2000 A/N. He has been promoted as Assistant Engineer initially on *ad hoc* basis and subsequently regularized as A.E. w.e.f. 17.1.2000. The Scheme of VRS has been introduced in VPT as per Ministry of Surface and Transport (Labour Division) letter No. L.B. 16016/7/88-L.II dated 29.08.1991 with a view to reduce surplus manpower subject to sustain condition specified therein. E F

It is true that Sri Rama Rao (respondent No.2 herein) has applied for retirement under the voluntary retirement scheme vide his application dated 28.4.2000 seeking retirement w.e.f. 30.11.2000. Sri Rama Rao was posted as A.E. for the maintenance section of C.I.S.F. residential colony consisting maintenance repairs, drains etc., including water supply to entire colony, thus his services are very much essential to the department, therefore, his application dated 28.4.2000 has not been considered favourable keeping in view the exigencies of work essentially of cadre, feasibility of surrendering the post etc., since as per Government guidelines V.P.T. has to show appropriate G H

A surplus in the manpower in the cadre without causing hindrance to the normal operations of the department. Further as per the above circular while accepting V.R.S., the Port Trust has to ensure to surrender the vacancy caused due to retirement of the incumbent on V.R.S.

B This apart, the V.R.S. accepted by the Chairman, VPT to some of the employees of the VPT who have completed 58 years of age is only prior to 23.8.2000 by which time the retirement age limit of 60 years was in force and the same is not relevant to the case on hand as in the case of the respondent, he was holding important works under his control and his continuance was considered necessary in VPT service and thereby VRS was not granted to him. In the respondent's case, no such decision has been taken even on his application dated 13.9.2000 addressed by him direct to Deputy Chairman. The Circular dated 29.8.2000 that the employee who was desirous to apply for retirement under voluntary retirement scheme may apply direct to Dy. Chairman was only to consolidate such applications at administrative level before arriving at a decision, but it does not ensure ready acceptance as alleged by the respondents. We have already reproduced the prayers made in the writ petition of both the respondents. The prayer was to declare the inaction on the part of the Port Trust in not accepting the offer of the respondents to retire from service of the Port Trust on voluntary retirement basis as unjust and illegal. A further prayer was also made to direct the Port Trust to treat the respondent to have retired from its service on voluntary retirement basis with immediate effect by extending all the terminal benefits that flow therefrom and pass such other or further order or orders as are deemed fit and proper in the circumstances of the case.

F The respondents have not questioned the validity and correctness of the voluntary retirement scheme introduced by the Government of India and the decision taken by the Port Trust in its meeting of the Board of Trustees held on 30.10.1991 pursuant to the decision of the Ministry in terms of which Port Trust and Dock Labour Board are not to grant voluntary retirement to everyone. It is not in dispute that beneficial scheme was introduced with a view to reduction of surplus manpower.

G The High Court, in our opinion, could not entertain grievance of the respondents even on their own showing. It was based merely on a presumption that applications for VRS, if filed before April, 2000, would be considered by July, 2000 when no such circular or letter had been issued by the Port Trust. The Scheme also provides that the Port Trust and Dock Labour Board will

H

have a right not to grant voluntary retirement for the reasons recorded in writing. Such a right given to the Port Trust was not questioned in the writ petition. In our opinion, the Chairman is competent to frame the Scheme having regard to the exigencies of work and no one can claim voluntary retirement as of right. The learned Judges of the High Court have also not seen that the respondent's application for voluntary retirement cannot be considered in view of the seniority of service of the employees concerned. A B

In our opinion, the request of the employees seeking voluntary retirement was not to take effect until and unless it was accepted in writing by the Port Trust Authorities. The Port Trust Authorities had the absolute discretion whether to accept or reject the request of the employee seeking voluntary retirement under the scheme. There is no assurance that such an application would be accepted without any consideration. The process of acceptance of an offer made by an employee was in the discretion of the Port Trust. We, therefore, have no hesitation in coming to the conclusion that the VRS was not a proposal or an offer but merely an invitation to treat and the applications filed by the employees constituted an offer. C D

The reasons assigned by the learned single Judge and the learned Judges of the Division Bench in the orders are erroneous and unsound and, therefore, they are set aside.

For the foregoing reasons, we allow the appeals and set aside the order passed by the Division Bench affirming the order of the learned single Judge. However, there shall be no order as to costs. E

V.S.S.

Appeal allowed.