

\*  
+ **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
**WP (C) No. 8778/2004**

% Judgment delivered on: 31.03.2009

Atul Kumar Jain ..... Petitioner  
Through: Mr. Harish Sharma, Advocate  
Mr. Amit Jain, Advocate

versus

UTI AMC (P) Ltd. and others .... Respondent  
Through: Mr. Ramesh N. Keshwani, Advocate

**CORAM:**  
**HON'BLE MR. JUSTICE KAILASH GAMBHIR**

- |    |   |     |
|----|---|-----|
| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not?  | Yes |
| 3. | Whether the judgment should be reported in the Digest?                    | Yes |

**KAILASH GAMBHIR, J. (Oral)**

\*

1 . By way of this petition filed under Article 226 of the Constitution of India, the petitioner seeks directions for the acceptance of the withdrawal of his offer of voluntary separation in

terms of his letter dated 20.2.2004. Counsel for the petitioner also seeks direction against the respondents for not releasing him from the service consequent upon his withdrawal of offer of voluntary separation under the VSS.

2 . Brief facts relevant for deciding the present writ petition are as under:-

The petitioner was appointed with the erstwhile Unit Trust of India now UTI AMC (P) Ltd., respondent No.1 on 12.9.1988 vide appointment letter dated 8.9.1988 and was subsequently confirmed in the cadre of Assistant on 12.3.1990. Pursuant to the Administrative Circular No. 10/2003-2004 dated 8.8.2003 which was a Voluntary Separation Scheme, the petitioner applied for the voluntary separation on 26.09.2003 but the same was not accepted by the respondents on the ground that some disciplinary proceedings were pending/contemplated against him. The respondent issued a letter dated 31.10.2003 to the petitioner in this regard. The petitioner vide letter dated 20.02.2004 withdrew his offer of voluntary separation under the said VS Scheme which as per the petitioner

remained unresponded till the filing of the writ petition. As per the petitioner, he is entitled to withdraw his offer before its acceptance in terms of the law laid down by the Hon'ble Supreme Court. As the application of the petitioner withdrawing his offer of Voluntary Separation has not been responded till date, he apprehends that he would be released from the services by the respondent and because of this threat he has preferred this petition.

3. Counsel for the petitioner submits that after filing of the present writ petition, the respondent in a hurried manner issued a letter dated 25.5.2004 whereby he was relieved from his service under Voluntary Separation Scheme. Counsel for the petitioner further submits that in view of the said development the petitioner moved CM No. 8459/2004 and vide orders dated 25.11.2005 passed by this court the counsel representing the respondent gave an undertaking that they will not enforce the said order dated 25.5.2004. Counsel thus submits that since then the petitioner is continuing in his service.

4 .                    On merits the contention of the counsel for the petitioner is that petitioner had applied for voluntary separation vide his application dated 26.9.2003 which request of the petitioner was not accepted by the respondent on the ground that disciplinary proceedings were pending/contemplated against him. Communication in this regard was made by the respondent through letter dated 31.10.2003. Counsel thus submits that the petitioner gave due thinking to his decision and vide letter dated 20.2.2004 he withdrew his offer of voluntary separation under the said VS Scheme but the same remained unresponded till the filing of the present writ petition. Counsel for the petitioner further submits that the petitioner felt aggrieved with the impugned clause 6 of the Administrative Circular No. 10/2003-2004 which, prohibited the employees to withdraw their offer of voluntary separation. The same being in violation of the fundamental rights of the petitioner and in violation of the laid down principles by the Apex Court reported in **AIR 2003 SC 858 Bank of India Vs. O.P. Swarankar and Ors.** Counsel thus urges that the petitioner was well within his rights to

have withdrawn from the said offer before the acceptance of the same by the respondent.

5 .                Refuting the said submissions of the counsel for the petitioner, counsel for the respondent submits that the said Voluntary Separation Scheme announced by the respondent came into effect from 8.9.2003 and was closed on 3.10.2003. Counsel thus submits that the said scheme practically remained open for a period of about one month and came to expire on 1.11.2003 and any withdrawal at all could be made by the petitioner only before the said date and not otherwise. The contention of the counsel for the respondent is that once such withdrawal of request was made by the petitioner, therefore, the earlier request of the petitioner seeking his retirement under the scheme was due to have been accepted by the respondent. Counsel for the respondent thus submits that the petitioner again take a stand contrary to the said scheme which was binding on the petitioner as well as the respondent. Counsel for the respondent further submits that the time taken by the petitioner for withdrawal by his communication dated 20.2.2004 which request was made by

the petitioner much after the expiry of the said scheme and therefore the same was rightly ignored by the respondent. As far as the respondent is concerned, the counsel for the respondent submits that clearly acceptance was not conveyed to the petitioner as the respondent had contemplated disciplinary proceedings against the petitioner on account of his mis-conduct. On account of the said facts of mis-conduct by him committed during the course of his service. Counsel thus submits that the respondent had correctly taken the decision vide their communication to the petitioner vide their letter dated 25.5.2004 rejecting the request of the petitioner.

6 . I have heard learned counsel for the parties & perused the record.

7 . It is not in dispute that the effect of a voluntary separation scheme is cessation of jural relationship between the employer and the employee. The Apex Court in **Power Finance Corporation. Ltd. Vs. P.K. Bhatia – (1998) 5 SCC 461** while dealing with the principle of law to be applied to a case of resignation held that it is always open to the employee to

withdraw the same before the date on which the resignation could have become effective.

8 . It is no more res integra and in view of the decision in **Bank of India and Ors. v. O.P. Swarnakar and Ors. MANU/SC/1179/2002**, it is manifest that when an employer floats a voluntary retirement scheme, he actually makes an 'invitation to offer' and the request of an employee to seek voluntary retirement under the scheme is the 'offer'. 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 and acceptance or otherwise of the request of an employee seeking voluntary retirement is required to be communicated to him in writing. In this regard the Hon'ble Apex Court in **National Textile Corpn.**

**(M.P.) Ltd. v. M.R. Jadhav,(2008) 7 SCC 29**, observed as under:

20. Subject, of course, to the terms of "invitation to treat" as also those of the offer as envisaged under the Contract Act, an offer has to be accepted. Unless an offer is accepted, a binding contract does not come into being. A voluntary retirement scheme contemplates cessation of the relationship of master and servant. The rights and obligations of the parties thereto shall become enforceable only on completion of the contract. Unless such a stage is reached, no valid contract can be said to have come into force. Acceptance of an offer must, therefore, be communicated.

21. In *Bank of India v. O.P. Swarnakar*<sup>5</sup> this Court held: (SCC p. 752, para 60)

"60. Acceptance or otherwise of the request of an employee seeking voluntary retirement is required to be communicated to him in writing."

In **J. N. Srivastava's case it was held : AIR 1999 SC 1571 : 1998 AIR SCW 4057 para 3**

"It is now well settled that even if the voluntary retirement notice is moved by an employee and gets accepted by the authority within the time fixed, before the date of retirement is reached, the employee has locus poenitentiae to withdraw the proposal for voluntary retirement."

In **UOI vs. T. Parthasarathy – (2001) 1 SCC 158** the fact of the matter was as follows:



"The respondent submitted an application on 21-7-1983 praying for premature retirement with effect from 31-8-1986. He also furnished a certificate stating that he was aware that any request made by him for cancellation of his application for premature retirement would not be accepted. On 6-11-1985 he moved an amendment to earlier application stating that the actual date of his release could be decided taking into account the pensionary recommendations/requirements of the Fourth Pay Commission's report which was expected to come in November, 1985. He subsequently withdrew his offer on 19-2-1986.

The respondent received a letter dated 20th February, 1986 that he would prematurely retire from service with effect from 31-8-1986. On a writ petition moved by the respondent before the Karnataka High Court, it was held that having regard to the offer made on 19-2-1986, the subsequent action taken by the Department on 20th February, 1986 had no effect. In this Court an argument was advanced that having regard to the policy decision to which the respondent was aware and having given a certificate at the time of submission of application for premature retirement that he was aware of the fact that his request for withdrawal or cancellation subsequently would not be accepted, the impugned judgment of the High Court was erroneous but rejecting the same this Court held :

"We have carefully considered the submissions of the learned counsel appearing on either side. The reliance placed for the appellants on the decision reported in Raj Kumar case is in appropriate to the facts of this case. In that case this Court merely emphasised the position that when a public servant has invited by his letter of resignation determination of his employment his service clearly stands terminated from the date on which the letter of resignation is accepted by the appropriate authority and in the absence of any law or rule governing the condition of the service to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority and that till the resignation is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned had locus poenitentiae but not thereafter."

9 . In view, of the foregoing discussion and in the facts of the instant case, it is manifest that the withdrawal application was made before the jural relationship between the petitioner employee and the respondent employer came to an end. Thus, the present petition is allowed. The respondents are directed to accept the withdrawal of offer of voluntary separation in terms of the letter dated 20/2/2004 of the petitioner and therefore, the respondents shall not release the petitioner from his service consequent upon his withdrawal of offer of voluntary separation under VSS and he shall be deemed to be in continuous and uninterrupted service as if no offer of voluntary separation was made by the petitioner.

Allowed.

**March 31, 2009**  
pkv

**KAILASH GAMBHIR, J.**