HIGH COURT OF JAMMU AND KASHMIR

AT JAMMU

LPASW No.244/2006

Date of order: 21.02.2014

Rattan Singh v. Indian Overseas Bank and others.

Coram:

Hon'ble Mr. Justice M. M. Kumar, Chief Justice
Hon'ble Mr. Justice Hasnain Massodi, Judge

Appearing counsel:

For the petitioner(s) : Mr. A.V.Gupta, Sr. Advocate with
Mr. Munish Sharma, Advocate.
For the respondent(s) : Mr. A.P.Singh, Advocate.

i) Whether to be reported Press /Media : Yes.
ii) Whether to be reported in Digest/Journal : Yes.

M.M.Kumar, CJ

1. Rattan Singh, an employee of Indian Overseas Bank-respondent has preferred the instant appeal under Clause 12 of the Letters Patent challenging the view taken by the Writ Court rejecting his claim made in SWP No.1608/2001 vide judgment and order dated 01.11.2006. The question considered by the learned Writ Court is whether the appellant has successfully withdrew his offer of opting for Voluntary Retirement Scheme.

2. Facts which have remained undisputed are as under:-

2.1 The writ petitioner-appellant was working as Special Assistant in the respondent Bank and was posted at Srinagar. The respondent Bank issued a circular Memo No.7(f) 86 of

2000-2001 dated 02.12.2000 which is titled as IOB Officers/Employees Voluntary Retirement Scheme-2000 (for brevity 'VRS'). The scheme was to remain in operation for a period of five weeks commencing from 15.12.2000 to 19.01.2001. The writ petitioner-appellant applied for voluntary retirement under the VRS on 11.01.2001 through proper channel. His application was considered and it was accepted by the Central Office at Chennai on 19.01.2001. The decision accepting the offer made by the writ petitioner-appellant was communicated by the Central Office of Indian Overseas Bank to the regional office Chandigarh on 22.01.2001. It was the regional office Chandigarh, which communicated the letter of acceptance to the Indian Overseas Bank Srinagar Branch on 27.01.2001. The Srinagar Branch relieved the writ petitioner-appellant on 31.01.2001. It is appropriate to mention that the writ petitioner-appellant had filed an application on 29.01.2001 to Branch Manager, Srinagar with a prayer to withdraw his offer of seeking voluntary retirement under VRS. It was for the aforesaid reason that the writ petitioner-appellant made an endorsement on the foot of the order relieving him, which was to the effect *'received subject to the final decision on my withdrawal of VRS-2000 dated 29.01.2001'.*

3. The writ petitioner-appellant challenged order dated 22.01.2001 and 31.01.2001 passed by the respondent Bank

before the Writ Court. The learned Single Judge after referring to various features of VRS-2000 Scheme posed the following question for determination:-

> 'The sole point which is to be determined in this petition is as to whether an employee who opted for voluntary retirement in pursuance to or in furtherance of a Scheme floated by the respondent-Bank would be permitted to withdraw the said offer.'

3.1 Placing reliance on Clause 13 of the VRS, the learned Single Judge opined that it was not open for an officer/employee to withdraw the request made for voluntary retirement under the scheme after having exercised such option and the option once exercised was irrevocable. The learned Single Judge then placed reliance on the observations made by Hon'ble the Supreme Court in the case of **Bank of India and others v. O.P.Swaranakar, (2003) 2 SCC 721** and **State Bank of Patiala v. Ramesh Chander Kanoji and others, (2003) 2 SCC 651** and proceeded to hold as under:-

> "Similar proposition came up before the Apex Court in the case reported in AIR 2003 SC 858, Bank of India and ors v. OP Swaranakar, wherein it was held that "The nationalized Banks with a view to downsize their staff floated the Voluntary retirement to submit duly completed application in duplicate in the prescribed form marked 'offer to seek voluntary retirement'. The application so received was to be considered by the competent authority on first come first serve basis. The decision-making process involved application of mind on the part of several authorities. 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. The Bank also reserved to itself the right to alter/rescind the conditions of the

> Scheme. The Scheme also contained a clause that an employee who has opted for Voluntary Retirement cannot withdraw his application. A large number of employees submitted their applications out of whom a small number of employees withdrew their offer. Despite withdrawal the offer was accepted. The action on the part of the banks, in accepting the applications of the concerned employees despite their withdrawal was challenged.
>
> Held, the employees opting for Voluntary Retirement could withdraw their offer before it was accepted by the Bank despite the contractual bar to withdrawal contained in the Scheme."

3.2. The Writ Court also concluded that the offer could be successfully withdrawn before the closure of the scheme i.e. from 15.12.2000 to 19.01.2001. He applied for withdrawal on 29.01.2001 after the scheme had already been closed and his request for voluntary retirement had already been accepted on 22.01.2001. It was thus not open to the writ petitioner-appellant to apply for withdrawal on 29.01.2001.

4. Mr. A.V.Gupta, learned senior counsel has vehemently argued that the learned Writ Court has misdirected itself and has erroneously applied the judgment rendered by Hon'ble the Supreme court in the case of O.P.Swaranakar's case (supra) because a distinction has been drawn in that judgment between the employees working in State Bank of India and State Bank of Patiala on the one hand and those who are working in the nationalized banks on the other. In that regard he has drawn our attention to the observations made by their Lordships in various paras of the judgment in order to hammer home the issue that the scheme floated by the State Bank of India and

State Bank of Patiala is statutory in character and the VRS floated by the nationalized Banks would merely fall within the domain of contractual obligation. In that regard our attention has been drawn to 22 of the judgment which noticed the arguments advanced by learned counsel before the Supreme Court. That para highlights the provisions of the State Bank of India Act, 1955 (for brevity '1955 Act'), which brought in existence the State Bank of India or its subsidiaries. The terms and conditions of employment of its employees are regulated and governed by Sections 17 and 43 of 1955 Act. It was further pointed out that the provisions of 1955 Act materially differ from the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (for brevity '1970 Act'). According to Mr. Gupta, Sections 7(2) , 19(2)(f) and 19(4) of 1970 Act clothe the nationalized banks with certain powers which resulted in framing of regulations concerning pension of the employees of nationalized banks by their respective Banking Companies. Whereas the Reserve Bank of India with previous sanction of the Central Government by virtue of power vested in it under Section 50 of 1955 Act had framed State Bank of India General Regulations, 1955. By virtue of provisions under Section 43(1) of 1955 Act the Central Board of the State Bank of India then made State Bank of India Officers' Service Rules. Referring to para 47, Mr. Gupta has argued that VRS framed by State Bank

of India and Patiala is traceable to Ministry of Finance's circular dated 22.05.2000 which was floated for the purpose of downsizing the employees.

4.1. In the backdrop of the aforesaid observations Mr. Gupta has then referred to para 48 showing that the employees of the nationalized banks may not enjoy a status which is available to the civil servants, government employees or the employees of statutory banks. Therefore, the service conditions of employees working in nationalized banks would continue to be in the domain of contract which required mutuality; whereas the service conditions of employees working under the State Government or State Bank of India could be unilaterally amended.

4.2. Mr. Gupta, learned senior counsel then made reference to paras 59 and 60 and argued that once the relationship of employees working in nationalized banks falls within the domain of contract then the application for VRS would be considered as an offer which need to be accepted. On the basis of observations made in para 61, learned counsel has submitted that the acceptance of such an offer is required to be communicated in writing and the bank also reserves its right to alter or rescind the conditions of the scheme.

4.3. According to Mr. Gupta, there was no provision in the scheme of the nationalized banks that after the scheme is closed then the process of acceptance was to commence. The aforesaid Clause was inserted in order to estimate and finalize the funds. On account of statutory nature of the scheme the rights between the parties could have been enforced in a Court of law by seeking a mandamus.

4.4. Mr. Gupta then referred to the concluding para 130 of the judgment and argued that the appeals preferred by the nationalized banks were dismissed subject to a rider that where the employees have accepted a part of the benefit under the scheme then the directions of the Supreme Court were not to apply. However, the appeals filed by the State Bank of India/Patiala were allowed.

4.5. In order to substantiate his submissions, Mr. Gupta has then placed reliance on another judgment of Hon'ble the Supreme Court rendered in **Punjab National Bank v. Virender Kumar Goel and others, (2004) 2 SCC 193**. Placing reliance on paras 14 and 16 of the judgment, Mr. Gupta has argued that the act of unilateral deposit of part of benefit under the scheme into the bank account and that too after withdrawal of the application for VRS was not to be construed as acceptance on part of the writ petitioner-appellant.

4.6. Mr. Gupta has highlighted from the observations made in the case of **State Bank of Patiala v. Romesh Chander Kanoji and others, (2004) 2 SCC 651** to point out that in para 5 of the judgment the vital difference between the schemes floated by the State Bank of India/Patiala on the one hand and the scheme floated by nationalized banks on the other hand, have been highlighted. According to Mr. Gupta, there was specific provision for withdrawal and the employee was required to exercise his option within the specified time. In the case of nationalized banks the withdrawal was required to be effected prior to the acceptance by the Bank and its communication to the employee. Another distinction has been highlighted by referring to the observations made in para 9 of the judgment because State Bank of Patiala VRS gave 15 days time to its employees to opt for the scheme and under Clause 8 a period of two month was given to the management to work out the scheme. The schemes are funded schemes and the management was required to create fund. The creation of fund was to depend upon the number of applications, the cost of the scheme, liability which the scheme would impose on the bank. Therefore, there is a distinctive feature of the schemes of State Bank of India/Patiala, which provided for mode of acceptance by the management.

4.7. Highlighting facts of the present case Mr. Gupta has argued that the scheme was to operate only for the period from 15.12.2000 to 19.01.2001. The application for VRS by the writ petitioner-appellant was made on 11.01.2001 which was withdrawn on 29.01.2001. The acceptance by the respondent-Bank on 22.01.2001 cannot be considered effective until and unless it was communicated to the writ petitioner-appellant and it is admitted that the letter of acceptance was addressed to the Regional Office Chandigarh which in turn was sent to the Branch Office, Srinagar on 27.01.2001. Such a communication of acceptance cannot be regarded as valid until and unless it is addressed and sent to the writ petitioner-appellant. It was intimated to the writ petitioner-appellant on 31.01.2001, when he was sought to be relieved. However, by that time on 29.01.2001 the writ petitioner-appellant has withdrawn his application for VRS. The argument proceeds that if the relationship of the employee of nationalized banks is in the realm of contract then offer made by the writ petitioner-appellant has to be accepted and the acceptance has to be effectively communicated to the offerer. However, before the acceptance is communicated to the offerer if the offer is withdrawn then it cannot be acted upon because no binding contract within the meaning of Section 2(d) of the Contract Act would come into existence. In that regard Mr. Gupta has placed reliance on judgments of Hon’ble the

Supreme Court rendered in the case of **J.N.Srivastava v. Union of India and anr., (1998) 9 SCC 559 , Balram Gupta v. Union of India and another, 1987 (Supp) SCC 228** and a Constitution Bench judgment rendered in the case of **State of Punjab v. Amar Singh, AIR 1966 SC 1313** and has argued that in the absence of communication to the officer concerned the acceptance cannot be considered effective. It was then submitted that once withdrawal is considered to be effective then the writ petitioner-appellant would be entitled to re-instatement in service with all consequential benefits and continuity in service as has been held by their Lordships of Hon'ble the Supreme Court in the case of **Punjab & Sind Bank v. Mohinder Pal Singh, (2005) 12 SCC 747** which infact considered the application of the judgment in O.P.Swaranakar's case (supra).

5. Mr. Ajay Pal Singh, learned counsel for the respondent-Bank has vehemently argued that in the schemes floated by State Bank of India and Patiala there is a common feature and the parties were at liberty to withdraw. However, it was required to be done before the closure of the scheme. According to Mr.Ajay Pal Singh, there is no substantive difference between the two schemes floated by State Bank of India and the one floated by the respondent-Indian Overseas Bank. The offer has been accepted on 22.01.2001 and the same could not have been withdrawn after that date on 29.01.2001. Learned counsel

has then submitted that there is no precedent that offer once accepted by the competent authority was required to be communicated to the concerned employee. In that regard reliance has been placed on the observation made by Hon'ble the Supreme Court in the case of **North Zone Cultural Centre and another v. Vedpathi Dinesh Kumar, AIR 2003 SC 2719**. Referring to argument raised, learned counsel has argued that non-communication of the acceptance does not make the resignation in-operative if the acceptance infact was made before its withdrawal. Mr. Singh has emphasized that acceptance in the present case was accorded on 22.01.2001 whereas application for withdrawal was made on 29.01.2001. The delay in communication of acceptance would not nullify the acceptance in absence of withdrawal which would only be effective if made before the date of acceptance. In support of the aforesaid contention, reliance has also been placed on para 11 of the judgment of Hon'ble the Supreme Court rendered in the case of **New India Assurance Co. Ltd. v. Raghuvir Singh Narang, AIR 2010 SCW 3791**.

6. Having heard the learned counsel for the parties at a considerable length and having perused the record minutely, we feel that the controversy can be conveniently considered in the following two legal slots:-

A) Whether on the facts and circumstances of this case the matter is covered by the judgments of the Supreme Court rendered in the cases of Bank of India and others v. O.P.Swaranakar, (2003) 2 SCC 721 and *Punjab & Sind Bank v. Mohinder Pal Singh, (2005) 12 SCC 747 ?*

B) If the answer to question A is in affirmative then another question would arise whether the appellant successfully withdrew his offer submitted under VRS or a binding irrevocable contract opting for VRS came into existence between the employee and the Bank?

Re-Question A

7. In order to appreciate the aforesaid issue it would be necessary to highlight the concept of ‘status’ and ‘contract’ in service jurisprudence. An employee is appointed by issuing letter of appointment incorporating the terms and conditions of the appointment. Such an employee is also asked to accord his acceptance in writing. It is trite to observe that every appointment owes its origin to a contract preceded by offer and acceptance, which brings into being a binding contract between the parties. However, in the case of civil servants and government employees the initial commencement of contract with terms and conditions gets transformed into a ‘status’ after

appointment to a substantive post or office under the Government. In other words, once a government servant acquires a status then the right of the State government to unilaterally alter the conditions of his service comes in operation. The civil servant also then enjoys protection of the Constitution under Article 310 and 311 of the Constitution. The classic statement of this concept has been made in the case of **Roshan Lal Tandon v. Union of India, AIR (1967) 1889**. At page 1894 the classic statement has been made which is set out below *in extenso*:-

> "It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Article 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Article 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by law and in the enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned."

7. A perusal of the aforesaid formulation by Hon'ble Mr. Justice Ramaswami clearly enunciates that once an employee acquires a status then it is no longer a matter in the realm of any agreement or contract between the parties. This legal relationship between the parties is regulated by area of public law and not by mere agreement of the parties. In his book 'Ancient Law', (1861) Sir Henry Maine has presented his historical analysis by observing that the movement of progressive society is from 'status to contract'. It may convey the impression that 'status' is a term which no employee would like to acquire. In fact the conclusion reached by Sir Henry Maine brings into play the factor favouring the greater freedom for an individual in the society by allowing him to enter into contract as per his liking; whereas status is a term which used to show the aristocratic way of conferring title. The progress is not cyclical and the status conferred on every servant is to ensure availability of well protected bureaucracy and in the enforcement of public law duties in which the society has a interest. In order to acquire status and for acquiring constitutional protection as provided in Article 311 of the Constitution, all appointments are required to be made in conformity with constitutional scheme as laid down in Articles 14 and 16 of the Constitution as well as the rules framed in

exercise of powers under proviso to Article 309 of the Constitution or in terms of a statute.

8. It is in the aforesaid context that we have been called upon to opine as to whether the case of the appellant is covered by the judgments rendered in O.P.Swarankar and Mohinder Pal Singh's case (supra). In both the cases Hon'ble the Supreme Court has made a detailed reference to the provisions of Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and the provisions of Contract Act, 1872. Their lordships of Hon'ble the Supreme Court have also made a detailed reference to the provisions of State Bank of India Act, 1955. Thus a visible distinction has been drawn between the Banking Company covered by the Banking Companies Act nationalizing the Banks mentioned therein. The State Bank of India or its subsidiary like State Bank of Patiala have been created under the statute. After referring to the scheme floated by the State Bank of India/State Bank of Patiala on the one hand and the VRS scheme floated by the Nationalized Banks on the other hand, their Lordships proceeded to draw distinction between the status of a employee working in State Bank of India on the one hand and that of the one working in a nationalized bank on the other. It would, therefore, be profitable to extract *in extenso* following

informative and instructive paras from the judgment rendered in O.P.Swarnakar's case (supra):-

> "43. Pursuant to in furtherance of the powers conferred under Section 50(3), the Reserve Bank of India with the previous sanction of the Central Government made the State Bank of India General Regulations, 1955. It is also not in dispute that in exercise of the power conferred under Section 43(1) of the State Bank of India Act, 1955 the Central Board of the State Bank of India made the State Bank of India Officers' Service Rules determining the terms and conditions of the appointment and services of officers in the Bank.
> 44……..
> 45……..
> 46. As would appear from the discussions made hereinafter, there appears to be some difference in the schemes floated by the State Bank of India and the nationalized banks.
> 47. We may consider the cases of nationalized banks first. The circular dated 20-08-2000 and the Scheme framed by the banks are required to be read together for the purpose of ascertaining the true intendment thereof. The Scheme essentially was floated as has been mentioned hereinbefore with a purpose of downsizing the employees. Such a scheme although may incidentally be beneficial also to the employees but was primarily beneficial to the banks. The ultimate aim and object of floating such a scheme as has been stated in the circular letter issued by the Ministry of Finance was for the purpose of effective functioning of the banks so as to enable them to compete with the private banks.
> 48. The employees of the nationalized bank may not enjoy a "status' as is the case of government employees or the statutory authorities whose terms and conditions of service are governed by the constitutional provisions and/or the statutes and the statutory rules; but there is no gainsaying that the employees of the nationalized banks enjoy security of their employment. So far as the employees of the State Bank of India are concerned, their terms and conditions of service, as noticed hereinbefore, are governed by statutory rules. However, so far as the employees of the nationalized banks are concerned, except for the matter of grant of pension which is covered by the regulations framed in terms of Section 19 of the 1970 Act, other terms and conditions of their service are not statutory in nature. But the State Bank of India as also the nationalized banks are "States" within the meaning of Article 12 of the Constitution of India. The services of the workman are also governed by several standing orders and bipartite settlements

> which have the force of law. The banks, therefore, cannot take recourse to “hire and fire” for the purpose of terminating the services of the employees. The banks are required to act fairly and strictly in terms of the norms laid down therefor. Their actions in this behalf must satisfy the test of Articles 14 and 21 of the Constitution of India. Having regard to the intendment of the Scheme, each and every employee would not be entitled to the benefit of the said Scheme. Those who are facing disciplinary proceedings or working in a particular class of employment are not eligible therefor.”

9. A perusal of the aforesaid paras of the judgment rendered in O.P.Swarnakar’s case (supra) would show that the employees working in the State Bank of India enjoy a status because the State Bank of India General Regulations, 1955 were framed by Reserve Bank of India with the previous sanction of the Central Government as per the provisions of Section 50(3) of the State Bank of India Act, 1955. Likewise, under Section 43(1) of State Bank of India Act the Central Board of the State Bank of India framed the State Bank of India Officers’ Service Rules determining the terms and conditions of the services of the officers in the Bank. However, no such status is attached to the employees working in the nationalized banks like the respondent-Indian Overseas Bank. The terms and conditions of the employees of the nationalized banks are not statutory in character except in respect of matter concerning grant of pension which is covered by regulations framed in terms of Section 19 of the Banking Companies Act,1970. It may be true that the nationalized banks like State Bank of India may

be covered by the expression ‘State’ or its agencies within the meaning of Article 12 of the Constitution. But for the purpose of determining the issue it would not be a material factor. Therefore, the terms and conditions of their contract would govern their service conditions and they would not acquire any status which could be unilaterally changed. The matter was reconsidered when Punjab & Sind Bank raised the issue that the judgment rendered in O.P.Swarnakar’s case (supra) was not applicable to the employees working in their Bank and the VRS scheme floated by them must be treated at par with the scheme floated by State Bank of India because the appeals filed by Punjab & Sind Bank being a nationalized banks were disposed of in terms of leading judgment rendered in O.P.Swarnakar’s case. The application filed by the employee was accepted and the employee was reinstated in service with all consequential benefits. Therefore, we are of the considered opinion that the judgment in O.P.Swarnakar’s case (supra) rendered by Hon’ble the Supreme Court would be fully applicable because in the present case the respondent-bank namely Indian Overseas Bank is a nationalized bank and is covered by 1970 Act. Therefore, question A is answered in favour of the appellant and against the respondent-bank.

Re-Question B

10. The second issue which falls for our consideration is whether the appellant successfully withdrew his offer for VRS or a binding irrevocable contract opting for VRS came into existence. It has come on record that the respondent bank floated the scheme on 02.12.2000 and it was to remain in operation for a period of five weeks commencing from 15.12.2000 to 19.01.2001. The appellant applied for voluntary retirement under VRS on 11.01.2001 through proper channel. His application was duly accepted by the Central Office at Chennai on 19.01.2001 i.e. on the last date of filing application. The decision accepting the offer made by the writ petitioner-appellant was communicated by the Central Office, Chennai to its regional office Chandigarh on 22.01.2001. It was the regional office which communicated the letter of acceptance to the Indian Overseas Bank, Srinagar branch on 27.01.2001. The appellant filed an application on 29.01.2001 before the Bank Manager, Srinagar with a prayer to withdraw his offer of seeking voluntary retirement under VRS. He was relieved on 31.01.2001 and on the foot of relieving order he made an endorsement to the effect that ‘received subject to the final decision on my withdrawal to VRS 2000 dated 29.01.2001’.

11. It is true that the scheme is not an offer but is an invitation to offer. We say so for the reason that in para 59 of the judgment rendered in O.P.Swarnakar's case (supra), VRS scheme was regarded as an invitation to offer. The option as exercised by the employees was regarded as offer which needed to be accepted in writing by the competent authority. In para 60 of the judgment, it has been put beyond any doubt that the acceptance or rejection of the offer made by an employee has to be communicated in writing to the employee concerned. Para 60 of the judgment is crucial for the decision on question B and the same is set out below *in extenso*:-

> "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 appealable 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 decision-making process shall take place at various levels of the banks." (emphasis added)

12. It is also pertinent to mention that in para 61 of the judgment in O.P.Swarnakar's case (supra) consequences of VRS schemes floated by nationalized banks have been summed up. The salient features of such schemes have been enunciated as under:-

> "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.

(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.
(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 the competent authority.
(vi) The request of voluntary retirement would not take effect in praesenti but in future.
(vii) The bank reserved its right to alter/rescind the conditions of the Scheme."

13. In the present case the offer was made by the appellant on 11.01.2001 which was accepted on 19.01.2001, which was communicated to the appellant on 31.01.2001 through Srinagar branch, whereas the appellant had already withdrawn the offer on 29.01.2001.

14. The argument raised by Mr. Ajay Pal Singh, learned counsel for the respondent-bank that communication of acceptance is not mandatory has failed to impress us because in the absence of communication the offerer would remain in dark for all times to come. Moreover, Hon'ble the Supreme Court in paras 60 and 61 of the judgment rendered in O.P.Swarnakar's case (supra) has put it beyond any doubt that acceptance has to be communicated in writing. It may be true that offer made by the appellant was accepted by the respondent-bank at Chennai on 19.01.2001 but before its communication to the appellant at Srinagar on 31.01.2001 the offer was withdrawn on 29.01.2001 by filing an application to

the Indian Overseas Bank at Srinagar. Therefore, it cannot be concluded that the communication was not necessary. However, the judgments cited by Mr. Singh, learned counsel for the respondent-bank would not be attracted to the facts of the present case for the reason that the voluntary retirement scheme in the case of Raghuvir Singh Narang (supra) was statutory and while discussing the effect of the judgment in O.P.Swarnakar's case (supra) in para 11.3 the Supreme Court itself has opined that where the scheme is statutory in character the terms of the scheme would prevail over general principles of contracts and provisions of the Contract Act. Same logic would apply to the other judgments cited by the learned counsel i.e. Raj Kumar's case(supra) and Vedpathi Dinesh Kumar's case (supra).

15. We are further of the view that Section 2(b) read with Sections 7 & 8 of the Contract Act does not leave any manner of doubt that without communication of acceptance of the offer made by an offeror no contract of binding nature could come into force. The famous case of **Powel v. Lee, (1908) 99 LT 248** illustrates the position in law. The manager of a school passed a resolution appointing plaintiff to the position of headmaster. However, the decision appointing him was not communicated to him. It was held that passing of resolution without communication to the plaintiff did not constitute a contract to

appoint him to the post and for the breach thereof, the plaintiff was not entitled to sue. In his book law of contract G.H.Treitel in seventh edition has opined that acceptance has no effect until it is communicated to the offeror. The reason for this rule is difficulty of proving an un-communicated decision to accept that Devil himself knows not the intent of a man. Section 3 of the Contract Act expressly provides that acceptance has to be communicated and it is obligatory. In that regard reliance may be placed on the judgments of Hon'ble the Supreme Court rendered in the case of **U.P.Awas Evam Vikas Parishad v. Om Parkash Sharma, (2013) 5 SCC 182, Kerla Financial Corp. v. Vincent Paul (2011) 4 SCC 171, Haridwar Singh vs. Bagun Sumbrui and Others (1973) 3 SCC 889 and State of Haryana v. Malik Traders, (2011) 13 SCC 200**. Therefore, there is wall of authorities to support this first principle that communication of acceptance is obligatory. In the absence thereof no contract of binding nature would come into being. In the present case the communication was made on 31.01.2001 when the appellant was sought to be relieved from his duties, whereas the appellant had already withdrawn his offer on 29.01.2001. Therefore, the offer was withdrawn before the communication of acceptance and no contract of binding nature came into existence.

16. Another argument advanced by Mr. A.P.Singh on behalf of the respondent –Bank is that the Bank has deposited the

amount due under the VRS Scheme in the bank account of the appellant. However, it has failed to impress us because the amount has neither been accepted nor utilized by the appellant. It was unilateral act of the Bank and the appellant has never consented to aforesaid course adopted by the Bank. There is nothing on record showing that the appellant ever consented for deposit of the amount under VRS Scheme. Accordingly, we have no hesitation in rejecting the aforesaid argument.

17. In view of the above, the second question is answered in favour of the appellant and against the respondent-bank.

18. As a sequel to the above discussion, this appeal succeeds. The judgment of the learned Single Judge dated 01.11.2006 rendered in SWP No.1608/2001 is set aside. The writ petition filed by the appellant is allowed. He shall be reinstated in service with all consequential benefits. It is made clear that if he had already superannuated then all consequential benefits along with pension shall be paid to him.

(Hasnain Massodi)
Judge

(M. M. Kumar)
Chief Justice

Jammu,
21.02.2014
Vinod.