

HINDUSTAN COPPER LTD. AND ANR.

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v.

BANSHI LAL AND ORS.

DECEMBER 8, 2005

[S.B. SINHA AND P.P. NAOLEKAR, JJ.]

B

Contract Act, 1872:

Offer and acceptance—Closure of Unit—Offer to employees to either opt for VRS or get transferred to another unit—Employees opting for VRS—Later seeking withdrawal of same—Employer not allowing the withdrawal—High Court ordering reinstatement on ground that offer was withdrawn before its acceptance—Challenge to—Held: The offer made by an employee could be withdrawn by him before it was accepted—The scheme being contractual in nature, the provisions of Indian Contract Act would apply.

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Service Law—VRS—Offer of VRS withdrawn by employee before its acceptance—Effect of.

On closure of a unit of Appellant-Government Undertaking, the respondents-employees working therein were offered to either opt for the Voluntary Retirement Scheme or get transferred to another unit. Respondent-employees opted for voluntary retirement. However, later they withdrew their offers. Appellant did not allow respondents to withdraw in view of the stipulation contained in the option form filled up by the respondents that the option once exercised could not be withdrawn. Aggrieved respondents filed Writ Petition which was dismissed by Single Judge. Division Bench allowed the appeal holding that since respondents had withdrawn their offers before the same were accepted, they are entitled to reinstatement with back wages. Hence the present appeal.

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Disposing of the appeal, the Court

HELD: The offer made by an employee could be withdrawn by him before it was accepted. The scheme was contractual in nature, the provisions of the Indian Contract Act, 1872 would apply. No exception, thus, can be taken to the findings of the Division Bench of the High Court. However, there cannot be any doubt or dispute whatsoever that even if the termination of services of

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- A** the Respondents herein was found to be illegal, they could be directed to be continued in service until they reached their age of superannuation. Respondents have already received a huge amount in terms of the voluntary retirement scheme. The amount payable to them by or on behalf of the Appellant, thus, must be directed to be adjusted with the amounts of back wages, current wages or the future wages, if any. The Appellant shall be entitled to transfer the Respondents to the units which are working on such post or posts which they had been holding on the relevant dates.

[668-D-H; 669-A]

Bank of India and Ors. etc. v. O.P. Swarnakur and Ors. etc., [2003] 2 SCC 721, relied on.

- C** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1807 of 2001.

From the Judgment and Order dated 27.7.2000 of the Rajasthan High Court in D.B.C.S.A. No. 1387 of 1997.

Deba Prasad Mukherjee for the Appellants.

- D** Vijay Hansaria, Ms. Minakshi Sarma, Kanishk Gupta and Sunil Kumar Jain for the Respondents.

The Judgment of the Court was delivered by

- E** **S.B. SINHA, J.** The Appellant is a Government of India Undertaking. It had various copper mines and factories situate in different parts of the country. One of its mines was situate in the District of Alwar in the State of Rajasthan known as 'Dariba Copper Project'. It is stated that the mines situated in other States are lying closed except one mine being Malij Khan situate in the State of Madhya Pradesh. Having regard to the fact that the said Dariba Mine was to be closed, a notice of closure had been issued. The
- F** Appellant Company, however, had also floated a Voluntary Retirement Scheme in the year 1993. Options were called for from the employees of the said Dariba Mine Project as to whether they would like to be transferred to the mines operating in other States or opt for the voluntary retirement scheme. Out of 241 employees working in the said Dariba Mine, 112 opted for voluntary retirement under the scheme. 10 of them, however, later on withdrew their
- G** offers. They were not allowed to do so by the Appellant herein on the premise that as the options had been exercised in printed proforma which contained a clause that such option once exercised could not be withdrawn; their offers stood accepted.

- H** Having regard to the aforementioned stand of the Appellant, a writ

petition was filed by them which was dismissed by a learned Single Judge. An intra-court appeal, however, was filed only by six persons out of the ten writ petitioners. The other four persons, thus, accepted the judgment of the learned Single Judge. A

By reason of the impugned judgment, a Division Bench of the Rajasthan High Court opined that the stand of the Appellant Company was not correct, as the concerned employees had withdrawn their offers before the same were accepted. Allowing the appeal filed by the Respondents herein, it was directed: B

“Consequently, the appeal is allowed. The judgment of the learned Single Judge is set aside. It is directed that the appellants shall be treated to have continued in service of the respondent company. They shall be reinstated with back wages.” C

Mr. Deba Prasad Mukherjee, the learned counsel appearing on behalf of the Appellant, submitted that the High Court was not correct in issuing the aforementioned directions keeping in view the fact that the Appellant is not in a position to re-employ the Respondents as except one mine all other mines are closed. D

Our attention was further drawn to an order dated 12.03.2001 passed by this Court which is as under :

“Leave is granted. Heard learned counsel for the parties. The order under challenge shall remain stayed pending disposal of the appeal. It is needless to mention that if the appellants fail in the appeal they will have to give wages to the respondents including the back wages for the period for which otherwise they would have been in service. It does not preclude the respondents from receiving the benefits under the voluntary retirement scheme which would be without prejudice to their contentions in this appeal.” E F

It was submitted that pursuant to or in furtherance of the said order, the amount payable in terms of the voluntary retirement scheme has already been paid, details whereof are as under : G

A	"Sl. No.	Name	Date of Birth	Date of Superannuation on attaining of 58 years age	Amount paid under VRS	Amount
B	1.	Banshi Lal	05.11.43	30.11.2001	63608.20	20.4.2002
	2.	Gyarshi Lal	27.09.50	30.09.2008	173146.80	23.4.2002
	3.	Hardeva	21.05.49	30.09.2007	172015.50	30.4.2002
	4.	Kishan Lal	26.11.50	30.11.2008	169966.00	30.4.2002
C	5.	Nahnuram	26.11.52	30.11.2010	163304.10	23.4.2002
	6.	Chokha Ram	03.04.50	30.04.2008	178788.00	30.4.2002

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D Mr. Vijay Hansaria, the learned Senior Counsel appearing on behalf of the Respondents, on the other hand, supported the judgment of the High Court.

E The contention raised on behalf of the Appellant herein that in view of the stipulation contained in the option form to be filled up by the employees that the option once exercised cannot be withdrawn stands concluded by a three-Judge Bench Judgment of this Court in *Bank of India and Ors. etc. v. O.P. Swarnakar and Ors etc.*, [2003] 2 SCC 721, wherein it was held that the scheme being contractual in nature, the provisions of the Indian Contract Act, 1872 would apply and, thus, an offer made by an employee could be withdrawn by him before it was accepted. No exception, thus, can be taken to the findings of the Division Bench of the High Court. However, there cannot be F any doubt or dispute whatsoever that even if the termination of services of the Respondents herein was found to be illegal, they could be directed to be continued in service until they reached their age of superannuation. Respondent No.1, Banshi Lal, had already reached his age of superannuation. So far as the other Respondents are concerned, however, they would be G entitled to continue in service till they reach the age of superannuation.

H It is, however, not disputed that they have received a huge amount in terms of the voluntary retirement scheme pursuant to the observations made by this Court. The amount payable to them by or on behalf of the Appellant, thus, must be directed to be adjusted with the amounts of back wages, current wages or the future wages, if any.

The Appellant shall be entitled to transfer the Respondents to the mines which are working on such post or posts which they had been holding on the relevant dates. In the event, it is found that the Appellant has paid any excess amount to the said employees, it is made clear that the future salary payable to them would be adjusted from the amount which had already been received by them, if any.

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The Respondents are directed to join their posts at the transferred places forthwith, but not later than 15 days from the date of communication made to them in that behalf by the competent authority of the Appellant.

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This appeal is disposed of with the aforementioned observations and directions. No costs.

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D.G.

Appeal disposed of.