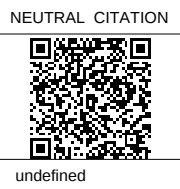


**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

Reserved On : 19/08/2025
Pronounced On : 04/09/2025

R/LETTERS PATENT APPEAL NO. 84 of 2024
In R/SPECIAL CIVIL APPLICATION/13803/2021
With
R/LETTERS PATENT APPEAL NO. 1007 of 2024
In
R/SPECIAL CIVIL APPLICATION NO. 14006 of 2021
With
R/LETTERS PATENT APPEAL NO. 1115 of 2024
In
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With
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In
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With
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In
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With
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In
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With
R/LETTERS PATENT APPEAL NO. 954 of 2024
In
R/SPECIAL CIVIL APPLICATION NO. 13835 of 2021



**With
R/LETTERS PATENT APPEAL NO. 956 of 2024
In
R/SPECIAL CIVIL APPLICATION NO. 13836 of 2021
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R/LETTERS PATENT APPEAL NO. 994 of 2024
In**



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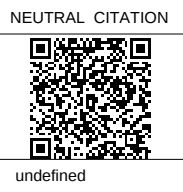
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In
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**With
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In**



**R/SPECIAL CIVIL APPLICATION NO. 13890 of 2021
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With
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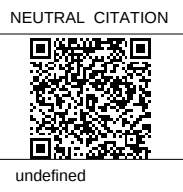
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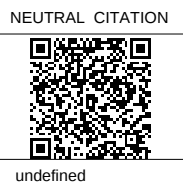
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In
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**With
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In
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In**



**R/SPECIAL CIVIL APPLICATION NO. 13939 of 2021
With
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In
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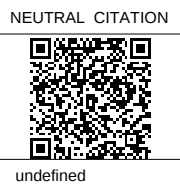
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In**



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With
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In
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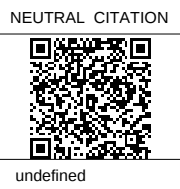
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In**



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With
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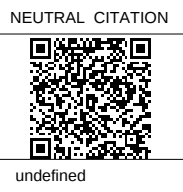
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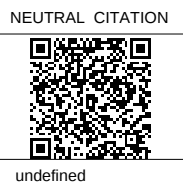
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**With
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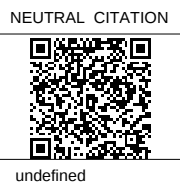
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With
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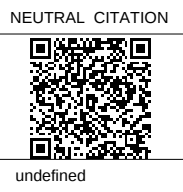
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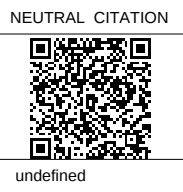
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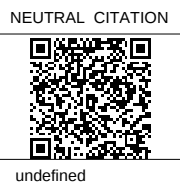
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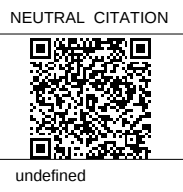
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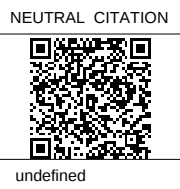
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**With
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In**



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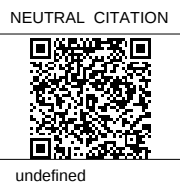
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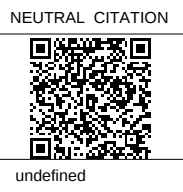
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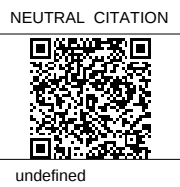
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FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA

Sd/-

and

HONOURABLE MR. JUSTICE R. T. VACHHANI

Sd/-

Approved for Reporting	Yes	No
	✓	

PUNAMBHAI ASHABHAI WAGHELA

Versus

INDIAN PETROCHEMICALS CORPORATION LTD. & ANR.

Appearance:

MR PR THAKKAR, ADVOCATE for MR JP THAKKAR, ADVOCATE for the Appellant – Employees

MR K.S. NANAVATI, SENIOR ADVOCATE & MR. MIHIR JOSHI, SENIOR ADVOCATE with MR KUNAL NANAVATI, MR MAYUR V DHOTARE & MR DEVESH RAMAKRISHNAN, ADVOCATES for the Respondent – CORPORATION

CORAM: HONOURABLE MR. JUSTICE A.S. SUPEHIA

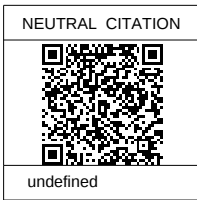
and

HONOURABLE MR. JUSTICE R. T. VACHHANI

COMMON CAV JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

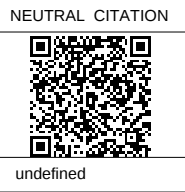
1. The present group of Letters Patent Appeals, filed under Clause 15 of the Letters Patent Act, 1865, emanates from the common CAV order dated 15.09.2022 passed by the learned Single Judge, whereby the captioned writ petitions filed by the appellants – employees of the respondent – Indian Petrochemical Corporation Ltd., (hereinafter referred to as “the



Company”), came to be rejected. The employees - writ petitioner’s had challenged the awards passed in the respective references by the Labour Court No.1, Vadodara, dismissing 462 reference proceedings and refusing to grant the relief of reinstatement with back wages. The controversy pertains to the withdrawal of applications filed by the appellant-employees seeking voluntary retirement under the Voluntary Separation Scheme (VSS) / Special Separation Scheme (SSS) introduced by the respondent-Corporation vide Circular dated 06.03.2007, which has remained in operation from 06.03.2007 to 20.03.2007.

2. A total of 2,400 employees, including the present appellants, applied to avail the benefits under the said Scheme.

3. According to the employees, on 20.03.2007, in the late evening, all of them approached the appropriate officer of the respondent-Company with a request to withdraw their voluntary retirement applications. However, the officers refused to accede to such requests. Thereafter, between 21.03.2007 and 22.03.2007, the employees submitted formal applications for withdrawal. It is the specific case of the employees that, as on 20.03.2007, when the order purporting to accept all 2,400 applications was shown to have been passed, such an order was, in fact, not in existence, and that it was subsequently prepared and backdated with a view to deny the requests of the appellant-employees for withdrawal of their applications.

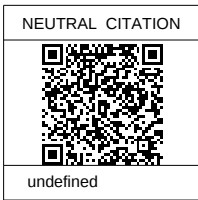


4. It is further alleged by the employees that their signatures were obtained on blank forms attached to the applications for availing benefits under the VSS / SSS, and that the corresponding amounts were directly deposited into their bank accounts. The aforesaid action of the respondent-Corporation led to the initiation of reference proceedings. The matter has a checkered history, having undergone three earlier rounds of litigation, which ultimately traveled upto the Supreme Court. The Supreme Court, in turn, directed that separate references be filed and decided on their own merits. Pursuant thereto, the aforesaid 464 references were segregated, and each individual reference was adjudicated by the Labour Court, after examining the evidence adduced by both sides.

5. The Labour Court, in its ultimate decision, rejected the reference proceedings, which gave rise to the writ petitions. The learned Single Judge dismissed the said writ petitions, which gave rise to the present group of Letters Patent Appeals.

SUBMISSIONS OF THE APPELLANT - EMPLOYEES :

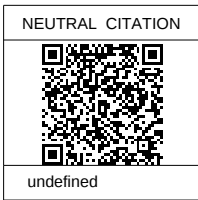
6. The first and foremost ground, which has been raised by the learned advocate Mr.P.R.Thakkar, appearing for learned advocate Mr.J.P.Thakkar, for the appellant-employees is that the validity of the Voluntary Separation Scheme (VSS) was from 06.03.2007 till 20.03.2007. However, while pointing out Clause 7 of the said Scheme, it is submitted by him that the date of relieving was the first week of April, 2007. It is submitted that before the aforesaid relieving, all the employees had filed an application for withdrawing their



applications, which were filed by the employees, who were 464 in number. He has also referred to the Office Order dated 20.03.2007 in this regard and has submitted that the order also reveals that the employees were to be relieved in the first week of April, 2007. Reference is also made to the relieving order, which indicates that all the employees were relieved within the first week of April, 2007 and hence, before the relieving order, the respondent-Corporation was required to accept the applications, and in case no decision was taken, the applications were required to be treated as valid, and all the employees were required to be reinstated and held in service.

7. Learned advocate Mr.P.R.Thakkar has further submitted that there is no clause in the entire scheme, which mentions the withdrawal of applications, and in this regard, it was always open for the present employees to withdraw the application seeking voluntary retirement.

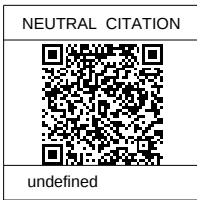
8. It is contended that, as per Clause 2.8 of the Scheme, "one month's notice pay in lieu of notice period" was specified, and hence, the applications of the appellants could not have been rejected as it was always open for the employees to withdraw their applications within a period of one month. It is submitted that either till the first week of April 2007, that is, when the appellants were relieved from the service or till the period of one month's notice pay, the jural relationship between the employees and the respondent-Corporation was in existence, and during this period, the employees had vested rights to withdraw their applications.



9. On this issue, learned advocate Mr.P.R.Thakkar has placed reliance on the judgments of the Supreme Court in the case of Bank of India and Others Vs. O.P. Swarnakar and others, AIR 2003 SC 858, and in the case of K.L.E. Society Vs. Dr. R. R. Patil and Another, (2002) 5 SCC 278. While placing reliance on the said judgments, learned advocate Mr.P.R. Thakkar has further submitted that the learned Single Judge as well as the Tribunal were influenced by the fact that since the employees had accepted their benefits, it was not open for them to resile from the scheme. It is submitted that the employees were never aware about the deposit of an amount by the respondent - Corporation in their bank accounts, and the amount of the VSS was directly deposited in their bank accounts. It is submitted that immediately, the employees protested the action of the respondent-Corporation and on 29.03.2007, they sent an email to the Hon'ble Chief Minister.

10. It is submitted that the first writ petition being Special Civil Application No.20727 of 2007 was filed before this Court, in which they had specifically made a statement that they were ready and willing to return the money, which was deposited in their accounts.

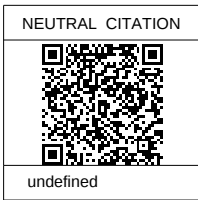
11. Learned advocate Mr.P. R. Thakkar has further contended that the issue of acceptance of amount was raised before the Labour Court, Vadodara, in the reference proceedings and vide order dated 20.08.2012, the Labour court directed the employees to deposit the entire amount received by them under the scheme, excluding the provident fund amount, with the respondent-Corporation, failing which, the reference would



automatically be dismissed. The said order of the Labour Court directing the employees to deposit the amount received by them was challenged by filing a writ petition being Special Civil Application No.13915 of 2012, which was also dismissed by the learned Single Judge vide judgment and order dated 19.12.2012.

12. Learned advocate Mr.P.R.Thakkar has submitted that the aforesaid judgment and order of the learned Single Judge was directly challenged by the employees before the Supreme Court by filing Civil Appeal No.7703 of 2013, which was allowed by the order dated 02.09.2013. The Supreme Court set aside the order of the Labour Court dated 20.08.2012 along with the judgment and order of the learned Single Judge relating to depositing of the amount and it was directed that the reference proceedings shall proceed without any of the conditions mentioned therein. Thus, it is submitted that, in view of the aforesaid order, the Labour Court and the learned Single Judge ought not have rejected the case of the employees on this ground, as there was no condition in existence for depositing the amount which the present employees had received.

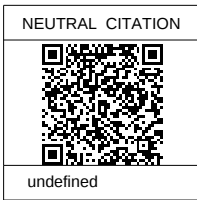
13. Learned advocate Mr.P.R.Thakkar has further submitted that the respondent-Corporation had, with *mala fide* intention, accepted the applications filed by the employees. It is submitted that all the employees went on late night hours of 20.03.2007 for withdrawing their applications, however the request was not acceded. He has further submitted that it is impossible for a company to verify 2,400 applications of the



employees and take a decision within few hours on 20.03.2007.

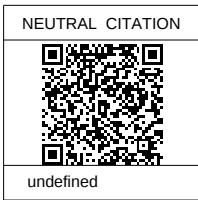
14. Learned advocate Mr.P.R.Thakkar has submitted that, on 21.03.2007, when the employees went with their applications for withdrawal of voluntary retirement, the endorsement was made by the officer of the respondent-Corporation on 22.03.2007 stating that their application would be subject to further decision of the higher officer. Thus, it is submitted that, as on 22.03.2007, no decision was taken by any officer of the respondent-Corporation to accept the applications of withdrawal. While referring to the postal stamps of the Registered Post A.D., it is submitted by the learned advocate Mr.P.R.Thakkar that the same is dated 26.03.2007 and by backdating the acceptance letter dated 20.03.2007, the respondent-Company has tried to play a mischief. It is submitted that thus, the circular which was displayed on the notice board on 20.03.2007 accepting the application was, in fact, a backdated circular. It is submitted that the officer, who issued this circular, being Mr.M.D.Bara, has not mentioned anything about any email or circular of the notice board.

15. In support of his submissions, learned advocate Mr.P.R.Thakkar has referred to the evidence of the retired employee of the respondent-Corporation, Mr.Haresh Ramanbhai Desai, who was examined below Exh.94. It is submitted that he had categorically deposed that, the circular was not issued on 20.03.2007. However, the evidence of this witness had been rejected on the ground that he is an interested witness, for the only reason that he has deposed in favour of the employees by making a statement that he cares



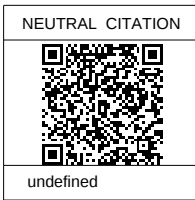
for the employees of the Corporation. It is submitted that this witness was a very vital witness of the management who highlighted the mischief and *mala fide* intention of the respondent-Corporation. While referring to the observations and findings of the Labour Court, learned advocate Mr.P.R.Thakkar has contended that the Labour Court was misdirected in discarding the evidence of the witness Mr.Haresh Ramanbhai Desai. Similarly, it is submitted that the learned Single Judge also fell in error in ignoring this vital aspect.

16. Learned advocate Mr.P.R.Thakkar has submitted that, for the first time, the Company has mentioned that none of the employees had submitted their withdrawal applications on or before 20.03.2007, and subsequently, a case has been made out that only 110 employees had made applications. It is submitted that there was no reference made to either the email or circular dated 20.03.2007 in any of the proceedings right from the reference proceedings from the stage of Section 10 (1) of the Industrial Disputes Act, 1947, and only after the Union filed the reply in the affidavit in the said petition, the respondent-Corporation carved out a new case. It is submitted that the respondent-Corporation has not clarified in what mode and manner they accepted the applications of 110 employees. It is submitted that, in fact, the present applicants and other employees who wanted to withdraw from the Voluntary Separation Scheme were asked to submit their applications in one tray, and all of them had submitted such applications by placing them in the tray, and hence, the appellant-employees are not having copies of such applications of withdrawal.



17. It is submitted that the employees have also challenged the validity of the scheme since, after the employees were relieved, the respondent Corporation has made contractual appointments.

18. Learned advocate Mr.P.R.Thakkar has submitted that the learned Single Judge fell in error in appreciating the ratio of the judgment of the Supreme Court in the case of Bareilly Electricity Supply Company Limited Vs. Workmen and Ors., (1971) 2 S.C.C. 617. It is submitted that the learned Single Judge has held that there was no objection taken by the employees while exhibiting the documents before the Labour Court, and hence there was no need for compliance with Section 65B of the Indian Evidence Act, 1872, which is an illegal finding and is contrary to the law. It is submitted that, in all the documents produced before the Labour Court by the respective sides, an endorsement was made that they were to be exhibited with further objection, subject to the contentions raised by the respective parties. Thus, it is submitted that after the list of documents was tendered before the Labour Court, with the endorsement made that the parties have no objection for exhibiting the same subject to contentions reserved in their favour, hence, the provisions of Section 65B of the Indian Evidence Act, 1872 would get attracted, and as per the decision of the Supreme Court in the case of **Bareilly Electricity Supply Company Ltd. (supra)**, the original documents were required to be produced in order to prove their existence. Hence, it is submitted that, since the original circular dated 21.03.2003 was not produced and proved before the Labour Court, the same is a nullity in the eyes of law, and

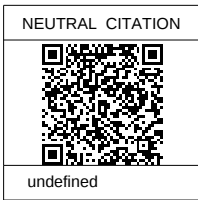


hence the applications filed by the employees withdrawing their request for voluntary retirement were validated.

SUBMISSIONS ON BEHALF OF RESPONDENT-CORPORATION :

19. At the outset, learned Senior Advocates Mr.K.S. Nanavati and Mr.Mihir Joshi, assisted by the learned advocates Mr. Kunal Nanavati, Mr.Mayur V. Dhotare, and Mr.Devesh Ramakrishnan for the respondent-Corporation have submitted that there were 2,391 employees who had opted for VSS / VRS / SSS and only 19 employees withdrew their applications before the last date of the scheme i.e. 20.03.2007. It is submitted that there are two groups of employees, who have raised the dispute. The first group consists of 464 employees, who raised an industrial dispute before the Labour Court, out of which 448 employees are the appellants before this Court. The remaining 15 employees chose not to challenge the awards of the Labour Court. It is contended that, thus, there are 1,422 employees who have not raised any dispute against the decision dated 20.03.2007.

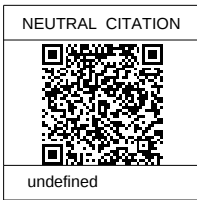
20. In response to the allegations levelled by the employees to the extent that it was not feasible to accept so many applications in the late evening of 20.03.2007, it is submitted that the applications were scrutinized on a specifically designated computer system, and after scrutinizing each of the applications, it was very easy and practically possible for the competent authority to take decisions accepting the applications on the night (late evening) of 20.03.2007, and hence an Office Order was passed on 20.03.2007. Accordingly, through a circular dated 21.03.2007, the same was placed on



the notice board, which is an established mode of communication as per the standing orders of the respondent-Corporation, including in different departments of the Corporation and at the entrance of the office along with a mass email forwarded through Lotus Notes to all concerned officers/employees, including department heads, field personnel, managers, and officers linked through the computer system. It is submitted that along with this email, the Circular dated 21.03.2007 was attached, and the timing of the email was 10:33 a.m. on 21.03.2007.

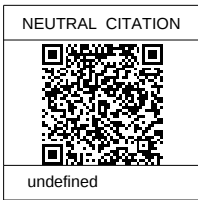
21. Learned Senior Advocate Mr. Joshi has submitted that the optees were requested to collect their letters of acceptance from the concerned personnel unit, and the circular itself communicated the mode of communication, which was mentioned as "all optees through notice boards." Thereafter, individual letters dated 20.03.2007 were also issued, conveying acceptance of the applications with information that the likely date of relieving would be the first week of April 2007, and a detailed communication indicating compensation/benefits and the date of relieving would be issued separately.

22. Learned Senior Advocates appearing on behalf of the respondent-Company have further submitted that vide Circular dated 21.03.2007, the Company announced an ex-gratia payment of Rs.1,50,000/- to all optees of the Voluntary Separation Scheme (VSS), in response to the objections raised by the Union alleging differential treatment to different categories of employees under the Scheme. It is further



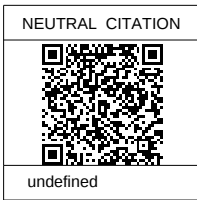
submitted that the majority of employees collected their letters of acceptance between 21.03.2007 and 23.03.2007, and for the remaining employees, the respondent-Company issued a Circular dated 24.03.2007 advising them to collect their acceptance letters. Out of 2,391 employees who had opted for the VSS, all except 356 collected their letters from their respective field establishments, and of these 356, only 99 belonged to the group of 464 employees before the Labour Court. Since these 356 employees did not collect their letters in person, the Company dispatched the same by the Registered Post on 26.03.2007, which included the 99 employees forming part of the said group.

23. Learned Senior Advocates appearing on behalf of the respondent-Company have further submitted that by the Circular dated 26.03.2007, all optees were notified about the requirement of submitting Form 10E to avail the benefit of relief under Section 89 of the Income Tax Act, 1961 and accordingly, all the employees submitted Form 10E along with the requisite Undertaking thereafter, thereby creating an irreversible position in so far as the benefit under Section 89 was concerned. It is stated that vide Office Order dated 29.03.2007, the employees were notified of their relieving date as 03.04.2007 and were informed about the details of their terminal benefits. On 03.04.2007, service certificates were issued to the employees, monetary benefits were paid in the first week of April 2007, and such benefits were accepted and utilized by the employees without protest. The Provident Fund and gratuity benefits paid by cheque were also deposited by the employees.



24. Learned Senior Advocates appearing on behalf of the respondent-Company have further submitted that out of 464 employees, only 110 submitted written applications seeking withdrawal from the Scheme. The employees were relieved strictly in accordance with the VSS after due acceptance of their applications, and hence the question of termination of service does not arise. The Scheme was a complete contract containing all the terms and conditions, including a cut-off date for relieving and a clause stipulating that the decision of the Competent Authority would be final. Once the applications were accepted, the employees were bound by the terms of the Scheme and could not withdraw. The contention that the jural relationship continued until the date of relieving and, therefore, the employees could withdraw, is misconceived. Reliance is placed on the decision of the Supreme Court in the case of New Victoria Mills & Ors. Vs Shrikant Arya, (2021) 13 S.C.C. 771, wherein it was held that withdrawal from the Scheme is impermissible, once the application has been accepted.

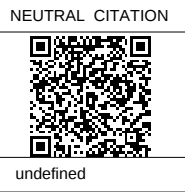
25. Learned Senior Advocates appearing on behalf of the respondent-Company have further submitted that the employees have not challenged the validity of the Scheme, as evident from the Terms of Reference sent to the Labour Court, Vadodara. The Scheme expressly prohibited withdrawal after its closure on 20.03.2007, and Clause 9 vested the Competent Authority, with the sole discretion to accept or reject any request. Acceptance of the applications was completed on the night of 20.03.2007; therefore, any alleged withdrawals on



21.03.2007 or 22.03.2007 were invalid. Having accepted the benefits, the employees are *estopped* from raising disputes post-acceptance or continuing litigation after having lost before the Tribunal and the learned Single Judge. Reliance is placed on the decisions of the Supreme Court in the case of Bank of India & Ors. vs. Pale Ram Dhanial, (2004) 9 S.C.C. 36, and in the case of Punjab National Bank vs. Virender Kumar Goel & Ors., (2004) 2 S.C.C. 193, wherein it was held that employees who have accepted retiral benefits under a Voluntary Retirement Scheme (VRS) cannot subsequently withdraw their applications.

26. It is further pointed out that in cross-examination, Ms.Felicia D'Souza admitted that the VSS applications of approximately 2,400-2,500 employees were accepted by the Company and that acceptance was notified on the notice board, and Mr.Umashankar had admitted that he received his acceptance letter on 21.03.2007 and submitted a withdrawal application on 22.03.2007. As on 19.11.2015, 40 employees had availed benefits under the Medi Claim Policy, and as of now 358 out of 448 employees have availed such benefits. The first undated letter seeking the status of withdrawal applications was sent only in June 2007, three months after acceptance, and the first objection regarding monetary benefits was raised only by letter dated 29.09.2007, six months after acceptance, by one individual claiming to act under a Power of Attorney (PoA).

27. Learned Senior Advocates appearing on behalf of the respondent-Company have finally submitted that the present



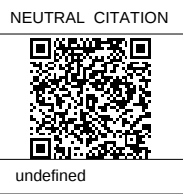
attempt of the employees to dispute facts and re-argue the matter amounts to seeking *de novo* adjudication, which is impermissible in writ jurisdiction under Articles 226 and 227 of the Constitution of India. Reliance is placed upon the case of K.V.S. Ram vs. Bangalore Metropolitan Transport Corporation, (2015) 12 S.C.C. 39, wherein it was held that interference by the High Court is permissible only in cases of patent perversity, gross failure of justice, or violation of basic principles of natural justice.

ANALYSIS AND CONCLUSION :

28. The evidence and the findings recorded by the Labour Court, Vadodara in Order dated 21.03.2020 passed in Reference (LCV) No.792-2010, in Letters Patent Appeal No.84 of 2024 is taken up as lead matter, since it is submitted by the learned advocates appearing for the respective parties, that all the facts and evidences are almost analogous to other reference proceedings. The issue remains the same in all the references. The terms of reference as per the order dated 22.10.2010, in each of the matters is verbatim. The terms of reference is that as to whether the employees are entitled to be reinstated in service with continuity of service with all benefits or not.

ESTABLISHED FACTS FROM PLEADINGS :

- (a) The respondent-Corporation announced a Voluntary Separation Scheme (VSS) on 06.03.2007, which was to remain in operation until 20.03.2007.
- (b) The Clause 7 of the scheme reads as under :-



“Date of relieving will be at the discretion of the management. However, the likely date of relieving will be in the first week of April, 2007.”

(c) The Clause 9 of the scheme reads as under :-

*“Right of Management.
Competent Authority will have sole direction to accept or reject the request of any employee for voluntary separation, without assigning any reason.”*

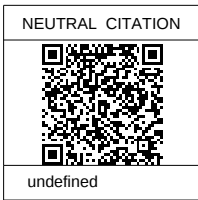
- (d) There is no clause, which mentions about the last date of withdrawal of applications.
- (e) The appellant-employees applied to avail themselves of the benefits of the said Scheme. On 21.03.2007, a Circular was pasted on the Notice Board of the Company, indicating the acceptance of the applications vide Office Order dated 20.03.2007. The Office Order dated 20.03.2007 issued by the respondent-Company, reads as under: -

“OFFICE ORDER

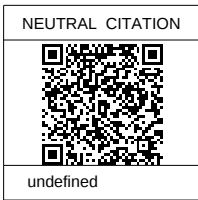
With reference to your application for Voluntary Separation Scheme in response to Circular No. CPL/1/154 dated March 06, 2007, this is to convey acceptance of the same by Competent Authority and you are likely to be relieved from the services of the Corporation in the first week of April-2007. Detailed communication indicating compensation / benefits and date of relieving will be issued separately

Sd/-
MD Bara
Authorised Signatory

To Sn PUNAMBHAI PANCH
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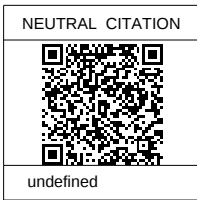
- (f) This order was circulated through a Circular dated 21.03.2007 by displaying it on the notice boards. From the various documents on record, we find that, the conveyance of information by orders/circulars through Notice Board appears to be the recognized mode of communication of the Company.
- (g) It is the case of the employees that, they went in the late-night hours of 20.3.2007, and orally made their request for withdrawal from the VSS. It is not in dispute that the applications filed by the appellant-employees for withdrawal from the VSS Scheme bear the dates between 21.03.2007 and 23.03.2007. The total number of employees who had opted for VSS was 2,391, out of which 1,422 employees did not raise any dispute and accepted the VSS. The present appellants are 448 out of 464 employees who claim to have submitted their applications for withdrawal between 21.03.2007 and 23.03.2007.
- (h) The applications of all the 464 employees are not on record of the reference proceedings. All the employees are represented by the Power of Attorney (PoA) holder Shri Punambhai Waghela.
- (i) The applications of 19 other employees, who had opted out of the scheme during the validity of the Scheme were accepted by the Company.
- (j) After the employees were relieved on or before first week of April, 2007, as per the VSS, they were paid all the amounts arising from VSS. It appears that at the time of giving the evidence in the year 2018, 70



employees had passed away, and they are now represented by their legal heirs.

- (k) Before the Labour Court, in the respective references, in cross-examination, all the employees have admitted that they do not have any proof of submitting application of withdrawal or they have not mentioned anything in this regard.

29. The evidence of the PoA holder of employees, Shri Punambhai Waghela suggests that, he has deposed that there were at least 1000 employees who went in night hours between 8 to 9 PM seeking withdrawal of the applications, however the request was not acceded. It is also deposed that some of the employees did not keep the withdrawal applications with them, and thousands of employees had tendered their applications for withdrawal between 20.03.2007 till 22.03.2007, and in some of the applications, an endorsement was made by an officer that the VSS Application withdrawal can be allowed as per the management's decision. Finally, it is deposed that all 463 employees had made their applications for withdrawal at the first instance on 20.03.2007, and thereafter on 21-22.03.2007. In his cross-examination, he has admitted that all the employees have not tendered written applications of withdrawal on 20.03.2007, and he has also not given any application for withdrawal on 20.03.2007. He has also accepted that the amount of gratuity and provident fund was accepted by the employees and subsequently, they had raised objection. He has denied that the cheques were accepted by the employees, but he has admitted that the amount of provident fund and gratuity was accepted, and it

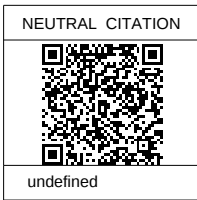


was not returned. He has also admitted that all the employees had filed the application for claiming VSS on 19th and 20th of March. With regard to the allegations of fraud committed by the company, he has admitted that no police complaint has been filed.

30. Thus, from the evidences, it is established that all the employee were aware of the last date of the Scheme. Though, the POA has contended that the employees had filed the withdrawal application on 20.03.2007, there is not a single application of withdrawal of such date, which is either placed before the Labour Court or before this Court. Some of the applications, which are produced are between 21.03.2007 till 23.03.2007. The employees in their evidence have accepted that they have filed such application after 20.03.2007, between these dates. All employees were relieved in the first week of April, 2007. On 03.04.2007, they were handed over cheques for the amount of gratuity, which they deposited in their bank accounts.

ISSUE OF ACCEPTANCE OF THE APPLICATIONS FROM WITHDRAWAL FROM VSS :

31. Thus, in wake of the established fact that the employees have failed to point out any evidence showing that they had filed the application for withdrawal from VSS on or before 20.03.2007, and all the applications are subsequent to the closure of the Scheme, the only issue arising for deliberation in the aforementioned established facts is whether the appellant-employees had a vested right to withdraw their applications under the VSS, after the closure of the scheme on 20.03.2007

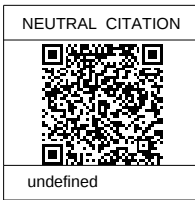


or not. In this regard, we rely on the observations of the Supreme Court in the case of Madhya Pradesh State Road Transport Corporation Vs. Manoj Kumar and another, (2016) 9 S.C.C. 375.

32. The case law regarding acceptance and withdrawal from voluntary retirement emanates from the celebrated judgment of the Supreme Court in the case of Bank of India and others vs. O.P. Swarnakar and Ors., (2003) 2 S.C.C. 721, which has been relied upon in the aforementioned judgments cited by the learned advocates appearing for the respective parties.

33. The legal precedent on this issue is divided into two sets. The first applies, where an employee, whether serving in government or any other establishment, files an application seeking voluntary retirement or tenders' resignation making it effective from a future date, and he withdraws the same. It is settled legal proposition that in case the employer accepts such request before the effective date mentioned in the notice or resignation, the action of acceptance is illegal, since the jural relationship between the employer and employee is in existence till such date, and the employee retains vested rights to withdraw his request before the resignation or notice for voluntary retirement becomes effective.

34. There is another line of legal precedent, emanating from the judgments of the Supreme Court, which rests exclusively on Voluntary Retirement Schemes introduced by statutory bodies or Companies like the respondent. In the case of **Manoj Kumar (supra)**, the Supreme Court, while analyzing a

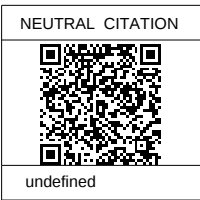


Voluntary Retirement scheme floated by the Madhya Pradesh State Road Transport Corporation, and after considering earlier decisions on the subject in the case of **O.P. Swarnakar (supra)**, elucidated the concept of a Voluntary Retirement Scheme vis-à-vis the provisions of the Indian Contract Act, 1872.

35. In the case of **Manoj Kumar (supra)**, the facts recorded indicate that the employees had submitted applications for voluntary retirement within the period stipulated under the scheme, and thereafter withdrew their applications before they were accepted.

36. The quintessential distinction, relevant to the present case is that, whereas in the case of **Manoj Kumar (supra)** the withdrawal applications were filed during the validity of the scheme, in the present case they were filed after its expiry. Thus, the employees before the Supreme Court in the said case, were standing on better footing than the present appellants. The Supreme Court, after examining a range of judgments on the issue, more particularly in the case of **O.P. Swarnakar (supra)** and in the case of State Bank of Patiala Vs. Romesh Chander Kanoji & Ors., (2004) 2 S.C.C. 651. Ultimately the Supreme Court in the case of **Manoj Kumar (supra)**, has held as follows:-

“28. In New India Assurance Company Ltd. v. Raghuvir Singh Narang & Anr.[7], this Court again reiterated that such schemes were contractual in nature and the provisions of the Indian Contract Act, 1872 would apply and the offer could be withdrawn any time before its acceptance. What is important is



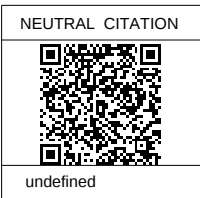
that this Court culled out the principles laid down in O.P. Swarnakar in para 22 of its judgment, which we reproduce below:

"22. The effect of the decision in Swarnakar can be summarised thus:

(i) If a contractual scheme provides that the voluntary retirement by exercise of option by the employee will come into effect only on its acceptance by the employer, it will not create any enforceable right in the employee to claim SV retirement. Any term in such a scheme that the employee shall not withdraw from the option once exercised, will be an agreement without consideration and therefore, invalid. Consequently, the employee can withdraw the offer (that is option exercised) before its acceptance. But if the contractual scheme gives the option to an employee to voluntarily retire in terms of the scheme and if there is no condition that it will be effective only on acceptance by the employer, the scheme gives an enforceable right to the employee to retire, by exercising his option. In such a situation, a provision in the contractual scheme that the employee will not be entitled to withdraw the option once made, will be valid and binding and consequently, an employee will not be entitled to withdraw from the option exercised.

(ii) Where the scheme is statutory in character, its terms will prevail over the general principles of contract and the provision of the Contract Act. Further, there will be no question of any "consideration" for the condition in the scheme that the employee will not withdraw from the option exercised. Subject to any challenge to the validity of the scheme itself, the terms of the statutory scheme will be binding on the employees concerned, and once the option is exercised by an employee to voluntarily retire in terms of the retirement package contained in the scheme, the employee will not be entitled to withdraw from the exercise of the option, if there is a bar against such withdrawal.

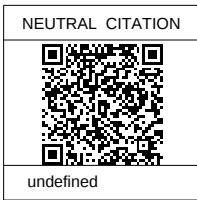
29. Reading of the aforesaid judgments would clearly demonstrate that in those cases where the Scheme is contractual in nature (and not statutory in character as was seen in State Bank of India's case), provisions of the Indian



*Contract Act would apply. The VRS Scheme floated by the employer would be treated as invitation to offer and the application submitted by the employees pursuant thereto is an offer which does not amount to resignation in praesenti and the offer can be withdrawn during the validity period. This would be the position even when there is a clause in the Scheme that offer once given cannot be withdrawn at all. **However, exception to this principle is that in such cases offer is to be withdrawn during the validity period of the Scheme and not thereafter even when if it is not accepted during the period of the Scheme.** That is the clear mandate of Romesh Chander Kanoji. The rationale which is given for carving out this exception is contained in para 9 of the said judgment, which has already been reproduced above. To put it pithily, what is highlighted is that such schemes are funded schemes and time is given to every employee to opt for voluntary retirement. Because these are funded schemes, the Management is required to create a fund. The creation of this fund depends upon a number of applications; the cost of the Scheme; liability which this Scheme would impose on the employer and such other variable factors. In this situation, if the employees are allowed to withdraw from the Scheme at any time even after its closure, it would not be possible to work out the Scheme as all calculations of the employer would fail.*

37. The Supreme Court has summarized that in cases where the scheme is contractual in nature and not a statutory in character, the provisions of the Indian Contract Act, 1872 would apply. A VRS / VSS scheme floated by the employer would be treated as an “invitation to offer” and the application submitted by an employee pursuant thereto would constitute an “offer”. Such an offer does not amount to resignation in *praesenti*, and it can be withdrawn during the validity period of the scheme.

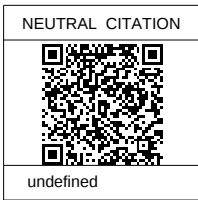
38. It is further emphasized by the Supreme Court that this legal principle would apply even where there is a clause in the



scheme stating that an offer once made, cannot be withdrawn at all. However, the Court carved out an exception to this principle holding that it applies only when the withdrawal is sought during the validity period of the scheme and not thereafter even if the offer has not been accepted during the scheme period. In the present case, the appellants have not filed the withdrawal applications during the validity of scheme, but have filed subsequently, that too when the Company has passed an office order in the night hours of 20.03.2007, which was placed by way of Circular dated 21.03.2007. Thus, even without delving into the issue of acceptance of applications after 20.03.2007, the employees have no case, since they have filed the applications after the validity of the scheme.

39. The Supreme Court has also highlighted that such schemes are funded schemes wherein employees are given time to opt for voluntary retirement. In such cases, the management is required to create a fund, which is directly dependent upon the number of applications received, the cost of the scheme, the liability imposed on the employer, and other variable factors. The Supreme Court cautioned that, if employees were allowed to withdraw from the scheme at any time after its closure, it would be impossible to implement the scheme, as the employer's calculations would fail.

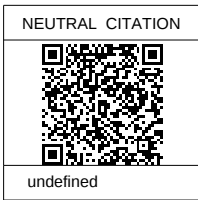
40. Applying these principles to the present case, it is an admitted fact that all the appellant-employees submitted their withdrawal applications between 21.03.2007 and 23.03.2007. The VSS is not statutory in nature. The Labour Court and the learned Single Judge have disbelieved that the appellant-



employees went in the night hours on 20.03.2007 to submit their applications for withdrawal. We also do not find any cogent evidence in this regard. The applications, which are on record do not bear any date of 20.03.2007, but are subsequent. The last date of validity of the scheme was 20.03.2007. Had the appellant- employees submitted their withdrawal applications during the validity period, they would have had an indefeasible right to withdraw from the VSS. It is an admitted fact that 19 applications made by other employees before the expiry of the scheme are accepted by the Company. Once the scheme got closed on 20.03.2007, there was the Company was not under an obligation to pass orders either accepting or rejecting the withdrawal applications submitted thereafter. Thus, in light of the judgment of the Supreme Court in the case of **Manoj Kumar (supra)** on an analogous issue, we find no merit in the submissions of the appellant-employees that they had the vested right to withdraw the application before their relieving from service on the ground that their jural relationship continued with the Company. The issue of jural relationship having being continued until the first week of April 2007 or till one months' notice period, and the appellant- employees' right to withdraw from the VSS during this period, pales into insignificance in view of the fact that the appellant-employees have not submitted their applications during the validity of the Scheme.

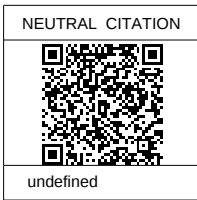
41. On this count alone, the present appeals deserve to be dismissed.

42. The appellant - employees have, however, questioned the Office Order dated 20.03.2007 issued by the respondent-



Corporation accepting the voluntary retirement applications of its employees, as well as the Circular issued the following day, i.e. on 21.03.2007. It is alleged that, since the said Circular was not proved before the Labour Court by cogent evidence under Section 65 of the Indian Evidence Act, 1872 it must be treated as non-existent. We do not subscribe to this view. The Labour Court and the learned Single Judge have disbelieved the same.

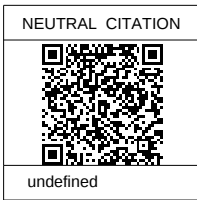
43. This submission stands neutralized for the reason that 1,422 employees—being a substantial number—have taken the benefit of the VSS. Their right to accept voluntary retirement and to receive benefits under the scheme emanates from the Office Order dated 20.03.2007 and the Circular dated 21.03.2007. In light of these facts, neither the existence of office order nor the manner in which it has been issued can be doubted. This Court cannot delve into the issue that it was not feasible or impossible to issue the Office Order dated 20.03.2007 within few hours on the night of 20.03.2007 since the Company had to process 2400 applications. The last date of the validity of the Scheme was 20.03.2007, and the Company was aware of the deadline, and before that it had to take decision on the applications received under the VSS, and accordingly it was planned. The Company had contended that the complete data as well as the applications of all the employees was already stored in the computer. The Company is/was having the wherewithal and was equipped to handle and process the data. Hence, the action of the Company and processing the applications in the night hours of 20.03.2007 cannot be doubted. The endorsement made on the applications on some of the applications to the extent that



“VSS application withdrawal can be allowed as per the management decision”, does not mean that the Company was required to accept such applications, which are made after the expiry of the Scheme.

44. The existence of the Office Order dated 20.03.2007 accepting the applications is also doubted by the appellant-employees on the testimony of a retired employee, Mr. Haresh Ramanbhai Desai. The testimony of this witness is in contrast to the action of 1422 employees, who have accepted the benefit of VSS. None of these employees have raised any doubt about the existence of the Office Order dated 20.03.2007, and communication of the same vide Circular dated 21.03.2007. It was placed at the conspicuous place i.e. on the Notice Board. From documents on record, we find that mode of placing of the instructions on the Notice Board is accepted by the employees of the Company, which included 1422 employees. Hence, the existence and validity of the Office Order dated 20.03.2007 and the Circular dated 21.03.2007 does not get obliterated on the testimony of this witness.

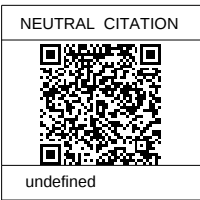
45. Another factor weighed upon by both, the Labour Court and the learned Single Judge in rejecting the case of the appellant - employees is the acceptance of the amounts by the appellant-employees. While the appellant- employees contend that the amounts were directly deposited into their accounts, it is not disputed that part of the amounts, specifically gratuity, was paid by cheques, which were handed over by the Company in April 2007. At the time of receiving these cheques,



the appellant-employees raised no objection; on the contrary, they accepted the cheques and deposited them into their accounts. This fact has not been disputed before us, nor before the learned Single Judge.

46. The Full Bench of the Supreme Court in the case of Punjab National Bank vs. Virender Kumar Goel (2004) 2 S.C.C. 193 has held that, even if part of the amount payable under a Voluntary Retirement Scheme is utilized, the employee cannot thereafter resile and challenge the scheme. Similarly, in the case of ***O.P. Swarnakar (supra)***, the Supreme Court has categorically held that employees who have accepted the benefits under such a scheme cannot be permitted to approbate and reprobate, nor can they resile from their earlier stand. They are estopped, by their acceptance of benefits, from challenging the employer's acceptance of their VRS applications. Merely, because they have agreed to deposit the entire amount subsequently, the same cannot give them vested right to claim right of withdrawal from the scheme after the expiry of the validity of the Scheme. The acceptance of cheques bearing part of the amounts, and thereafter, agreeing to return after a period of three months, cannot give them vested right of accepting their applications of withdrawal from the Scheme, after its validity.

47. As we have previously held that the case of the appellant - employees can be rejected only on a sole ground, of filing the withdrawal applications after the validity of the Scheme. However, since other peripheral grounds were also raised, we have accordingly answered them.



48. In view of the foregoing discussions, we are not inclined to delve further into the matter. The Letters Patent Appeal fails, the same stand dismissed.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(R. T. VACHHANI, J)

MAHESH/01