Bank Of India & Ors vs O.P. Swarnakar Etc on 17 December, 2002

Equivalent citations: AIR 2003 SUPREME COURT 858, 2003 (2) SCC 721, 2003 AIR SCW 313, 2003 LAB. I. C. 689, 2003 (1) UPLBEC 594, 2003 (1) SLT 9, 2002 (9) SCALE 519, 2003 (1) SERVLJ 253 SC, 2003 (1) UJ (SC) 225, (2003) 3 ALLMR 356 (SC), (2003) 1 SERVLJ 253, 2003 (2) SRJ 186, 2003 UJ(SC) 1 225, 2004 BOM CRSUP 630, (2003) 4 SCT 787, 2003 SCC (L&S) 200, (2002) 9 SCALE 519, (2003) 1 ALL WC 798, (2003) 102 FJR 242, (2003) 1 LABLJ 819, (2003) 1 LAB LN 867, (2003) 2 MAHLR 454, (2003) 1 SERVLR 1, (2003) 1 UPLBEC 594, (2003) 1 SUPREME 842, (2003) 2 ESC 226, (2003) 1 WLC(SC)CVL 444, (2003) 1 INDLD 1028

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Bench: Chief Justice, H.K. Sema, S.B. Sinha

CASE NO.:
Appeal (civil) 854 of 2002
Appeal (civil) 855 of 2002
Appeal (civil) 870 of 2002
Appeal (civil) 874 of 2002
Appeal (civil) 877 of 2002
Appeal (civil) 878 of 2002
Appeal (civil) 879 of 2002
Appeal (civil) 883 of 2002
Appeal (civil) 7353 of 2002
Appeal (civil) 7354 of 2002
Appeal (civil) 7355 of 2002
Appeal (civil) 7356 of 2002
Appeal (civil) 873 of 2002
Appeal (civil) 876 of 2002
Appeal (civil) 880 of 2002
Appeal (civil) 3552-60 of 2002
Appeal (civil) 4067 of 2002
Appeal (civil) 5380-81 of 2002
Appeal (civil) 875 of 2002
Appeal (civil) 881 of 2002
Appeal (civil) 8467-8499 of 2002
Special Leave Petition (civil) 19373-405 of 2002
Appeal (civil) 8511 of 2002
Special Leave Petition (civil) 12322 of 2002
Appeal (civil) 7314-35 of 2002
Appeal (civil) 3561-65 of 2002
Appeal (civil) 896 of 2002
Appeal (civil) 955 of 2002

Appeal (civil) 8500 of 2002
Special Leave Petition (civil) 7966 of 2002

PETITIONER:
Bank of India & Ors.

RESPONDENT:
O.P. Swarnakar etc.

DATE OF JUDGMENT: 17/12/2002

BENCH:
CJI, H.K. Sema & S.B. Sinha.

JUDGMENT:

Punjab National Bank & Ors.

Allahabad Bank etc. etc. Dena Bank Punjab & Sind Bank & Ors.

Union Bank of India & Ors.

State Bank of Patiala State Bank of India & Anr. etc. Virender Kumar Goel Shri Harprit Singh Chhabra Bhupinder Singh Sachdeva & Ors.

Vs. Jai Singh Chauhan etc. etc. Raminder Singh Arora etc. etc. Mr. Netaji D. Karande & Ors. etc. Mohinder Pal Singh & Ors.

A.Q. Beg Virender Kumar Sharma & Ors.

Sanjeev Kalra etc. Punjab National Bank & Ors. etc. Bank of India & Ors.

Chairman, Punjab & Sind Bank & Ors.

J U D G M E N T SB SINHA, J :

Leave granted in the special leave petitions.

A common question, as to whether an employee who opts for the voluntary retirement pursuant to or in furtherance of a scheme floated by the Nationalised Banks and the State Bank of India would be precluded from withdrawing the said offer, is involved in this batch of appeals which arise out of the judgments of various High Courts.

The State Bank of India has been constituted under the State Bank of India Act, 1955 whereas the other banks (hereinafter referred to as 'the Nationalized Banks, for the sake of brevity) were taken over in terms of the provisions of the Banking Companies

(Acquisition and Transfer of Undertakings), Act, 1970 (hereinafter referred to as '1970 Act').

The banks were said to be over-staffed. For the purpose of effective management , man power planning was contemplated by the Ministry of Finance, Government of India, pursuant whereto and in furtherance whereof, the Government considered the desirability of introducing voluntary retirement scheme to help the banks to right-size their force. In a letter dated 22.5.200, the Director (IR & BOII), Ministry of Finance, intimated to the concerned banks that different committees and experts opined that most of the banks have 25% surplus manpower. It was observed :

"While there is a need for inducting new workforce, which had adequate knowledge of new skills such as modern technology, foreign exchange, venture capital, e-commerce, money management, etc. it is also essential to rationalize the existing manpower. In doing so, it has to be ensured that there should be adequate opportunities for promotions for all and proper balance between promoted and direct recruit officers at entry level. Sufficient promotional opportunities should be created for the entrants in non-executive grades by creating graded scales within the cadre and giving age relaxation and special coaching to enable them to compete for direct recruitment also. Thus for entry in officers cadre, 50% quota for promotion should suffice. That will enable banks to recruit 50% officers from open market in accordance with the needs of the banks to ensure continuous intake of persons with desired qualifications in accordance with the changing skill needs."

It was, therefore, requested that the concerned banks should undertake the exercise of man-power planning on priority basis and send the same to the Banking Division for approval of the Board. A Committee was constituted by the Central Government for consideration of various issues as specified in the report of the Committee on Human Resource Management in Public Sector Banks. The said Committee in its report, inter alia, observed :-

"3.15.1 The Committee feels that the high establishment cost and low business per employee are important contributory factors for the low profitability of several public sector banks. The Committee feels that without right-sizing the staff, it would be difficult for public sector banks to compete with other banks operating in the country and their profitability will remain under severe strain. Optimising the existing work force is also necessary to facilitate recruitment of personnel with specialised skills required for appropriate use of information technology in banking transaction, compliance with prudential norms and consequent emphasis on improved risk management and assert liability management, as also Banks' foray into new business areas such as insurance, capital markets, etc. 3.15.2 Different committees and experts have in the recent past perceived excess staff in banks especially in the public sector banks. The extent of surplus may however differ from bank to bank. Banks are at various stages of making a proper assessment of human resource including man-power planning exercise.

> 3.15.4 The Committee further reiterates that the Government may consider rolling back the age of retirement for officers from 60 years to 58 years. This will not only reduce the man-power in the age group of 58 to 60 but will also result in considerable savings."

Pursuant to or in furtherance of the said purported policy decision, the State Bank of India as well as the Nationalised Banks adopted separately but almost identical scheme known as "Employees Voluntary Retirement Scheme". We may, however, observe that the scheme adopted by the State Bank of India (hereinafter referred to 'SBIVRS') in certain respects differ from the scheme of the Nationalised Banks (hereinafter referred to the 'said scheme'). For our purpose, we would consider them separately.

The said scheme was applicable in relation to employees who on the date of application had completed 15 years of service or 40 years of age. The employees specified therein including specialised officers were not eligible to seek voluntary retirement. However, in certain scheme they were ordinarily ineligible for being considered. The period during which the said scheme was to remain operative varies from bank to bank. However, as far as Punjab National Bank was concerned, the said scheme was to remain in operation from 1.11.2000 to 30.11.2000. In terms of the said scheme those who sought for voluntary retirement were entitled to ex-gratia payments as specified therein as also other benefits which are as follows :-

> "AMOUNT OF EX-GRATIA An employee seeking voluntary retirement under the scheme will be entitled to the ex-gratia amount mentioned below in para (a) or (b), whichever is less :-
>
> a) 60 days salary (pay plus stagnation increments plus special pay plus dearness relief) for each completed year of service;

OR

b) salary for the number of months service left;

OTHER BENEFITS An employee seeking voluntary retirement under the scheme will be eligible for the following benefits in addition to the ex-gratia amount mentioned in para 6 above of this scheme :-

> i) Gratuity as per Payment of Gratuity Act, 1972 or Gratuity payable under the Service Rules as the case may be, as per existing rules;
>
> ii) a) Pension (including commuted value of pension) as per PNB (Employees') Pension Regulations, 1995.

OR

b) Bank's contribution towards PF as per existing rules.

iii) Leave encashment as per existing rules."

The Scheme contained an eligibility criteria, namely, that employees against whom disciplinary proceedings were contemplated or pending would not be eligible for seeking voluntary retirement. It states that the employees seeking voluntary retirement were eligible for all other retirement benefits. Under the existing said scheme the bank has reserved with itself the right to withdraw the scheme at any time it thinks fit and its decision in this behalf was to be final.

Para 9 of the said scheme specifies different competent authorities for accepting voluntary retirement of different categories of officers and workmen.

The following general conditions now need be noticed :-

> "10.4 A mere request of an employee seeking voluntary retirement under the Scheme will not take effect until and unless it is accepted in writing by the Competent Authority.
>
> 10.5 It will not be open for an employee to withdraw the request made for voluntary retirement under the scheme after having exercised such option.
>
> 10.6. The Competent Authority shall have absolute discretion either to accept or reject the request of an employee seeking Voluntary Retirement under the scheme depending upon the requirement of the bank. The reasons for rejection of request of an employee seeking voluntary retirement shall be recorded in writing by the competent authority. Acceptance or otherwise of the request of an employee seeking voluntary retirement will be communicated to him in writing.
>
> 10.11. An employee who would seek voluntary retirement under this scheme will not be eligible for re-employment in the bank or any of its subsidiaries.
>
> 10.13. The benefits payable under this scheme shall be in full and final settlement of all claims of whatsoever nature, whether arising under the scheme or otherwise to the employee (or to his nominee in case of death). An employee who voluntarily retired under this scheme will not have any claim against the bank of whatsoever nature and no demand or dispute or difference will be raised by him or on his behalf, whether for re-employment or compensation or back wages including employment of any of his relative on compassionate grounds in the service of the bank or for any other benefit whatsoever.
>
> 10.14. The vacancy caused by voluntary retirement shall not be filled up by new recruitment.

10.15. The ex-gratia payable to an employee on opting for Voluntary Retirement under this scheme would be paid to him within 45 days from the date of his relieving.

PROCEDURE An employee eligible to seek voluntary retirement under this scheme should make a request on the prescribed application enclosed with this scheme as Annexure-A or Annexure A-1 as the case may be through proper channel addressed to the Competent Authority before the last date prescribed under this Scheme. Further one copy of the application be directly sent to the Dy. General Manager (P) at Head Office New Delhi."

Annexure-A appended to the said Scheme is the format of an application for offer to seek voluntary retirement which reads thus :-

"Application for Offer to seek voluntary retirement from the service of the Bank.

(For workmen employees & officers upto scale-III) The Dy. General Manager Personnel Division Head Office New Delhi.

(Through proper channel) Sir, SUB: VOLUNTARY RETIREMENT.

I hereby offer to seek voluntary retirement from the services of the Bank in accordance with the terms and conditions stipulated in the PNB Employees Voluntary Retirement Scheme 2000 circulated vide Personnel Division Circular No.1755 dated 29.9.2000, which I have carefully read and understood the contents of the same.

2. I accept the terms and conditions stipulated in PNB Employees Voluntary Retirement Scheme 2000 unconditionally and irrevocably.

3. I furnished the required particulars in the APPENDIX enclosed for consideration of my offer to seek voluntary retirement from the service of the Bank under the above scheme.

Yours faithfully,
Signature of the Employee

Place:
Date :
Name _____
Designation_____
BO/Division _____"

A large number of employees (1,01,000 employees approx.) submitted their applications out of whom a small number of employees (200 employees approx.) withdrew their offer. Despite withdrawal of their offer the same was accepted. In some cases offers despite withdrawal thereof

were accepted within the period during which the scheme was operative and in some beyond the same.

The scheme was introduced by the banks with the approval of the Board of Directors.

Questioning the action on the part of the banks, in accepting the applications of the concerned employees despite their withdrawal, writ petitions were filed in the Punjab & Haryana High Court, Bombay High Court, Uttaranchal High Court etc. Before the Punjab & Haryana High Court, the legality or validity of the said scheme also came to be questioned. Writ applications were also filed by some employees seeking for issuance of writ of mandamus directing the respective banks to pay unto them their lawful dues strictly in terms of the scheme.

The Punjab & Haryana High Court by reason of its judgment impugned herein dated 3.4.2002, inter alia, held :-

> "That the V.R. Scheme as framed is not a valid piece of subordinate legislation inasmuch as the provision of Section 19 sub clause (1) and sub clause (4) of the Act have not been complied with and has, therefore, to be set aside.
>
> Even if it is assumed for the sake of arguments that the scheme is validly framed, it would be open to an employee to withdraw his option before the same has been accepted and effectively enforced.
>
> For the reasons recorded above, we allow 71 writ petitions i.e C.W.P. Nos.1458, 1472 of 2001 and C.W.P Nos. 303 and 1765 of 2002 etc. etc. in which the petitioners have made a prayer for the withdrawal of their options and the impugned orders accepting the options of voluntary retirement stand quashed. All these petitioners shall be reinstated in service with all consequential benefits. It is however, made clear that those petitioners who have received the benefits under the scheme including the ex-gratia payment whether with or without protest, shall return the entire amount received by them with interest at the rate of 9% per annum from the date of the receipt of the said amount till the date of return. On return of the aforesaid amount the consequential benefits regarding the payment of arrears of salary and allowances from the date of their release to the date of reinstatement shall be given to them by the respondents. These petitioners shall also have the benefit of continuity of service and the interregnum period shall be regularised in accordance with law and regulations.
>
> Since we have already declared this scheme as bad, therefore, we are not in a position to give any relief to the writ petitioners of 10 writ petitions i.e. C.W.P. Nos.6072, 7277, 7448, 9191, 14325, 15686, 15689, 19393, 19711 and 19803 of the year 2001, and in our opinion, these writ petitions are liable to be dismissed. When all rights flow from a valid scheme and the moment the scheme is declared bad on account of statutory restrictions then the petitioners of these 10 writ petitions cannot ask for any

advantage or benefit.

Now we want to make some observations with regard to those employees who had taken the benefit under the VRS Scheme but they have not approached this court as they appear to be satisfied/ with the amount/benefits already received by them. With regard to them we want to make it clear that the Banks are not obliged to recall these employees for employment"

The Bombay High Court and the other High Courts, on the other hand, held that clause 10.5 of the scheme or the scheme framed framed by the other banks is not operative as the employees have indefeasible rights to withdraw their offer before the same is accepted. In arriving at its aforementioned finding, the High Courts, inter alia, relied on the following decisions of this Court in Union of India & Ors. v. Gopal Chandra Misra & Ors. [(1978) 2 SCC 301], Balram Gupta v. Union of India & Anr. [(1987) Supp.SCC 228], Punjab National Bank v. P.K. Mittal [(1989) Supp. 2 SCC 175], Union of India & Anr. v. Wing Commander T. Parthasarathy [(2001) 1 SCC 158] and Shambhu Murari Sinha v. Project & Development India Ltd. & Anr. [(2002) 3 SCC 437].

Assailing the judgment of the High Courts, Mr. Soli J. Sorabjee, learned Attorney General for India, inter alia, submitted that having regard to the purport and object sought to be achieved by the scheme, clause 10.5 of the General Conditions cannot be said to be illegal as by submitting themselves thereto, the concerned employees must be held to have resigned in prasenti and in that view of the matter the contractual bar contained therein cannot be held to be bad in law. The learned Attorney General would urge that the High Court proceeded on a wrong premise insofar as it failed to take into consideration that the scheme would amount to a regulation which would attract the provision of Section 19 of 1970 Act. It was submitted that power to fix the terms and conditions of service of their employees by the Banks is provided for under Section 7 of the said Act. The learned counsel would contend that it is not the case of the writ petitioner-respondents that the aforementioned clause 10.5 is arbitrary or otherwise opposed to public policy or suffers from lack of mutuality and, thus, the High Court must be held to have arrived at a wrong conclusion. Such a clause being an offer, the learned Attorney General would contend, is not violative of any provisions of the Indian Contract Act, 1872 or the Constitution of India. Taking us through the decisions of this Court in Gopal Chandra Misra (supra), T. Parthasarthy (supra), Balram Gupta (supra) as also Shambhu Murari Sinha (supra), the learned Attorney General would urge that therein this Court has laid down that such a provision leads to laudable object and only in absence of such a provision prospective resignation can be withdrawn before its acceptance. It was further submitted that as each of the employees had made irrevocable and unconditional offer of terms and conditions laid down in the scheme, they could not have withdrawn therefrom and particularly as some of them accepted the ex-gratia payment and, thus, they having elected for the scheme and thus, were estopped and precluded from questioning the same. Those employees, Mr.Sorabjee would submit, who accepted the ex-gratia payment could not have been permitted by the High Court to approbate or reprobate. In support of the said contention, reliance has been placed in Brijendra Nath Bhargava & Anr. v. Harsh Wardhan & Ors. [(1988) 1 SCC 454], Shri Lachoo Mal v. Shri Radhey Shyam [(1971) 1 SCC 619], Halsbury's Laws of England, Fourth Edition, Volume 16, para 957 and American Jurisprudence, 2d, Volume 28, pages 677 to 680.

As regards the finding of the Punjab & Haryana High Court that the scheme is ultra vires having regard to the fact that the same was not laid before the Parliament as required under Section 19(4) of 1970 Act, it was contended that such a provision being directory one, failure on the part of the Central Government to lay the said scheme before the Parliament could not vitiate the scheme itself. Strong reliance, in this connection, has been placed in Jan Mohammad Noor Mohammad Begban v. State of Gujarat & Anr. [(1966) 1 SCR 505] and M/s Atlas Cycle Industries Ltd. & Ors. v. The State of Haryana [(1979) 2 SCC 196]. It was urged that the entire scheme was offered to the employees as a package and the same had to be treated as such and in that view of the matter, it being within the realm of contract, statutory regulations cannot be said to have any application whatsoever.

Mr. V.R. Reddy who appeared for the Punjab National Bank in the matters arising out the judgment and orders passed by the Bombay High Court, inter alia, would submit that the High Court erred in proceeding on the basis as if the employees are the Government servants and enjoy a status. According to the learned counsel, having regard to the provisions of the 1970 Act, the terms and conditions of services of the employees of the Nationalised Banks are governed by contract. Mr. Reddy would urge that the purpose of the scheme being down sizing of the employees, the same was required to be considered having regard to the age profile, skill profile, the extent of the response received from the employees and several other relevant factors. In the aforementioned situation, the learned counsel would submit that clause 10.5 was inserted so that in the event, those who had opted for the scheme resile therefrom, the banks may not face practical difficulties. The requirement of the bank, the learned counsel would submit, must prevail over the requirement of the individual employees.

As regards the validity of clause 10.5, the learned counsel would submit that the same was at the threshold stage leading to a major contract. Strong reliance, in this connection, has been placed Anson's Law of Contract, 28th Edition, paras 235 and Chitty on Contracts, 28th Edition (1999) pages 3 -160 and 3-161 and Halsbury's Laws of England, 4th Edition, Volume 9, para 235 at page 106.

Mr. Mukul Rohtagi appearing on behalf of the Bank of India would contend that as the writ petitions involved enforcement of contract qua contract, they were not maintainable. The learned counsel placed strong reliance in Har Shankar & Ors. v. The Dy. Excise and Taxation Commr & Ors. [(1975) 1 SCC 737].

Dr. Rajeev Dhawan and Mr. Harish Salve, appearing on behalf of the State Bank of India, submitted that the High Court completely misdirected itself insofar as it failed to take into consideration that the provi sions of the State Bank of India Act, 1955 materially differ from 1970 Act. According to the learned counsel, the terms and conditions of employment are governed under Sections 17 and 43 of 1955 Act. It has been pointed out that having regard to the difficulties which may be faced by some of the employees, although the scheme dated 27.12.2000 was to remain in force for a short time, implementation thereof was contemplated in a time-bound manner i.e. :-

> a) Opportunity to the employees to apply for voluntary retirement during the period 15.1.2001 to 31.1.2001;

b) Opportunity to the employees to withdraw, if so desired by 15.2.2001;

c) Employees whose request for voluntary retirement is accepted, were to stand retired on 31.3.2001 and paid accordingly.

Having regard to the difficulties which may be faced by some of the employees, by a circular a cut-off date of 15.2.2001 was fixed; thereby granting opportunities to the employee to withdraw the option exercised by him. The logic and necessity therefor, inter alia, was :-

i) the purpose of the SBIVRS was inter alia to have overall reduction in the existing strength of the employees. However, the bank were also required to control the outflow according to its requirements, for which the bank retained the discretion to limit the number of employees allowed to retire.

ii) A decision was taken by the bank that around 10% employees may be allowed to retire under the VRS; the petitioner bank had to process the applications of all the employees who had opted for VRS. This ratio of 10% could be achieved only after the bank receives a definite figure about the number of persons opting for VRS and withdrawing later.

iii) Further the final decision of the category of persons eligible under VRS could be taken only after the petitioner bank had the final tally regarding the last and final figure of number of persons who had opted under the VRS.

iv) The scheme was purely voluntary and the conscious decision of the employee, hence there could be no reason for his withdrawal of application at a later date. However, keeping in view the interest of the employee, it was decided that the employee might be permitted to withdraw the application on or before 15.2.2001.

v) It was a time bound scheme whereunder the employee was to be relieved and paid entire monetary benefits by 31.3.2001, for which arrangements were to be made.

It has been pointed out that around 35,380 employees had applied under the said scheme and around 1,996 employees had withdrawn before the cut off date. Around 21,000 employees had been granted voluntary retirement under the scheme, excluding the ineligible.

It was contended that the scheme if read in its entirety would clearly show that the same was an offer and not an invitation to offer and in terms thereof an enforceable rights and duties had been conferred upon both employer and employee which would, subject to certain exception, be enforceable. It was contended that as the concerned employee did not exercise his option of withdrawal within the specified date, namely, 15.2.2001, his case had been considered on the premise that he has not withdrawn his offer. The learned counsel would contend that a contract of employment can be terminated unilaterally; even a tenure of contract of employment can be curtailed by an agreement and in that view of the matter voluntary retirement scheme cannot be

said to be illegal. Reliance, in this connection, has been placed on 'Chitty on Contract' paras 37-114 and 37-115.

Mr. Nageshwar Rao, learned senior counsel appearing on behalf of the respondents in civil appeal arising out of SLP (C) CC No.7966, inter alia, would submit that the decisions of this Court in Balram Gupta (supra) and Parathasary (supra) in no unmistakable terms laid down the law that an offer of resignation can be withdrawn before the same is accepted. According to the learned counsel, the matter relating to the scheme is merely an invitation to offer and option pursuant thereto on the part of an employee would constitute an offer. Such an offer, the learned counsel would contend, had been made by the concerned employee on dotted lines. In any event, the learned counsel would submit, that having regard to the provision contained in Section 5 of the Contract Act, the concerned employee had an absolute right to withdraw the same before a concluded contract is arrived at. Clause 10.5 of the Punjab National Bank VRS is, thus, ultra vires Section 5 of the Contract Act.

Strong reliance, in this connection, has been placed on Rajendra Kumar Verma v. State of Madhya Pradesh & Ors. [AIR 1972 MP 131], Abdus Salam Choudhury v. The State of Assam & Ors. [AIR 1991 Gauhati 9] and Devi Krishan Goyal v. District Inspector of Schools, Ghaziabad & Ors. [J.T. 1988 (4) SC 201].

Mr. Gopal Subramanium, learned senior counsel appearing on behalf of the respondent in Civil Appeal arising out of SLP (C) Nos.19373-404 of 2002, would submit that the scheme formulated by other public sector banks including Punjab & Sind Bank is identical to that of Punjab National Bank. According to the learned counsel, the entire scheme has be read as a whole. It was pointed out that the scheme had a limited duration from 1.12.2000 to 31.12.2000, and a cumulative consideration of the relevant clauses would clearly show that the relationship between the master and servant comes to an end only upon acceptance of the offer. It was pointed out that the offer is required to be considered at the level of the Branch Manager and Zonal Manager and upon their recommendation the same was ultimately to be taken up by the Personnel Department will clearly go to show that irrevocable nature of option would be relevant only if the same culminates into an acceptance. The learned counsel would submit that mere declaration given by an offerer that he would not withdraw or cancel the offer would not destroy his locus. Strongly relying upon the decisions of this Court in J.N. Srivastava v. Union of India & Anr. [(1998) 9 SCC 559], Gopal Chandra Misra (supra), Parthasarathy (supra), Shambhu Murari Sinha (supra), Balram Gupta (supra), the learned counsel would submit that even after acceptance, the offer could be withdrawn, such an action on the part of the optioner is permissible even after the acceptance of the offer and in that view of the matter the application of contractual bar must be held to be applicable only in a case where offerer has been relieved from his part not prior thereto.

The decisions of this Court, Mr. Suramanium would submit, lay down the following principles : (1) Juridical relationship of employer and employee continues till the employee is relieved from his duties (2) It is a bilateral action, (3) Offer being not in prasenti its acceptance is necessary, (4) only exception to the said rule would be where prejudice may be caused.

Mr. Subramanium would urge that in the instant case, it cannot be said that the statutory regulation has nothing to do with the Scheme as pension was to be calculated in terms thereof. The learned counsel pointed out that after the offer had been made, the concerned banks had issued a circular, pursuant whereto or in furtherance whereof a proviso to Regulation 28 was sought to be added; in terms whereof the concerned employees were deprived of the benefit of additional five years of service towards qualifying service so as to get pension in terms of clause (4) of Regulation 19 as thereby instead and in place of full pension the principle of pro- rata pension was introduced. Such amendment in the scheme as a result whereof the employees were gravely prejudiced, the concerned employees derived a legal right to withdraw from the said scheme.

Mr. Rakesh Dwivedi, learned senior counsel appearing on behalf of the respondents in Civil Appeals arising out of SLP (C) Nos.19373-405 of 2002, would contend that the offending clause having been unilaterally prescribed would not amount to a contractual bar. Such a contractual bar, the learned counsel would submit, must be based on consideration. A contractual scheme must not offend the right of the employee under Section 5 of the Indian Contract Act, in terms whereof the offeror is entitled to revoke his proposal/offer at any time before the communication of the acceptance. Relying upon or on the basis of a large number of decisions by different High Courts, namely, Zoravarmal v. Gopal Das [AIR 1922 Mad. 486, 491], Secretary of State v. Bhaskar Krishnaji [AIR 1925 Bom. 485,487, 488], Somu Sundram Pillai v. Provincial Government [AIR 1947 Mad. 366, 368], Raghunandan v. State of Hyderabad [AIR 1963 AP 110, 113], T. Linga Godar v. State of Madras [AIR 1971 Mad. 28], Rajendra K. Verma v. State of M.P. [AIR 1972 M.P. 131], Sri Durga Saw Mills v. State of Orissa [AIR 1978 Orissa 41,43], Managing Committee v. State of Bihar [AIR 1981 Patna 271, 272], Janardhan Misra v. State of U.P. [AIR 1981 Allahabad 213, 216-217], M/s Suraj Besan & Rice Mills v. FCI [AIR 1988 Delhi 224], A.S. Khongphai v. Special Judicial Officer [AIR 1981 Gau, 9], it was argued that in absence of any statute or statutory rules governing the field, Section 5 of the Indian Contract Act would be attracted and in that view of the matter clause 10.5 is neudum pactum and thus being a nullity is not enforceable. According to the learned counsel, the terms and conditions of service of employees being governed by a statute or statutory regulations, they enjoy a status. It was urged that as such voluntary retirement scheme affects the status of an employee, a contractual bar cannot be imposed. Reliance, in this connection, has been placed on Delhi Transport Corporation v. D.T.C. Mazdoor Congress & Ors. [(1991) Supp.(1) SCC 600]. In a case, Mr. Dwivedi would urge when the employee has voluntarily withdrawn the offer, the doctrine of election will have no application as by reason thereof the employee has not received the benefit in one part of the contract and then questioned the rest thereof.

Mr. Jagdeep Dhankar would, inter alia, submit that in some cases the letters of withdrawal reached before the option. In any event, as the orders had been passed in many cases on 8.1.2001 i.e. well after the expiry of the period of the scheme, namely, 31.1.2.2000, the competent authority had no jurisdiction to accept the same.

Mr. Panda appearing for the Appellant in Civil Appeal No.955 of 2002 would draw the attention of this Court to the fact of the matter and submitted that the concerned respondent had withdrawn his offer on the very next day of filling his application but despite the same, he had been relieved from his duties on 30.12.2000. The learned counsel would contend that the offending clause seeks to

obliterate the right of the employee to which he would have been otherwise entitled to in terms of Regulation 19(4) and thus the same must be held to be illegal. Reliance, in this connection, has been placed in V.T. Khanzode & Ors. v. Reserve Bank of India & Anr.[(1982) 2 SCC 7]. Mr. Panda contended that by reason of the impugned judgment, the Uttaranchal High Court dismissed a writ petition filed by an employee, inter alia, on the ground that as he is bound himself by the terms not to withdraw the application for voluntary retirement, the writ petition was not maintainable. According to the learned counsel, for the reasons stated by the Punjab & Haryana High Court and Bombay High Court and the other High Courts, the said decision cannot be sustained.

Mr. D. Goburdhan, appearing on behalf of the respondent-employee of the State Bank of India would submit that his client, who had completed 19 years, 10 months of service, had made the offer as he wanted pensionary benefits having regard to the circular issued by the Indian Banks' Association of which the State Bank of India is manager, namely, that who had completed 15 years of service may opt therefor, but withdrew the same as he was informed that he would not get his pensionary benefits.

Mr. Pradeep Gupta appearing in Civil Appeal Nos.5380-81 of 2002 on behalf of the concerned employees of Allahabad Bank, would submit that as the respondent therein was working in a foreign exchange branch, and having been doing a specialised job, would not have ordinarily come within the purview of the scheme. It was pointed out that his letter of withdrawal was strongly recommended by the Branch Manager but despite the same, by reason of the writ petition, the competent authority accepted the same without assigning any reason. The said order, contends the learned counsel, suffers from vice of non-application of kind inasmuch as in a case of this nature, the concerned authority should have passed a speaking order.

The learned counsel appearing in SLP (C) CC No.7966 would submit that the Punjab & Haryana High Court had rejected ten writ petitions filed by the petitioners, inter alia, on the ground that as the scheme is ultra vires, no relief can be granted in their favour. The learned counsel contended, that as the scheme is contractual in nature, the benefits which were otherwise available to them in terms of the scheme could not have been curtailed.

Before we advert to the rival contentions, we may take note of the relevant provisions of 1970 Act.

Sections 7(2), 19(1), 19(2)(f) and 19(4) of 1970 Act read as follows :-

> "7(2) The general superintendence, direction and management of the affairs and business of a corresponding new bank shall vest in a Board of Directors which shall be entitled to exercise all such powers and do all such acts and things as the corresponding new bank is authorised to exercise and do."
>
> "19. Power to make regulations. - (1) The Board of Directors of a corresponding new bank may, after consultation with the Reserve Bank and with the previous sanction of the Central Government, by notification in the Official Gazette, make regulations, not inconsistent with the provisions of this Act or any scheme made thereunder, to

provide for all matters for which provision is expedient for the purpose of giving effect to the provisions of this Act."

"19(2) In particular, and without prejudice to the generality of the foregoing power, the regulations may provide for all or any of the following matters, namely, :-

(a)

(b)

(c)

(d)

(e)

(f) the establishment and maintenance of superannuation, pension, provident or other funds for the benefit of officers or other employees of the corresponding new bank or of the dependants of such officers or other employees and the granting of superannuation allowances, annuities and pensions payable out of such funds;"

19(4) Every regulation shall, as soon as may be after it is made under this Act by the Board of Directors of a corresponding new bank, be forwarded to the Central Government and that Government shall cause a copy of the same to be laid before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation."

Pursuant to or in furtherance of the power conferred upon the 'Bank' under clause (f) of sub-section (2) of Section 19 of 1970 Act, the Punjab National Bank (Employees') Pension Regulation, 1995 was framed; the relevant provisions being Regulations 28 and 29 thereof read thus :-

"28. Superannuation Pension Superannuation pension shall be granted to an employee who has retired on his attaining the age of superannuation specified in the Service Regulations or Settlements."

29. Pension on voluntary Retirement

1) On or after the 1st day of November, 1993, at any time after an employee has completed twenty years of qualifying service he may, by giving notice of not less than three months in writing to the

appointing authority retire from service;

2) Provided that this sub-regulation shall not apply to an employee who is on deputation or on study leave abroad unless after having been transferred or having returned to India he has resumed charge of the post in India and has served for a period of not less than one year;

3) Provided further that this sub-regulation shall not apply to an employee who seeks retirement from service for being absorbed permanently in an autonomous body or a public sector undertaking or company or institution or body, whether incorporated or not to which he is on deputation at the time of seeking voluntary retirement;

Provided that this sub-regulation shall not apply to an employee who is deemed to have retired in accordance with clause (1) of regulation 2.

4) An employee, who has elected to retire under this regulation and has given necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority;"

> It is not in dispute that on or about 23.12.2000 a proviso to Regulation 28 was sought to be introduced, which is as follows :-
>
> "Provided that, pension shall also be granted to an employee who opts to retire before attaining the age of superannuation, but after having served for a minimum period of 15 years in terms of any scheme that may be framed for the purpose by the Bank's Board with the concurrence of the Government".

The said amendment, however, has been carried into effect recently in 2002. .

The relevant portion of the SBI Voluntary Retirement Scheme is as follows :

> "SBI VOLUNTARY RETIREMENT SCHEME (SBIVRS)
>
> 1. xxx
>
> 2. Objectives :
>
> I. To have a balanced age profile providing for mobility, training, development of skills and succession plans for higher-level positions.
>
> II. To provide an exit for employees who have an honest feeling that they should now retire and take rest or that there are better opportunities elsewhere. III. To have over all reduction in the existing strength of the employees and to increase productivity and profitability.

3. Eligibility :

The scheme will be open to all permanent employees of the Bank, except those specifically mentioned as 'ineligible', who have put in 15 years of service or have completed 40 years of age as on 31st December, 2000.

Age will be reckoned on the basis of the date of birth as entered in service record.

Ineligible :

The following categories of employees are ineligible under the scheme;

i. Staff members who have executed bonds and have not completed it; staff members serving abroad under the special arrangements/bonds. The Board of Directors may, however, waive this, subject to fulfillment of the bond/other requirements.

ii. Employees against whom Disciplinary Proceedings are contemplated/pending or who are under suspension. This will also include employees against whom action has been initiated by Government Agencies/other law enforcing agencies. iii. Employees appointed on contract basis. iv. Watch and ward staff.

v. Specialist Officers.

vi. Highly skilled and qualified staff.

4. xxx

5. Amount of Ex-gratia :

The staff members whose request for retirement under SBIVRS has been accepted by Competent Authority will be paid an amount of ex-gratia of 60 days' salary (pay plus stagnation increments plus special pay plus dearness allowance for each completed year of service (for this purpose fraction of service of six months and above will be taken as one year and accordingly service of less than six months will not be counted) or salary for the number of months service is left, whichever is less. Fraction of a month, if any, will be ignored.

6. Other benefits :

a) Gratuity as payable under the extent instructions on the relevant date.

b) Provident Fund contribution as per State Bank of India Employees' Provident Fund Rules as on relevant date.

Pension in terms of State Bank of India Employees' Pension Fund Rules on the relevant date (including commuted value of pension).

c) Encashment of balance of Privilege Leave, as applicable, on the relevant date.

d) Respective facilities extended to officers/others such as retention of accommodation, telephone, car, continuation of housing loan etc. will be extended to officers/others retiring under SBIVRS as per present dispensation, at the discretion of Competent Authority. However, in such cases of retention of physical facilities, 50% of the amount of ex-gratia payable will be released only after the employee surrenders the facility. No interest, however, will be paid for the amount so withheld. All other outstanding loans/advances will have to be repaid before date of retirement under SBI VRS, failing which the amount of ex-gratia and other terminal benefits payable to the employee will be appropriated towards the outstanding loans/advances and the balance amount only will be payable to the employee.

7. Other features :

The Bank intends to control the outflow according to its requirements. Towards this end, the Bank retains the discretion to limit the number of employees allowed to retire in each category of staff viz. officer/clerical - cash/subordinate, to be covered under SBIVRS. As such the Bank will have the sole discretion as to the acceptance or the rejection of the request for retirement under SBIVRS depending upon the requirements of the Bank. For the purpose of exercising discretion in this regard, category wise lists of eligible applicants would be prepared in descending order of their age and applications of employees coming in higher age groups above cut-off age would be accepted, the cut-off age in each category will of course depend upon the acceptable number of employees who can be permitted to retire.

No voluntary retirement shall be deemed to have come into effect unless the decision of the Competent Authority has been communicated in writing.

General conditions :

i. Staff members desirous of availing benefits under the scheme will have to submit a written application to the Competent Authority, through proper channel, in the specified format, within the period for which the Scheme is kept open. ii. A staff member retired under the scheme will not be eligible for re-employment in the Bank or its subsidiaries/Associates joint ventures (including offices outside India). iii. The employees seeking retirement under SBIVRS will not be entitled to dispute the payments received under the scheme on any ground whatsoever. The retiring staff member and/or their nominees or legal heirs shall have no right/claim demands against the Bank on any matter relating to the scheme.

iv. As SBIVRS is voluntary, it shall not be negotiable and shall not be deemed or construed as a subject matter of right or contract of service. It will not be a subject matter of any industrial disputes under the provisions of the Industrial Disputes Act, 1947 and shall not be cited as precedent, custom, convention, usage or practice any time in future. v. As SBIVRS is voluntary in nature, the employee seeking retirement under the SBIVRS will not be eligible for any retrenchment compensation payable under the provisions of the Industrial Disputes Act.

vi. SBIVRS is independent of and without prejudice to the rights of the Bank to dispense with the services of an employee either under the contract of employment, service rules, awards or under the applicable Standing Orders/Law/Rules/terms and conditions of service as may be applicable to the employee concerned.

vii. The SBIVRS shall not be construed as a revision of any of the previous retirement schemes of the Bank and as such no claim from the employee who has retired/will be retiring under the existing schemes shall be entertained.

viii. In case of disputes as to the interpretation of any of the terms and conditions of the scheme, the decision of the Bank shall be final and binding on all the parties concerned. ix. Bank reserves the right to modify, amend or cancel any or all of the aforesaid clauses and to give effect thereto from any dates it may deem fit.

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.

Following legal issues arise for determination in these appeals :

A. Whether an application by an employee to secure voluntary retirement under the Voluntary Retirement Scheme (VRS) can be withdrawn by such an employee before the same is accepted by the Competent Authority though the scheme contained an express stipulation that an application made thereunder is irrevocable and the employee will have no right to withdraw the application once submitted? B. Whether upon making an application under VRS the employer bank secures the authority to unilaterally determine one way or the other the jural relationship of master and servant between the parties?

The moot question which is required to be posed and answered is whether the voluntary retirement scheme is an offer/proposal or merely an invitation to offer. The question is whether the banks intended to make an offer or merely issued an

invitation to treat is essentially a question of fact.

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.

We may consider the cases of nationalized bank first. The circular dated 20.8.2000 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 herein before 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.

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 & 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.

An offer indisputably can be made to a group of persons collectively which is capable of being accepted individually but the question which has to be posed and answered is as to whether having regard to the service jurisprudence; the principles of Indian Contract Act would be applicable in the instant case. It is the specific case of the 'Banks' that the schemes had been floated by way of contract. It does not have any statutory flavour. Reference to the pension scheme framed under the regulations was made for computation of the pension.

It is difficult to accept the contention raised in the Bar that a contract of employment would not be governed by the Indian Contract Act. A contract of employment is also a subject matter of contract. Unless governed by a statute or statutory rules the provisions of the Indian Contract Act would be

only applicable at the formulation of the contract as also the determination thereof. Subject to certain just exceptions even specific performance of contract by way of a direction for reinstatement of a dismissed employee is also permissible in law.

It is in the aforementioned backdrop, the questions are required to be answered. It is now well-known that the use of the term 'offer' or 'proposal' is not decisive. It, as noticed, would depend upon the fact involved in the matter.

In Anson's Law of Contract, 26th Edn. at p.25 it is stated:

> "Offers and Invitations to Treat: It is sometimes difficult to distinguish statements of intention which cannot, and are not intended to result in any binding obligation from offers which admit of acceptance, and so become binding promises. A person advertises goods for sale in a newspaper, or announces that he will sell them by tender or by auction; a shopkeeper displays goods in a shop window at a certain p rice; or a bus company advertises that it will carry passengers from A to Z and will reach Z and other intermediate stops at certain times. In such cases it may be asked whether the statement made is an offer capable of acceptance or merely an invitation to make offers, and do business. An invitation of this nature, if it is not intended to be binding, is known as an 'invitation to treat."

Chitty on Contract states the law thus:

> "Tenders A statement that goods are to be sold by tender is not normally an offer to sell to the person making the highest tender; it merely indicates a readiness to receive offers. Similarly, an invitation for tenders for the supply of goods or for the execution of works is, generally, not an offer, even though the preparation of the tender may involve very considerable expense. The offer comes from the person who submits the tender and there is no contract until the person asking for the tenders accepts one of them. These rules, may, however, be excluded by evidence of contrary intention: e.g. where the person who invites the tenders states in the invitation that he binds himself to accept the highest offer to buy (or as the case may be, the lowest offer to sell or to provide the specified services). In such cases, the invitation for tenders may be regarded either as itself an offer or as an invitation to submit offers coupled with an undertaking to accept the highest (or, as the case may be, the lowest) offer; and the contract is concluded as soon as the highest offer to buy (or lowest offer to sell, etc.) is communicated."

In Treitel's 'The Law of Contract, it has been stated thus:

> "When parties negotiate with a view to making a contract, many preliminary communications may pass between them before a definite offer is made. One party may simply respond to a request for information (e.g. by stating the price at which he might be prepared to sell a house), or he may invite the other to make an offer; he is

> then said to make an "invitation to treat". The question whether a statement is an offer or an invitation to treat depends primarily on the intention with which it was made."

It has also been stated in the said book:

> "The question whether a statement is an offer or an invitation to treat depends primarily on the intention with which it was made. A statement is only an offer if the person making it intends to be bound as soon as the person reasonably believes that it was made with this intention. It follows that a statement is not an offer, if it expressly provides that the person making it is not to be bound merely by the other party's notification of assent, but only when he himself has signed the document in which the statement is contained."

The law relating to 'offer' and 'acceptance' is not simple.

In Hamilton, Rau and Winthraub on Contracts, the learned authors referred to a decision of Habaska Seed Co. Vs. Harsh 98 Nob 89, 152 NW 310 wherein the purported offer "I want $ 2.25 cent per cent for this seed fobcowell," was held not be an offer on the ground that the defendant did not say "I offer to sell you.

At page 346 of the said treatise, it is stated:

> "The rules of offer and acceptance are usually favourites of law students; they are easily stated and tend to be rather mechnical in their operation. They also involve situations that are relatively easy to grasp and in which various policy consideration are close to the surface. However, one should not assume that one has mastered the law of contracts simply because one is conversant with rules of offer and acceptance. In deed the writings of modern contracts scholars tend to deprecate the importance of the rules of offer and acceptance. See Geneally G Gilmore, the Death of Contract (1974): L. Freidman, Contract Law in America (1965)".

In Halsbury's Laws of England, 4th Edition, Volume-9, meaning of 'offer' has been stated in paragraph 227 at page 98 in the following terms:

> "227; Meaning of offer. An offer is an expression by one person or group of persons or by agents on his behalf, made to another, of his willingness to be bound to a contract with that other on terms either certain or capable of being rendered contain.
>
> An offer may be made to an individual or to a group of persons or to the world at large. It may be made expressly by words, or it may be implied from the product of the offerer."

The request of employees seeking voluntary retirement was not to take effect until and unless it was accepted in writing by the competent authority. The Competent Authority had the absolute discretion whether to accept or reject the request of the employee seeking voluntary retirement under the scheme. A procedure has been laid down for considering the provisions of the said scheme to the effect that an employee who intends to seek voluntary retirement would submit duly completed application in duplicate in the prescribed form marked "offer to seek voluntary retirement" and the application so received would be considered by the competent authority on first come first serve basis. The procedure laid down therefor suggests that the applications of the employee would be an offer which could be considered by the bank in terms of the procedure laid down therefor. There is no assurance that such an application would be accepted without any consideration.

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 decisions making process shall take place at various levels of the banks.

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 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.

From what has been noticed herein before, it is apparent that the Nationalized banks in terms of the scheme had secured for themselves an unfettered and unguided right to deal with the jural relationship between themselves and their employees.

It is not a case where on mere making of option on the part of the employee the offer is to be accepted or even there will be reasonable certainty that some norms should be maintained. There is no consideration for the contractual bar clause. The submission of the learned counsel appearing on behalf of the banks that the proposal to the effect that the option made by an employee would be considered, is a consideration cannot be accepted.

Once it is held that the provisions of the Indian Contract Act, 1872 would be applicable, the scheme admittedly being contractual in nature, the provisions of the Act shall apply. The Scheme having regard to its provisions as noticed hereinbefore would merely constitute invitation to treat and not an offer.

A proposal is made when one person signifies to another his willingness to do or abstain from doing anything with a view to obtaining the assent of the other to such act or abstinence (See Section 2(a)). Herein the banks by reason of the scheme or otherwise have not expressed their willingness to do or abstain from doing anything with a view to obtaining assent of the employees to such act. It will bear repetition to state that not only the power of the bank to accept or reject such application is absolutely discretionary, it, as noticed herein before, could also amend or rescind the scheme. The Scheme, therefore, cannot be said to be an offer which, on the acceptance by the employee, would fructify in a concluded contract.

The proposal of the employee when accepted by the Bank would constitute a promise within the meaning of Section 2(b) of the Act. Only then the promise becomes an enforceable contract. In the instant case the banks when floating the scheme did not signify that on the employees assenting thereto a concluded contract would come into being in terms whereof they would be permitted to retire voluntarily and get the benefits thereunder.

Furthermore, in terms of the said scheme no consideration passed so as to constitute an agreement. Once it is found that by giving their option under the scheme, the employees did not derive an enforceable right, the same in absence of any consideration would be void in terms of Section 2(g) of the Contract Act as opposed to Section 2(h) thereof.

Furthermore, even by opting for the scheme as floated by the banks, no consideration is passed far less amounting to reciprocal promise.

Once it is found, as would appear from the position rendered by this court that the employees do not have an enforceable right upon making an option the same would be void in terms of Section 2(g) of the Contract Act as opposed to Section 2(h) thereof.

The distinction between an offer and invitation to treat has been dealt with some clarity in Gibson v. Manchester City Council reported in 1979 All.E.R. 972.

In that case the council adopted a policy of selling council's house to Mr. Gibson. The council wrote a letter to Mr. Gibson that "it may be prepared to sell the house to you at the purchase price of Pounds 2,725 less 20% = Pounds 2180 (free hold)". He was invited to make a formal application

which he did. Before the documents could be executed the control of the council changed hands as a result whereof policy of selling the council house was reversed.

When it was claimed by Mr. Gibson that the transaction amounted to a binding contract, the House of Lords negativing the same held that the letter in question was an invitation to treat and Mr. Gibson's application was an offer and not an acceptance.

In the instant case, there was even no reasonable certainty that the scheme would be acted upon. Furthermore terms and conditions thereof could be amended and even the scheme itself could be rescinded.

We, therefore, have no hesitation in coming to the conclusion that the voluntary scheme was not a proposal or an offer but merely an invitation to treat and the applications filed by the employees constituted 'offer'.

Once the application filed by the employees is held to be an 'offer'; Section 5, in absence of any other independent binding contract or statute or statutory rules to the contrary would come into play.

In Cheshire, Fifoot & Furmston's Law of Contract (14th edition) at Page 62 the law is stated as under:-

> "It has been established ever since the case of Payne v Cave in 1789 that recovation is possible and effective at any time before acceptance: up to this moment ex hypothesi no legal obligation exists. Nor, as the law stands, is it relevant that the offeror has declared himself ready to keep the offer open for a given period. Such an intimation is but part and parcel of the original offer, which must stand or fall as a whole. The offeror may, of course, bind himself, by a separate and specific contract, to keep the offer opn; but the offeree, if such is his allegation, must provide all the elements of a valid contract, including assent and consideration. In Routledge v Grant the defendant offered on 18 March to buy the plaintiff's house for a certain sum, 'a definite answer to be given within six weeks from the date'. Best CJ held that the defendant could withdraw at any moment before acceptance, even though the time limit had not expired. The plaintiff could only have held the defendant to his offer throughout the period, if he had bought the option by a separate and binding contract."

This principle, as noticed herein before, has been accepted in a large number of decisions relied upon by Mr. Nageshwar Rao and Mr. Dwivedi (supra). We may, however, only refer to Devi Krishan Goyal (supra).

The relevant rule, interpretation whereof fell for consideration of this Court therein is as under:

> "These rules shall be applicable to the Teachers of those State Government Aided Higher Secondary Schools which are working under any local body or any

> nonadministrative management, within the ambit of Salary Disbursement Act, 1971 on 30th June, 1978 or thereafter and who will give their option in favour of retirement at the age of 58 years, within six months of the Publication of these Rules. An option, once used will be deemed to be final. The date of retirement shall be the end of session".

Interpreting the said rule this court held:

> "we are of the view that the High Court should not have rejected the writ application. It has not been disputed anywhere that option stood withdrawn before it was accepted. The provision in the rule "an option once used will be deemed to be final" would not mean that when an offer made it is not open to be withdrawn before it is accepted. The respondent No.1 obviously acted under the wrong notion and the High Court did not appreciate this aspect. We would accordingly hold that the appellant was entitled to withdraw the option".

We may at once point out that the stands of the learned counsel appearing on behalf of banks is inconsistent and self-contradictory. Whereas once it was argued that the offer was made by the bank by floating the scheme and once an application is filed, the same would amount to acceptance of offer; on the same breath they took recourse to the 'doctrine of option' which is applicable only at the instance of the offeror, who in this case would be the employees.

The submission in our considered opinion proceed on a total misconception. By reason of making such option or firm offer the offeror must get some benefit or the offeree must incur some detriment.

The contracts in which the said principle can be applied would be a case where there would usually be a money payment. In the instant case apart from the fact that no consideration is passed, the banks standing in the category of offeree either expressly or impliedly had not promised to do or refrain from doing something in exchange for the offeror's promise not to revoke the offer. In all fairness to Mr. Reddy, we may set out hereunder the authorities relied upon by him.

In Anson's Law of Contract (28th edition page 53), it is stated:

> "Firm Offers: It will be noted that in Offord v. Davies, discussed above, the mere fact that the defendants promised to guarantee payment for 12 months did not preclude that from revoking before that period had elapsed. It is a rule of English law that a promise to keep an offer open needs consideration to make it binding and would thus only become so if the offeror gets some benefit, or the offeree incurs some detriment, in respect of the promise to keep the offer open. The offeree in such a case is said to 'purchase an option'; that is, the offeror, in consideration usually of a money payment, sometimes nominal, makes a separate contract not to revoke the offer during a stated period. The position is similar where the offeree expressly or impliedly promises to do or refrain from doing something in exchange for the

> offeror's promise not to revoke the offer. For example, the offeree may promise not to negotiate with anyone else for a fixed period. Again, a building tendering for a construction contract may have invited quotations for a fixed period (i.e. firm offers) from electricity or carpentry sub- contractors and expressly or impliedly promised to use the figures contained in those offers in its tender. In these cases the offeror by its promise precludes itself from exercising its right to revoke the offer; but where it receives no consideration for keeping the offer open, it says in effect, 'You may accept within such and such a time, but this limitation is entirely for my benefit, and I make no binding promise not to revoke my offer in the meantime'. The Law Revision Committee recommended that 'an agreement to keep an offer open for a definite period of time or until the occurrence of some specified event shall not be unenforceable by reason of the absence of consideration'. Despite this criticism, subject to two exceptions, it seems to be good law".

In Chitty on Contract, it is stated:

> "Firm offers. By a "firm" offer is meant one containing a promise not to revoke it for a specified time. The mere fact that such a promise has been made does not prevent the offeror from revoking the offer within that period since normally the promise will be unsupported by consideration. Most obviously such consideration will be provided if the offeree pays (or promises to pay) a sum of money for the promise and so buys an option. Consideration may also be provided by some other promise; for example, in the case of an offer to sell a house, the offeree may provide consideration for the offeror's promise not to revoke the offer for a specified time by promising not to dispose of those shares elsewhere during that time. The performance of the offeree's promise to keep the offer open. In one case a vendor of land entered into a so-called "lock-out" agreement by which he promised a prospective purchaser not to consider other offers if that purchaser would exchange contracts within two weeks; and it was said that "the promise by the [purchaser] to get on by limiting himself to just two weeks" constituted consideration for the vendor's promise not to consider other offers. The case is not strictly one of a firm offer since the vendor's promise would not in terms have prevented him from simply deciding not to sell at all; but the practical effect of a binding "lock-out" agreement may be to prevent the vendor from withdrawing his offer; and the reasoning quoted above could apply to the case of a firm offer. The reasoning gives rise to some difficulty in that it does not appear that the purchaser made any promise to exchange contracts within two weeks. It seems more plausible to say that the vendor's promise had become binding as a unilateral contract under which the purchaser had provided consideration by actually making efforts to meet the deadline, even though he had not promised to do so. Similar reasoning can apply if a seller of land promises to keep an offer open for a month, asking the buyer during that period to make efforts to raise the necessary money. If the buyer makes such efforts (without promising to do so), it is arguable that he has by part performance accepted the seller's offer of a unilateral contract to keep the principal offer open. Similarly, it is possible for a person, to whom a promise not to

revoke an offer for the sale of a house has been made, to provide consideration for that promise by incurring the expense of a survey. On the other hand, the equitable principle applied in Hughes v. Metropolitan Ry. and in the High Trees case will not avail the offeree since it only operates defensively and does not create new causes of action where none existed before. Nor does it seem probably that the offeree will be able to claim damages in tort under the principles laid down in Hedley Byne & Co. Ltd v. Heller & Partners Ltd.

In Halsbury's Laws of England (4th Ed.), Para 235 at Page 160, the law is stated as under:

"235. Options. A contract of option is one whereby the grantor of the option offers to enter into what may be called a "major" contract with a second person and makes a separate contract to keep his offer open. Usually, but not necessarily, the person to whom the grantor of the option binds himself to keep the offer open is that second person, who may be conveniently referred to as the "option- holder". The contract of option may make it possible for the rights of the option-holder to be assigned.

The contract of option may be unilateral or bilateral. It may exist either as a separate option contract, or as part of a larger contract such as one of the following: a lease with an option in the lessee to renew the lease or but the reversion; a hire purchase agreement; a sale with an option of repurchase granted to either the seller or the buyer; a sale with an option for the buyer to make further purchases on similar terms; a service or agency agreement with an option in either party to renew. Certain contracts of option have been made void or illegal by statute.

With regard to the envisaged major contract, the effect of the contract of option is to create an irrevocable offer and a power of acceptance. The offer is irrevocable in the sense that it is a breach of the contract of option to revoke it, and its effect is to create a power of acceptance in the option-holder good against the grantor of the option and sometimes also against third parties. Thus the grantor of the option is under a conditional duty, and the option- holder has a conditional right of performance of the option offer, that condition being the exercise of the power of acceptance by the option-holder; as the envisaged major contract may be bilateral or unilateral, that condition may be an acceptance or other act by the option-holder. Furthermore, the exercise of the option may itself be subject to certain conditions precedent, such as a time limit, or the occurrence of a certain event, or the duration of a major contract of which it forms a part, or the mode in which it may be exercised."

In Chitty on Contract (28th edition para 3-161) it is stated that the position being uncertain as the rule can still cause hardship; a legislation limiting the right to withdraw firm offers is desirable.

In Anson's Law of Contracts it is stated at page 51:

"(a) Revocation of the Offer: The law relating to the revocation of an offer may be summed up in two rules; (1) an offer may be revoked at any time before acceptance, and (2) an offer is made irrevocable by acceptance.

(i) Revocable before acceptance: The first of these rules may be illustrated by the case of Offord v.

Davies:

D made a written offer to O that, if he would discount bills for another firm, they (D) would guarantee the payment of such bills to the extent of Pound 600 during a period of twelve calendar months. Some bills were discounted by O, and duly paid, but before the twelve months had expired D, the guarantors, revoked their offer and notified O that they would guarantee no more bills. O continued to discount bills, some of which were not paid, and then sued D on the guarantee.

It was held that the revocation was a good defence to the action. The alleged guarantee was an offer, for a period of 12 months, of promises for acts, of guarantees for discounts. Each discount turned the offer into a promise, pro tanto, but the entire offer could at any time be revoked except as regards discounts made before notice of revocation."

The learned author, as noticed from the passage quoted herein before, clearly stated that an offer may be revoked even before it is accepted.

Furthermore, a large number of employees have withdrawn their offer only when a proviso is sought to be added to Regulation 28 aforementioned. In terms of the Scheme the employees, who expected to get benefits of clause 4 of Regulation 29 would be deprived therefrom. It is not in this dispute that the qualifying period for pension qualifying for receiving pension was 20 years. Only upon completion of 20 years, in terms of the statutory regulation contained in Regulation 29, an employee could opt for voluntary retirement and in terms thereof, he would be entitled to the benefits specified therein. The said regulations had specifically been mentioned for the purpose of computation which would include invocation of Sub-regulation 4 of Regulation 29 providing for relaxation of 5 years towards the qualifying period. The employees must have proceeded on the basis that despite the fact that they have merely rendered 15 years of service which was not a qualifying service under the regulations, they would be entitled to the pensionary benefits in terms of the scheme. By introducing the proviso to Regulation 28 pension was sought to be made pro rata in place of full pension.

The basic concept of the scheme, therefore, underwent a change which also goes to show that the banks had sought to invoke its power of amending the scheme. Once the scheme is amended and/or an apprehension is created in the mind of the

employees that they would not even receive the entire benefits as envisaged under the scheme, they were entitled to revoke their offers. Their action in our considered opinion is reasonable. It may be that some of the employees only opted for the provident fund benefit which did not undergo any amendment but the same would not change the attitude on the part of the banks.

We, therefore, do not find any error in the judgment of the High Court on this score.

However, the case of the State Bank of India stand slightly on a different footing. Firstly, the State Bank of India had not amended the scheme. It, as noticed here before, even permitted withdrawal of the applications after 15th February. The scheme floated by the State Bank of India contained a clause (clause 7) laying down the mode and manner in which the application for voluntary retirement shall be considered. The relevant clause as referred to herein before creates an enforceable right. In the event the State Bank failed to adhere to its preferred policy, the same could have been specifically enforced by a court of law. The same would, therefore, amount to some consideration.

Furthermore in the case of State Bank of India, the Punjab and Haryana High Court failed to take into consideration the provisions of the State Bank of India Act, 1955 It further failed to take into consideration that the matter relating to grant of pension was not covered by any statutory regulation.

We are, however, not prepared to accept the submission of Mr. Salve to the effect that by reason of the said scheme, merely the tenure of service has been curtailed to some extent which is permissible in law.

Mr. Harish Salve in support of its contention has relied upon para 37-115 from Chitty on Contracts.

The said paragraph itself shows that for bringing into a change in the tenure of contract, the existing contract of service must be substituted or amended by another contract. The later contract also must be an enforceable contract. Once it is held the later contract is not a contract within the meaning of the provisions of the Indian Contract Act, the question of invoking this aforementioned principle would not arise.

We may at this juncture notice the decisions of this court covering the subject.

In Gopal Chandra Misra's case (supra) this court was considering a question where a Judge of a High Court in terms of Article 217 of the Constitution of India withdraw the resignation submitted by him. Resignation by a constitutional authority is a unilateral act. In the case of resignation by a constitutional authority, it is governed by the constitutional provisions as resignation of a constitutional authority does not require an express acceptance. The same being unilateral in character, it was

observed:

> "The substantive body of this letter (which has been extracted in full in a foregoing part of this judgment) is comprised of three sentences only. In the first sentence, it is stated : "I beg to resign my office as Judge, High Court of Judicature at Allahabad". Had this sentence stood alone, or been the only content to his letter, it would operate as a complete resignation in praesenti, involving immediate relinquishment of the office and termination of his tenure as Judge. But this is not so. The first sentence is immediately followed by two more, which read : "I will be on leave till July 31, 1977. My resignation shall be effective on August 1, 1977". The first sentence cannot be divorced from the context of the other two sentences and construed in isolation. It has to be read along with the succeeding two which qualify it. Construed as a whole according to its tenor, the letter dated May 7, 1977, is merely an intimation or notice of the writer's intention to resign his office as Judge, on a future date, viz., August 1, 1977".

In that case, thus, a resignation which was not in praesenti has been held to be capable of being withdrawn. It did not constitute a juristic act.

We may notice that in Jai Ram v. Union of India (AIR 1954 SC 584) it was held:

> "It may be conceded that it is open to a servant, who has expressed a desire to retire from service and applied to his superior officer, to give him the requisite permission, to change his mind subsequently and ask for cancellation of the permission thus obtained; but, he can be allowed to do so as long as he continues in service and not after it has terminated."

Yet again in Raj Kumar v. Union of India [(1968) 3 SCR 857] it was held:

> "When a public servant has invited by his letter of resignation determination of his employment, his services normally stand 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 conditions of his 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. Till the resignation is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has locus poenitentiae but not thereafter".

In Balram Gupta's case this court was dealing with Central Civil Services (Pension) Rules, 1972 which is a statutory rule. Sub-rule (4) of Rule 48-A prevented withdrawal of resignation letter except with the approval of the authority. The validity of the said rule was not in question. In that case the approval of the authority to withdraw was not given. It was in the aforementioned situation observed:

> "That has been done. The approval of the authority was, however, not given. Therefore, the normal rule which prevails in certain cases that a person can withdraw his resignation before it is effective would not apply in full force to a case of this nature because here the government servant cannot withdraw except with the approval of such authority".

Having regard to the fact that the issue involved therein stood on a different footing, this Court made a mere observation to the following effect:

> "It may be a salutary requirement that a government servant cannot withdraw a letter of resignation or of voluntary retirement at his sweet will and put the government into difficulties by writing letters of resignation or retirement and withdrawing the same immediately without rhyme or reason. Therefore, for the purpose of appeal we do not propose to consider the question whether sub-rule (4) of Rule 48-A of the Pension Rules is valid or not".

Validity of such a rule was, therefore, not in question. As indicated hereinbefore, the bar of withdrawing the resignation was contained in the statutory rule and, thus Section 5 of the Indian Contract Act would not have been applicable in that case. However, it is advantageous to notice the following observations made in the said decision:

> "We do not see how this could not be a good and valid reason. It is true that he was resigning and in the notice for resignation he had not given any reason except to state that he sought voluntary retirement. We see nothing wrong in this. In the modern age we should not put embargo upon people's choice or freedom. If, however, the administration had made arrangements acting on his resignation or letter of retirement to make other employee available for his job, that would be another matter but the appellant's offer to retire and withdrawal of the same happened in such quick succession that it cannot be said that any administrative set up or arrangement was affected".

It was further observed:

> "In the modern and uncertain age it is very difficult to arrange one's future with any amount of certainty; a certain amount of flexibility is required, and if such flexibility does not jeopardize government or administration, administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the appellant to withdraw his letter of retirement in the facts and circumstances of this case".

In P.K. Mittal's case (supra), a question arose as to whether in contravention of Rule 20 of the Punjab National Bank (Officers) Service Rules, 1979, the bank can reduce the notice period. Ranganathan, J. speaking for the bench held that the same could not have been done and the concerned employee was entitled to withdraw his resignation before it became effective.

In Power Finance Corporation Ltd. v. Pramod Kumar Bhatia [(1997) 4 SCC 280] a scheme of voluntary retirement was floated and pursuant thereto the Respondents therein had applied for voluntary retirement but subsequently the Corporation had withdrawn the scheme although the offer had been accepted. Such acceptance was to take effect from 31-12-1994. This court held that the acceptance of his offer to voluntarily retire being subject to adjustment of the amount payable to him, the same did not attain finality. It was held:

> "It is now settled legal position that unless the employee is relieved of the duty, after acceptance of the offer of voluntary retirement or resignation, jural relationship of the employee and the employer does not come to an end. Since the order accepting the voluntary retirement was a conditional one, the conditions ought to have been complied with. Before the conditions could be complied with, the appellant withdrew the scheme. Consequently, the order accepting voluntary retirement did not become effective. Thereby no vested right has been created in favour of the respondent. The High Court, therefore, was not right in holding that the respondent has acquired a vested right and, therefore, the appellant has no right to withdraw the scheme subsequently".

This decision is an authority for the proposition that even after acceptance of the offer made by the employee, the scheme can be withdrawn and, if it is so done, the employee does not acquire any vested right.

In J.N. Srivastava's case(supra), it was held :

> "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 Wg. Cdr T. Parthasarathy's case the fact of the matter was as follows:
>
> The Respondent submitted an application on 21-7-1985 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 emphasized 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".

In Shambhu Murari Sinha's case it was held:

> "Coming to the case in hand the letter of acceptance was a conditional one inasmuch as, though option of the appellant for the voluntary retirement under the Scheme was accepted but it was stated that the "release memo along with detailed particulars would follow".

Before the appellant was actually released from the service, he withdrew his option for voluntary retirement by sending two letters dated 7-8-1997 and 24-9-1997, but there was no response from the respondent. By office memorandum dated 25-9-1997 the appellant was released from the service and that too from the next day. It is not disputed that the appellant was paid his salaries etc. till his date of actual release i.e. 26-9-1997, and, therefore, the jural relationship of employee and employer between the appellant and the respondents did not come to an end on the date of acceptance of the voluntary retirement and the said relationship continued till 26-9-1997. The appellant admittedly sent two letters withdrawing his voluntary retirement before his actual date of release from service. Therefore, in view of the settled position of the law and the terms of the letter of acceptance, the appellant had locus poenitentiae to withdraw his proposal for voluntary retirement before the relationship of employer and employee came to an end".

It may be that therein there did not exist a clause to the effect that once an option to voluntary retirement is accepted, the employee cannot withdraw the same, but the law laid down therein would apply herein also.

The submission of learned Attorney General that as soon as an offer is made by an employee, the same would amount to resignation in praesenti cannot be accepted. The scheme was in force for a

fixed period. A decision by the authority was required to be taken and till a decision was taken, the jural relationship of employer and employee continued and the concerned employees would have been entitled to payment of all salaries and allowances etc. Thus it cannot be said to be a case where the offer was given in praesenti but the same would be prospective in nature keeping in view of the fact that it was come into force at a later date and that too subject to acceptance thereof by the employer. We, therefore, are of the opinion that the decisions of this Court, as referred to herein before, shall apply to the facts of the present case also.

However, it is accepted that a group of employees accepted the ex gratia payment. Those who accepted the ex gratia payment or any other benefit under the scheme, in our considered opinion, could not have resiled therefrom.

The Scheme is contractual in nature. The contractual right derived by the concerned employees, therefore, could be waived. The employees concerned having accepted a part of the benefit could not be permitted to approbate and reprobate nor can they be permitted to resile from their earlier stand.

In Lachoo Mal's case (supra) the law is stated in following terms:

> "The general principle is that every one has a right to waive and to agree to waive the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity which may be dispensed with without infringing any public right or public policy. Thus the maxim which sanctions the non-observance of the statutory provision is cuilibet licet renuntiare juri pro se introducto. (See Maxwell on Interpretation of Statutes, Eleventh Edition, pages 375 and 376). If there is any express prohibition against contracting out of a statute in it then no question can arise of any one entering into a contract which is so prohibited but where there is no such prohibition it will have to be seen whether an Act is intended to have a more extensive operation as a matter of public policy. In Halsbury's Laws of England, Volume 8, Third Edition, it is stated in Paragraph 248 at page 1432:
>
> As a general rule, any person can enter into a binding contract to waive the benefits conferred upon him by an Act of Parliament, or, as it is said, can contract himself out of the Act, unless it can be shown that such an agreement is in the circumstances of the particular case contrary to public policy. Statutory conditions may, however, be imposed in such terms that they cannot be waived by agreement, and, in certain circumstances, the Legislature has expressly provided that any such agreement shall be void."

In Brijendra Nath Bhargava's case (supra), the law is stated in following terms:

> "It clearly goes to show that if a party gives up the advantage he could take of a position of law it is not open to him to change and say that he can avail of that ground. In Dawsons Bank Ltd. case their Lordships were considering the question of waiver as a little different from estoppel and they observed as under:

> On the other hand, waiver is contractual, and may constitute a cause of action; it is an agreement to release or not to assert a right. If an agent, with authority to make such an agreement on behalf of his principal agrees to waive his principal's rights then (subject to any other question such as consideration) the principal will be bound, but he will be bound by contract.
>
> But in the context of the conclusion that we have reached on the basis of circumstances indicated above that it could not be held that the tenant had constructed this dochatti or balcony a wooden piece without the consent express or implied of the landlord, in our opinion, it is not necessary for us to dilate on the question of waiver any further and in this view of the matter we are not referring to the other decisions on the question of waiver."

In Halsbury's Laws of England, 4th Edition, Vol.16 (Reissue) para 957 at page 844 it is stated:

> "On the principle that a person may not approbate and reprobate a special species of estoppel has arisen. The principle that a person may not approbate and reprobate express two propositions:
>
> (1) That the person in question, having a choice between two courses of conduct is to be treated as having made an election from which he cannot resile.
>
> (2) That he will be regarded, in general at any rate, as having so elected unless he has taken a benefit under or arising out of the course of conduct, which he has first pursued and with which his subsequent conduct is inconsistent."

In American Jurisprudence, 2nd Edition, Volume 28, 1966, Page 677-680 it is stated:

> "Estoppel by the acceptance of benefits: Estoppel is frequently based upon the acceptance and retention, by one having knowledge or notice of the facts, of benefits from a transaction, contract, instrument, regulation which he might have rejected or contested. This doctrine is obviously a branch of the rule against assuming inconsistent positions.
>
> As a general principle, one who knowingly accepts the benefits of a contract or conveyance is estopped to deny the validity or binding effect on him of such contract or conveyance.
>
> This rule has to be applied to do equity and must not be applied in such a manner as to violate the principles of right and good conscience."

We also accept the contention raised by the learned counsel for the respondents that the concerned appellants could not have accepted the offer of voluntary retirement after expiry of the scheme. All actions by the Banks were required to be taken strictly in terms of the said scheme.

We are furthermore not in a position to accept the arguments of Mr. Mukul Rohtagi to the effect that writ petitions were not maintainable as thereby the writ petitioners intended to enforce a contract. The writ petitioners filed the writ petitions, inter alia, questioning the validity of the scheme. In any event validity of clause 10.5 of the said scheme was in question. The appellants herein are 'State' within the meaning of Article 12 of the Constitution of India. The questions raised by the writ petitioners thus could be raised in a proceeding under Article 226 of the Constitution of India. Furthermore, in the event it be held that the action of the appellants was arbitrary and unreasonable, the same would attract the wrath of Article 14 of the Constitution of India. Furthermore, the right of the employee to continue in employment, which is a fundamental right under Article 21 of the Constitution of India could not have been taken away except in accordance with law. The decision of this Court in Har Shankar and Ors. v. The Dy. Excise and Taxation Commr. and Ors. [(1975) 1 SCC 737] is not apposite. In that case, this Court was concerned with the question as to whether enforcing the terms and conditions of a contract of supply of liquor which is a privilege would be permissible in a writ proceeding? In the aforementioned situation, the writ was held to be not maintainable. Such is not the position herein We may now deal with that part of the order of the Punjab & Haryana High Court whereby it has been held that the entire scheme is ultra vires being violative of sub-regulation 4 of Regulation 19 of the Regulations.

We do not agree with the decision of the High Court on that count for more than one reason.

Firstly, the scheme is not a part of the statutory regulation. It was in the realm of contract. That being so it was not necessary for the Central Government to place the same before the Parliament.

Secondly, even if the same was a regulation, the laying down rule is merely a directory one and not mandatory.

In Jan Mohammad's case (supra), the law is stated in following terms:

> "Finally, the validity of the rules framed under the Bombay Act 22 of the 1939 was canvassed. By s.26(1) of the Bombay Act the State Government was authorised to make rules for the purpose of carrying out the provisions of the Act. It was provided by sub- s. (5) that the rules made under s.26 shall be laid before each of the Houses of the Provincial Legislature at the session thereof next following and shall be liable to be modified or rescinded by a resolution in which both Houses concur and such rules shall, after notification in the Official Gazette, be deemed to have been modified or rescinded accordingly. It was argued by the petitioner that the rules framed under the Bombay Act, 22 of 1939 were not placed before the Legislative Assembly or the Legislative Council at the first session and therefore they had no legal validity. The rules under Act 22 of 1939 were framed by the Provincial Government of Bombay in 1941. At that time there was no Legislature in session, the Legislature having been suspended during the emergency arising out of World War II. The session of the Bombay Legislative Assembly was convened for the first time after 1041 on May 20, 1946 and that session was prorogued on May 24, 1946. The second session of the Bombay Legislative Assembly was convened on July 15, 1946 and that of the Bombay

> Legislative Council on September 3, 1946 and the rules were placed on the Assembly Table in the second session before the Legislative Assembly on September 2, 1946 and before the Legislative Council on September 3, 1946. Section 26(5) of Bombay Act 22 of 1939 does not prescribe that the rules acquired validity only from the date on which they were placed before the Houses of Legislature. The rules are valid from the date on which they are made under s. 26(1). It is true that the Legislature has prescribed that the rules shall be placed before the Houses of Legislature, but failure to place the rules before the Houses of Legislature does not affect the validity of the rules, merely because they have not been placed before the Houses of the Legislature. Granting that the provisions of sub-s. (5) of s.26 by reason of the failure to place the rules before the Houses of Legislature were violated, we are of the view that sub-s.(5) of s. 26 having regard to the purposes for which it is made, and in the context in which it occurs, cannot be regarded as mandatory. The rules have been in operation since the year 1941 and by virtue of s.64 of the Gujarat Act 20 of 1964 they continue to remain in operation."

In Atlas Cycle Industries' case (supra) the same view has been reiterated.

We, therefore, are of the opinion that the scheme in question cannot be said to be bad in law.

The Punjab and Haryana High Court in its impugned judgment has refused to grant any relief in ten writ petitions, wherein prayers were made to the effect that the bank should be directed to act in terms of the said scheme. The relief prayed for by the concerned petitioners were denied by the High Court on the ground that the same was not enforceable. We have not accepted that part of the judgment of the High Court. In that view of the matter, the High Court must now consider the claim of the said writ petitioners on merits and pass an appropriate order in accordance with law. The said matters are, therefore, remitted to the High Court for consideration thereof afresh.

For the reasons aforementioned, we direct that :

> 1. The appeals preferred by the Nationalised Banks arising from the High Courts are dismissed except the cases where the concerned employees have accepted a part of the benefit under the scheme;

However, in respect of such of the employees who despite acceptance of a part of the retirement benefit under the scheme had continued under the orders of the High Court and has retired on attaining the age of superannuation, this order shall not apply;

2. The appeals filed by the State Bank of India are allowed;

3. The appeals arising from the judgments of the Uttaranchal High Court are allowed and the judgments of the said High Court are set aside;

4. The appeals arising from the judgments of the Punjab and Haryana High Court in relation to ten writ petitions which were filed by the employees for a direction upon the Bank that the benefits under the scheme be paid to them are set aside and the matters are remitted to the High Court for consideration thereof afresh on merits and in accordance with law;

These appeals are disposed of on the above terms. However, in the facts and circumstances of the case, the parties shall pay and bear their own costs throughout.