

IFCI LTD

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v.

SANJAY BEHARI & ORS.

(Civil Appeal No. 6995 of 2019)

SEPTEMBER 17, 2019

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**[SANJAY KISHAN KAUL AND K. M. JOSEPH, JJ.]**

*Service law: Voluntary Retirement Scheme – Benefit of – On facts, few employees of IFCI availed the benefit under the VRS-2008 – Said ex-employees seeking entitlement to enhanced pension on the basis of subsequent revision of pay-scales, which was given from the time period when they were still employees of the IFCI – Writ petition by ex-employee dismissed by the Single Judge of the High Court – However, said order set aside by the Division Bench – On appeal, held: Any scheme for voluntary retirement is a package by itself – One cannot, look to other voluntary retirement schemes, or other rules and regulations for the said purpose – If the RBI pay-scales had been adopted by IFCI with retrospective effect, the ex-employees could never have had a claim as their chapter was closed – Merely because, for existing employees, RBI pay-scales had been applied, albeit retrospectively, without past benefits, that cannot be a ground to start getting pension on the basis of a calculation based on those revised pay-scales – Seeking benefits other than the VRS scheme is misadventure and thus, is rejected – IFCI Staff Regulations, 1974 – Regulation 33.*

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**Allowing the appeal, the Court**

**HELD:** 1.1 A reading of the clauses of the Voluntary Retirement Scheme 2008 shows that the Scheme envisaged a full and final settlement of all claims, making it clear that benefits under earlier Schemes would not be applicable. However, pension under IFCI Pension Regulations was to be applicable. It has been specifically provided in clause 9.12 that there would be no revision in the voluntary retirement amount on account of pay revision or any other account in future. This clause was specifically absent in the 2001 Scheme, but pay revision was subsequently made

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- A applicable *vide* Circular dated 4.1.2001. The endeavour to apply that Circular in the 2003-2004 VRS was not successful. It appears that in order to avoid any further ambiguity on this account, this clause was inserted. [Para 13] [579-G-H; 580-A-B]

- 1.2 Any scheme for voluntary retirement is a package by itself. One cannot, thus, look to other voluntary retirement schemes, or other rules and regulations for the said purpose. There can be no quibble with this fundamental principle. It is not appropriate to add or subtract from the Scheme, nor can any concessions be given contrary to the Scheme, or if they are not provided for under the Scheme. What is to be seen are the clauses of the scheme under which voluntary retirement has been taken and the terms of the scheme must be strictly followed. [Para 21,22] [582-G-H; 583-A-B]

- National Insurance Special Voluntary Retired/Retired Employees Association & Anr. v. United India Insurance Co. Ltd. & Anr. (2018) 18 SCC 186 – relied on.*

- 1.3 The very rationale of introducing a scheme for voluntary retirement, i.e., to reduce surplus staff and to bring in financial efficiency. It is referred to as the ‘Golden Handshake’. *Ex gratia* amounts are paid, not for doing any work or rendering any service, but in lieu of employees leaving services of the company and foregoing any further claims or rights in the same. It is optional, not compulsory. It is take it or leave it situation. Thus, anyone availing of a VRS does so with his eyes wide open. On having availed of the benefits under the scheme, if there are future changes, which may give any of the monetary benefits, the same cannot be read into the scheme. This would defeat the very purpose of having a VRS, i.e., to bring in financial efficiency, as it would not be possible that despite having paid the amounts, the organization can be lumped with further financial liability arising from re-thoughts by such persons, who have already availed of the VRS. The VRS cannot be frustrated in this manner. [Para 24] [584-B-E]

- A.K. Bindal v. Union of India (2003) 5 SCC 163 : [2003] 3 SCR 928 – relied on.*

**1.4** The benefits under VRS-2008 are many, in terms of the financial package. Pension is only one of the items of that package, while calculating the amounts as per clause 7.2 of the Scheme. There is no ambiguity left by the propounders of the Scheme while setting out the prohibitive clause against any further compensation, in clause 9.4, or while stating that no revision shall be made in the voluntary retirement amount on account of pay revision, as per clause 9.12. The latter leaves no manner of doubt. The plea of the private respondents that there were certain aspects on which the Scheme was nebulous and, thus, the benefits on those accounts must be available to the respondents is, hence, without any basis. [Para 25] [584-E-G]

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**1.5** The complete substratum of the reasoning of the impugned order, and for that matter, the arguments of the counsel for the private respondents, supporting the reasoning, is based on the presumption that VRS-2001 (in operation from 14.12.2000 to 15.1.2001) was an open ended scheme in character. This is a fallacious approach for the reason that every scheme for voluntary retirement really has a time frame. Not only that, VRS-2001 was followed by a fresh Scheme in 2003-2004, and thereafter in 2008. The terms of the Schemes were different. While the 2001 scheme initially, in clause 8.7, provided for a full and final settlement of claims, it is as per a clarification issued on 4.1.2001 that the benefit was extended, to provide for future pay revisions. This was so far as the 2001 Scheme is concerned. Even the 2003-2004 Scheme did not provide such clarification, and the endeavour to take up this issue, through the resolution of the Rajya Sabha Committee was not successful as the IFCI stuck by its original plan. VRS-2008 left no manner of doubt, and possibly, the IFCI was more cautious to, again and again, emphasise through different clauses that it would not be called upon to incur any other financial liability. [Para 28] [585-E-G; 586-A]

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**1.6** No doubt the Pension Regulations were specifically included as a benefit under VRS-2008. However, the Pension Regulations and the VRS have to be read harmoniously and, in the context of its inclusion, along with the other terms of the

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- A **VRS. In the Pension Regulations, no doubt the date of retirement includes the date on which the employee voluntarily retires, but that would mean that the concerned employee would be deemed to have retired on the date he terminates his relationship with the IFCI. As to how emoluments have to be calculated, it is the average emoluments of the last ten (10) months of his service.**
- B **This would naturally mean the emoluments received just prior to the termination of the relationship of employment. As regards IFCI Regulations, 1974, more specifically Regulation 33, in the context of retirement under the said Regulations taking their meaning from the 1974 Regulations, it refers to an option with an employee, on attaining 50 years of age, to retire any time by giving the Corporation three months' notice in writing. [Para 29] [586-B-D]**
- 1.7 Private respondents cannot claim parity with such people who had retired after full length of service and did not terminate their relationship. As regards the position qua persons who may have retired on the same date, on attaining the age of superannuation, as the persons who sought termination of relationship under VRS-2008 with all the benefits, such persons have not been paid the benefit of revised pension for the past period. [Para 31] [586-F-G]**
- E **1.8 Pension is for past services. However, it was not the full tenure, but the tenure was terminated by mutual consent, before it would have reached the end, on superannuation. To grant the private respondents the benefit of pay revision, retrospectively, and that to be taken into account for grant of future pension would be a bounty which cannot be given to these private respondents. The benefit is meant for persons who are actually in service, i.e., serving employees. The submission of the respondents that the CTC structure was, in fact, more beneficial and, thus, the benefits were not given retrospectively,**
- F **of the RBI 2007 pay-scales, made applicable from 1.11.2013, would be of not much use for the reason that even the CTC structure was introduced after the termination of relationship between IFCI and the private respondent. [Para 32] [586-G-H; 587-A-B]**
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1.9 There was an inappropriate comparison with SB, who was the serving employee, and opted for continuation of RBI pay-scales, in view of her special position, being visually challenged. She was the sole person in this category and thus, benefits were given retrospectively to her. She was not an optee of the VRS. [Para 33] [587-C]

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1.10 The employees who opt for voluntary retirement make a planning for future and take into consideration all its implications. At the time of giving the option, they know where they stand and they cannot get additional benefits other than mentioned in the Scheme. They prepare themselves to contract out of the jural relationship and are bound by their own acts.” [Para 34] [587-E]

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1.11 The plea of delay is a second battle which has been waged against the IFCI, claiming to be on a different cause of action. The principle as to why no other benefit, other than under the VRS-2008 should be made available, remains the same. Even if it is accepted that their knowledge was derived only in 2014, when for the first time they raised the issue, the same was rejected promptly by the appellant within a few days. Continuing representation on the same issue is really not of much use. There is a gap of one and a half years between the last representation and the sending of a legal notice. This, by itself, could have been fatal, but the private respondents must fail on multifarious grounds. [Para 35] [587-F-G; 588-A]

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1.12 If the RBI pay-scales had been adopted by IFCI with retrospective effect, the private respondents could never have had a claim as their chapter was closed. Merely because, for existing employees, RBI pay-scales had been applied, albeit retrospectively, without past benefits, that cannot be a ground to start getting pension on the basis of a calculation based on those revised pay-scales, on the reasoning that pension is a continuing right for past services rendered. The very cut-off date for calculation of pension, for the private respondents, was the date of their termination of relationship, and the calculation of pension under the Pension Regulations also proceeds on the basis of the

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- A **last ten (10) months' salary prior to that date. Thus, the endeavour by the private respondents is a misadventure and has to be rejected. The order of the Division Bench of the High Court is set aside. [Para 36, 37] [588-B-D]**

*P.P. Vaidya & Ors. v. IFCI Ltd. & Ors. SLP(C) No.*

- B **16364/2014; Bank of India v. K. Mohandas & Ors. (2009) 4 SCALE 576 ; D.S. Nakara v. Union of India (1983) 1 SCC 305 : [1983] 2 SCR 165 – referred to.**

**Case Law Reference**

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|---|---------------------------|--------------------|----------------|
| C | <b>(2018) 18 SCC 186</b>  | <b>relied on</b>   | <b>Para 22</b> |
|   | <b>[2003] 3 SCR 928</b>   | <b>relied on</b>   | <b>Para 24</b> |
|   | <b>(2009) 4 SCALE 576</b> | <b>referred to</b> | <b>Para 25</b> |
|   | <b>[1983] 2 SCR 165</b>   | <b>referred to</b> | <b>Para 27</b> |

- D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6995 of 2019.

From the Judgment and Order dated 17.01.2019 of the High Court of Delhi at New Delhi in LPA No. 300 of 2017.

- E P. S. Narasimha, Sr. Adv.. P. B. A. Srinivasan, Avinash Mohapatra, Rahul G. Tanwani, Ms. Sindoora VNL, Parth Tandon, Ms. Aditi Tripathi, Amit K. Nain, Advs. for the Appellant.

Desh Ratan Nigam, Awanish Sinha, Advs. for the Respondents.

The Judgment of the Court was delivered by

- F **SANJAY KISHAN KAUL, J.**

- G 1. The celebration of independence of our country also came with many challenges, including in the financial sector. The Industrial Finance Corporation of India Ltd. (for short 'IFCI') was the first financial corporation set up soon thereafter, in 1948, with the object of providing for the industrial and infrastructural needs of the new born India and to enable the growth of the economy through medium and long term finance. Passage of time and financial & infrastructural changes resulted in the transformation of IFCI from a statutory corporation to a company under the Indian Companies Act, 1956, in the year 1993. The status of this

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institution, at present, is of a Government of India Undertaking and a Non-Banking Financial Company, primarily engaged in corporate lending. A

2. Changing needs found the IFCI with having, possibly, an excess number of employees at various levels. In order to shed the flab, there have been voluntary retirement schemes introduced, from time to time. The present dispute pertains to the Voluntary Retirement Scheme (for short 'VRS') of 2008. The contesting respondents in the present case are thirty-one (31) employees of IFCI who availed of the VRS-2008 on 1.2.2008, and were accordingly relieved from duty on 25.2.2008. There is no dispute that all the benefits under the VRS-2008 were made available to these employees. B

3. The issue before us is limited in its character as it arises from a claim by these employees that they would be entitled to an enhanced pension on the basis of subsequent revision of pay-scales, which was given retrospective effect, with effect from the time period when the respondents were still employees of the IFCI. C

4. In the context of the aforesaid nature of dispute, it would be relevant to note that the IFCI notified a pension scheme in the year 1993 for its employees, under the Industrial Finance Corporation of India Limited Pension Regulations, 1993 (hereinafter referred to as the 'said Regulations'). The said Regulations came into effect from 1.11.1993. It would be appropriate to refer to some of the clauses of the said Regulations, which are germane for the determination of the controversy before us. D

5. Regulation 2 is the Definition clause. In terms of sub-clause (6) 'date of retirement' is defined while 'retirement' is defined under clause (11). These clauses read as under: E

## **“2. Definitions**

In these Regulations, unless the context otherwise requires:

.... .... .... .... ....  
(6) 'Date of retirement' means the date on which an employee attains the age of superannuation or he is retired by the Corporation or the date on which the employee voluntarily retires;" G

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- A       “(11) ‘Retirement’ means retirement in terms of Regulation 33 of the Staff Regulations and other instructions issued by the Corporation under settlement/award;”
6. What is relevant to note is that voluntary retirement is included in the definition of the ‘date of retirement’ and ‘retirement’, which in turn is defined with reference to Regulation 33 of the IFCI Staff Regulations, 1974 (hereinafter referred to as the ‘Staff Regulations’) and other instructions issued by the IFCI. Thus, turning to the Staff Regulations, Regulation 33 deals with superannuation and retirement. Regulation 33(2) was inserted by Administrative Circular No.16 of 1992 dated 14.8.1992, w.e.f. 20.6.1992. The relevant portion of clause (2) of Regulation 33 of IFCI Staff Regulations is extracted as under:

**“33. Superannuation and Retirement**

- ....       ....       ....       ....       ....
- D       “(2) (i) an employee who has attained the age of 50 years shall have an option to retire anytime thereafter by giving to the Corporation three months notice in writing.

xxxx       xxxx       xxxx       xxxx       xxxx”

- E       “(ii) “Without prejudice to sub-Regulation (2)(i), an employee governed by the IFCI Pension Regulations, 1993, may voluntarily retire at any time after he has completed 20 years of qualifying service in the Corporation as defined in the IFCI Pension Regulations, 1993 (even though he has not attained the age of 50 years), after giving to the Competent Authority three months’ notice in writing.

F       xxxx       xxxx       xxxx       xxxx       xxxx”

- G       7. It is an admitted position that the private respondents, who were the employees, had completed 20 years of service, before seeking voluntary retirement under the VRS-2008. They were, thus, entitled to seek voluntary retirement under the aforesaid Regulations. However, these private respondents actually availed of the VRS-2008, which gave them many more benefits and thus, the said Regulations would have to be read in the context of the terms of the Scheme itself.

- H       8. In view of the support sought to be derived by the private respondents from the earlier VRS-2001, it becomes necessary to deal

with the relevant clauses of the said Scheme insofar as relied upon by the private respondents. Clause 8.7 of the said Scheme reads as under: A

“8.7 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 officer (or to his nominee in case of death). An officer who voluntarily retired under this Scheme will not have any claim against the IFCI of whatsoever nature and no demand or dispute will be raised by him or on his behalf, whether for re-employment or compensation or back wages.” B

9. The aforesaid clause, thus, puts an embargo on any further claim being raised against the IFCI. However, *vide* clarification dated 4.1.2001, the benefit of future pay revisions was made available to the employees who availed of the Scheme. The said clarification has clause 2(i), which reads as under: C

“2. Certain queries have been received relating to the said Scheme. Accordingly, the following clarifications are issued for information of all concerned:- D

(i) In regard to para 8.7 of the Scheme, it is clarified that the officers, opting for voluntary retirement under the above Scheme, will be entitled to receive the benefit of revision in pay scales in respect of arrears of pay and allowances, gratuity, leave encashment, pension/Provident Fund, pursuant to pay revision. However, there will be no change in the voluntary retirement amount, in terms of para 7.5 of the Scheme. E

xxxx      xxxx      xxxx      xxxx      xxxx” F

10. As a factual narrative, it may be noted that there was also a VRS-2003-2004. There was no such clarification making applicable pay revisions, as was done for the VRS-2001. It appears that the retirees approached the issue through political representations, and the matter was taken up by the Rajya Sabha Committee, which referred to the Circular dated 4.1.2001 issued *qua* pay revisions in the context of the VRS-2001, and the Committee recommended the Ministry of Finance may impress upon IFCI, through its nominees in its Board of Directors, for revisions of pay-scales similarly. However, this was not accepted and no such pay revision took place. G

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- A 11. The respondents, along with other employees, prior to their seeking VRS, got the benefit of the revised pay-scales of 2002 of the Reserve Bank of India (for short 'RBI'), when these scales were implemented w.e.f. 1.4.2006 on 22.11.2006. The benefit of even these revised pay-scales, thus, was not made available to the persons who availed of the VRS implemented in the year 2003-2004. In November, 2007, the RBI formulated another new set of pay-scales which were, however, not immediately implemented by the IFCI.

- B 12. In the next endeavour of such VRS, the VRS-2008 was floated *vide* H.R. Circular No.1 of 2008, on 1.2.2008 with the avowed object of achieving "optimum manpower utilization in the IFCI and overall reduction in the existing strength of the employees." The eligibility, as per clause 5 required completion of ten (10) years of service in the IFCI or 40 years of age. The benefits under the Scheme were set out in clause 7 of the Scheme, while the general conditions were set out in clause 9. The relevant clauses are reproduced hereinunder:

D **"7. BENEFITS UNDER THE SCHEME**

An employee whose application for voluntary retirement is accepted, shall be entitled to the following:-

- E 7.1 The balance in Provident Fund Account of the employee, payable as per the IFCI Employees' Provident Fund Regulations.
- E 7.2 (i) Pension as per the IFCI Pension Regulations to those employees who have already opted for pension.
- F (ii) Pension as per the IFCI Pension Regulations to employees (in case they are not pension optees) who opt for VRS and seek pensionary benefits in lieu of contributory Provident Fund."

.... .... .... .... ....  
G "7.5 Voluntary retirement amount equivalent to two months' salary for each completed year of service rendered or the monthly salary at the time of relieving on voluntary retirement multiplied by the balance complete calendar months of service left or Rs.15 lakhs whichever is less. Service rendered by an employee prior to joining the service of the IFCI shall not be reckoned for the purpose of calculating the voluntary retirement amount (Fraction of service of six months and above will be reckoned as one year and fraction

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of service of less than six months will be ignored for the purpose A  
of calculating years of service rendered in IFCI.”

.... .... .... .... ....

**“9. GENERAL CONDITIONS”**

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“9.4 The benefits payable under the Scheme shall be in full and final settlement of all claims whatsoever, whether arising under the Scheme or otherwise to the employee (or to his nominee in case of death). An employee, who is voluntarily retired under the Scheme, will not have any claim against the IFCI whatsoever and no demand or dispute will be raised by him or on his behalf whether for re-employment or compensation or back wages.

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9.5 The Scheme shall not be construed as a revision of any of the previous retirement schemes of the IFCI and as such no claim from an employee who availed of the Voluntary Retirement under any of the earlier Voluntary Retirement Schemes shall be entertained.”

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.... .... .... .... ....

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“9.11 An employee, availing voluntary retirement under the Scheme, and if entitled to pension under the IFCI Pension Regulations will be eligible for pension from the day next to the date of his relieving from the service of IFCI. However, the benefit of increase in qualifying service by a period not exceeding five years as provided in Regulation 25(2) of the Pension Regulations, will not be available to such an employee.

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9.12 There will be no revision in the Voluntary Retirement amount on account of pay revision or any other account in future.”

13. A reading of the aforesaid clauses shows that the Scheme envisaged a full and final settlement of all claims, making it clear that benefits under earlier Schemes would not be applicable. However, pension under IFCI Pension Regulations was to be applicable. It has been specifically provided in clause 9.12 that there would be no revision in the voluntary retirement amount on account of pay revision or any

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- A other account in future. This clause was specifically absent in the 2001 Scheme, but pay revision was subsequently made applicable *vide* Circular dated 4.1.2001. The endeavour to apply that Circular in the 2003-2004 VRS was not successful. It appears that in order to avoid any further ambiguity on this account, this clause was inserted. Since the controversy relates to the total benefits under VRS-2008, it would also be relevant to reproduce sub-clause 3.4 (clause 3 being the 'Definition' clause), which defines "salary", as this terminology has been used in clause 7. Sub-clause 3.4 reads as under:

**"3. DEFINITIONS**

- C In this scheme, unless the context otherwise requires:-
  - ....      ....      ....      ....      ....
  - 3.4 "Salary" shall mean Basic Pay + Stagnation Increments + Special Pay + Post Scale Special Pay + Personal Pay + Additional Special Pay + Dearness Allowance, as on the date of relieving of employee."
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14. The private respondents who availed of the VRS-2008 also signed an undertaking, agreeing that they would not have further claims or rights against the IFCI, except for payment of benefits under the Scheme. Since all the employees were governed by the RBI pay-scales revised up to 1.11.2002 (applied to IFCI w.e.f. 1.4.2006), IFCI commenced payment of pension to the private respondents, commensurate to the RBI pay-scales applicable to them. Needless to add, all other retirement dues were also settled.

15. Soon thereafter, in August, 2008 itself, with the object of promoting performance culture by linking rewards to the performance of employees, IFCI introduced a Cost to Company (for short 'CTC') pay structure by way of HR Circular No.9/2008. All the existing employees were given an option to continue being governed by the RBI pay-scales, or opt for the more lucrative CTC structure, which was to be made effective from 18.8.2008. A non-response was to be treated as an affirmative one, to be governed by the new pay structure automatically. This structure was possibly more lucrative as, except for one employee, all others opted for the CTC pay structure.

16. Insofar as that one employee was concerned, Ms. Sweety Bhalla, she is stated to be a visually challenged employee, and her request

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was based on the fact that the CTC would not be beneficial to her. We may note that as per the IFCI, as set out in the rejoinder affidavit, there was really no option but to move to CTC, but an exception was made in her case on account of her being visually challenged. Thus, in her case, the revised RBI pay-scales, w.e.f. 1.11.2007, were made available on 23.9.2011, along with arrears. We may note another litigation, which was initiated by Mr. P.P. Vaidya and others, who had similarly retired under the VRS-2008. They filed a writ petition, being WP(C) No.1319/2011, before the Delhi High Court, claiming certain benefits and incentives. This writ petition was dismissed on 18.7.2013. The Letters Patent Appeal was dismissed on 6.5.2014 and the Special Leave Petition was dismissed on 26.9.2014<sup>1</sup>. All these decisions were predicated on the ground that there could not be any other benefits or incentives sought to be derived by them in view of the clear provisions of the VRS-2008.

17. In November, 2013, IFCI came under the active control of the Government of India and, thus, sought to align its policies in accordance with the practices in Public Sector Undertakings. Thus, IFCI, on 13.7.2013, again modified its pay structure and decided to follow the RBI structure (as revised from 1.11.2007) in the matter of pay-scales for serving employees of the IFCI, thus, abandoning the CTC pay structure. This revised pay structure was made applicable *vide* Memorandum dated 16.7.2013, and was implemented w.e.f. 1.11.2013. The IFCI has categorically affirmed that though this scale had come into being in the RBI in 2007, its benefits were available only prospectively, from 1.11.2013, and there were no arrears paid to the existing employees. We may add here itself that according to the private respondents this was so, as the CTC scales were more beneficial to the employees.

18. The beginning of the dispute is the respondents' claim that they became aware of this change in pay-scale only in July, 2014, when they sent a letter to the CEO of IFCI (the appellant herein), requesting for the benefit of such pay revisions. This representation was promptly rejected on 28.7.2014, by relying on clauses 9.4 and 9.12 of the VRS-2008. The respondents did not take any legal recourse, but sent another representation in September, 2014, which was again responded to on 17.11.2014, clarifying that the CTC structure was adopted from August, 2008 to October, 2013, and thereafter due to policy change in 2013, the 2007 RBI pay-scales were made applicable, but w.e.f. 1.11.2013, and

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<sup>1</sup> SLP(C) No.16364/2014 (P.P. Vaidya & Ors. v. IFCI Ltd. &Ors.)

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- A that too for serving employees. There was a pregnant silence for about one and a half years, when a legal notice was served by the private respondents, on 31.5.2016. This was, once again, refuted on 13.7.2017 by IFCI, and it is soon thereafter that a writ petition was filed before the Delhi High Court, seeking revision of the pay-scales, claiming a similar beneficial interpretation as provided to retirees under the VRS-2001, and parity with Ms. Sweety Bhalla, who was still in employment as on that date. The case of the appellant, however, was predicated on the basis that VRS-2001 was an open ended Scheme, in light of clause 8.7 read with the clarification dated 4.1.2001, while VRS-2008 was not an open ended Scheme.
- C 19. The claim of the private respondents did not find favour in the writ proceedings, when the learned Single Judge dismissed the writ petition on 20.2.2017. The private respondent, aggrieved by the order of dismissal, filed a Letters Patent Appeal, which was allowed *vide* impugned order dated 17.1.2019. The impugned order seeks to draw comparisons with the 2001 Scheme, the case of Ms. Sweety Bhalla, and the fact that since the revised pay-scales were made applicable from 2007, when the private respondents were still in service, the same ought to be applied to them. The impugned order has relied on the principle that pension is a benefit of past services and thus, is a continuing cause, and since, in terms of the VRS-2008, the Pension Regulations had been specifically made applicable, any revision of pay-scale, which has a consequence on the pension of existing employees should equally apply to employees like the private respondents, who had taken the benefit of the VRS. The factum that all other benefits had been made available to them, or that the endeavour to get certain other benefits and incentives had failed in
- E F the earlier legal proceedings was distinguished on the basis that pension had to be considered under a different parameter, and that the VRS-2001, insofar as pension was concerned, was an open ended Scheme.
- G 20. We have examined the submissions of the rival counsel for the parties.
- H 21. The principle ground for assailing the impugned order is that any scheme for voluntary retirement is a package by itself. One cannot, thus, look to other voluntary retirement schemes, or other rules and regulations for the said purpose.
- H 22. In our view, there can be no quibble with this fundamental principle. In fact, we had the occasion to recently propound the legal

position in this behalf, in *National Insurance Special Voluntary Retired/ Retired Employees Association & Anr. v. United India Insurance Co. Ltd. & Anr*<sup>2</sup>. The view taken is that it is not appropriate to add or subtract from the Scheme, nor can any concessions be given contrary to the Scheme, or if they are not provided for under the Scheme. What is to be seen are the clauses of the scheme under which voluntary retirement has been taken and the terms of the scheme must be strictly followed. This Court has observed as under:

“19. We have, thus, no hesitation in coming to the conclusion that statutory or contractual, such voluntary retirement schemes as the SVRS-2004 Scheme have to be strictly adhered to, and the very objective of having such schemes would be defeated, if parts of other schemes are sought to be imported into such voluntary retirement schemes. What is offered by the employer is a package as contained in the schemes of voluntary retirement, and that alone would be admissible.

20. The issue which arose in Manojbhai N. Shah [Manojbhai N. Shah v. Union of India, (2015) 4 SCC 482 : (2015) 2 SCC (L&S) 55] was qua the revision of pay, with retrospective effect. That was the only issue. That issue was decided against the beneficiaries of the SVRS-2004 Scheme. If there are certain observations made by that Bench while deciding so, qua aspects which are not forming the subject-matter of that dispute, the same cannot be read to amount to grant of relief/benefits, contrary to the terms of the Scheme, and that too, in the absence of any specific directions.

.... .... .... .... ....  
22. It is, thus, abundantly clear that nothing more would be given than what is stated in the scheme, and for that matter, nothing less. If the employees avail of the benefit of such a scheme with their eyes open, they cannot look here and there, under different schemes, to see what other benefits can be achieved by them, by seeking to take advantage of the more beneficial schemes, while simultaneously enjoying the more beneficial aspects of the SVRS-2004 Scheme.”

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<sup>2</sup>(2018) 18 SCC 186

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- A 23. In the present case, VRS-2008 has received consideration right till the Supreme Court and attained finality on the issue of benefits and incentives sought to be claimed beyond the Scheme, in *P.P. Vaidya & Ors.*<sup>3</sup> case. Interestingly, some of the respondents, apparently, are common between that case and the present case. Thus, not having succeeded on one aspect, another aspect is now sought to be agitated.
- B 24. We may usefully refer to the judgment in *A.K. Bindal v. Union of India*<sup>4</sup>, which set forth the very rationale of introducing a scheme for voluntary retirement, i.e., to reduce surplus staff and to bring in financial efficiency. It is in this context that it is referred to as the 'Golden Handshake'. *Ex gratia* amounts are paid, not for doing any work or rendering any service, but in lieu of employees leaving services of the company and foregoing any further claims or rights in the same. It is optional, not compulsory. It is a take it or leave it situation. Thus, anyone availing of a VRS does so with his eyes wide open. On having availed of the benefits under the scheme, if there are future changes, which may give any of the monetary benefits, the same cannot be read into the scheme. This would defeat the very purpose of having a VRS, i.e., to bring in financial efficiency, as it would not be possible that despite having paid the amounts, the organization can be lumped with further financial liability arising from re-thoughts by such persons, who have already availed of the VRS. The VRS cannot be frustrated in this manner.
- C 25. We have already discussed the terms of the Scheme, which are quite clear. The benefits under VRS-2008 are many, in terms of the financial package. Pension is only one of the items of that package, while calculating the amounts as per clause 7.2 of the Scheme. There is no ambiguity left by the propounders of the Scheme while setting out the prohibitive clause against any further compensation, in clause 9.4, or while stating that no revision shall be made in the voluntary retirement amount on account of pay revision, as per clause 9.12. The latter, in our mind, leaves no manner of doubt. The plea of the private respondents that there were certain aspects on which the Scheme was nebulous and, thus, the benefits on those accounts must be available to the respondents (*Bank of India v. K. Mohandas & Ors.*<sup>5</sup>) is, hence, without any basis.

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<sup>3</sup> (supra)

<sup>4</sup> (2003) 5 SCC 163

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26. Learned counsel for the private respondents did endeavour to emphasise the nature of the pension by referring to the constitution Bench judgment in *D.S. Nakara v. Union of India*<sup>6</sup>, in para 46, which reads as under:

“46...Recall at this stage the method adopted when pay scales are revised. Revised pay scales are introduced from a certain date. All existing employees are brought on to the revised scales by adopting a theory of fitments and increments for past service. In other words, benefit of revised scale is not limited to those who enter service subsequent to the date fixed for introducing revised scales but the benefit is extended to all those in service prior to that date. This is just and fair. Now if pension as we view it, is some kind of retirement wages for past service, can it be denied to those who retired earlier, revised retirement benefits being available to future retirees only. Therefore, there is no substance in the contention that the court by its approach would be making the scheme retroactive, because it is implicit in theory of wages.”

27. It is trite to say that the aforesaid principle really applies to a retiree, and not to one who terminates his relationship with the employer earlier, often for greener pastures, and takes a complete package of various financial benefits, pension being only one of them.

28. The complete substratum of the reasoning of the impugned order, and for that matter, the arguments of the learned counsel for the private respondents, supporting the reasoning, is based on the presumption that VRS-2001 (in operation from 14.12.2000 to 15.1.2001) was an open ended scheme in character. This, in our view, is a fallacious approach for the reason that every scheme for voluntary retirement really has a time frame. Not only that, VRS-2001 was followed by a fresh Scheme in 2003-2004, and thereafter in 2008. The terms of the Schemes were different. While the 2001 scheme initially, in clause 8.7, provided for a full and final settlement of claims, it is as per a clarification issued on 4.1.2001 that the benefit was extended, to provide for future pay revisions. This was so far as the 2001 Scheme is concerned. Even the 2003-2004 Scheme did not provide such clarification, and the endeavour to take up this issue, through the resolution of the Rajya Sabha Committee was not successful as the IFCI stuck by its original plan. VRS-2008 left no

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<sup>6</sup>(1983) 1 SCC 305

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- A manner of doubt, and possibly, the IFCI was more cautious to, again and again, emphasise through different clauses that it would not be called upon to incur any other financial liability.

29. No doubt the Pension Regulations referred to aforesaid were specifically included as a benefit under VRS-2008. However, the Pension Regulations and the VRS have to be read harmoniously and, in the context of its inclusion, along with the other terms of the VRS. If we refer to the Pension Regulations, no doubt the date of retirement includes the date on which the employee voluntarily retires, but that would mean that the concerned employee would be deemed to have retired on the date he terminates his relationship with the IFCI. As to how emoluments have to be calculated, it is the average emoluments of the last ten (10) months of his service. This would naturally mean the emoluments received just prior to the termination of the relationship of employment. If we turn to the IFCI Regulations, 1974, more specifically Regulation 33, in the context of retirement under the said Regulations taking their meaning from the 1974 Regulations, it refers to an option with an employee, on attaining 50 years of age, to retire any time by giving the Corporation three months' notice in writing.

30. It is not as if pension is being paid to the private respondents contrary to the terms of VRS-2008. The only thing is that, based on the calculation of average emoluments for a period of ten (10) months prior to that date when their relationship stood terminated, the pension has been calculated.

31. The private respondents cannot claim parity with such people who had retired after full length of service and did not terminate their relationship. We had specifically put a question to the learned counsel for the appellant, as to what would be the position *qua* persons who may have retired on the same date, on attaining the age of superannuation, as the persons who sought termination of relationship under VRS-2008 with all the benefits. The answer is categorical that such persons have not been paid the benefit of revised pension for the past period.

32. We must keep in mind that pension is for past services, as elucidated. However, it was not the full tenure, but the tenure was terminated by mutual consent, before it would have reached the end, on superannuation. To grant the private respondents the benefit of pay revision, retrospectively, and that to be taken into account for grant of

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future pension would be a bounty which cannot be given to these private respondents. The benefit is meant for persons who are actually in service, i.e., serving employees. The endeavour of learned counsel for the respondents to plead that the CTC structure was, in fact, more beneficial and, thus, the benefits were not given retrospectively, of the RBI 2007 pay-scales, made applicable from 1.11.2013, would be of not much use for the reason that even the CTC structure was introduced after the termination of relationship between IFCI and the private respondents.

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33. We may also deal with the inappropriate comparison with Ms. Sweety Bhalla, who was the serving employee, and opted for continuation of RBI pay-scales, in view of her special position, being visually challenged. She was the sole person in this category and thus, benefits were given retrospectively to her. She was not an optee of the VRS.

34. We may also elucidate further, with reference to the *P.P. Vaidya & Ors.*<sup>7</sup> case, that it was the case of the same parties and some other similarly placed employees, albeit with respect to special benefits and incentives. It, once again, talked about the aspect of a ‘Golden Handshake’ and the delay in approaching the Court from the time when the cause of action really arose. In that context, it was observed that “the employees who opt for voluntary retirement make a planning for future and take into consideration all its implications. At the time of giving the option, they know where they stand and they cannot get additional benefits other than mentioned in the Scheme. They prepare themselves to contract out of the jural relationship and are bound by their own acts.”

35. We may also note one last aspect, which is the plea of delay. This is coupled with the commonality of some of the respondents in the *P.P. Vaidya & Ors.*<sup>8</sup> case and the present case. In their context, more so, this is a second battle which has been waged against the IFCI, claiming to be on a different cause of action. The principle as to why no other benefit, other than under the VRS-2008 should be made available, remains the same. Even if we accept that their knowledge was derived only in 2014, when for the first time they raised the issue, the same was rejected promptly by the appellant within a few days. Continuing representation on the same issue is really not of much use. As observed earlier, there is a gap of one and a half years between the last representation and the sending of a legal notice. This, by itself, could have been fatal, but the

<sup>7</sup> (supra)

<sup>8</sup> (supra)

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- A private respondents must fail on multifarious grounds, discussed aforesaid and this aspect has been discussed only in the context of the plea being raised by IFCI/appellant.

36. If the RBI pay-scales had been adopted by IFCI with retrospective effect, the private respondents could never have had a claim as their chapter was closed. Merely because, for existing employees, RBI pay-scales had been applied, albeit retrospectively, without past benefits, that cannot be a ground to start getting pension on the basis of a calculation based on those revised pay-scales, on the reasoning that pension is a continuing right for past services rendered.
- C The very cut-off date for calculation of pension, for the private respondents, was the date of their termination of relationship, and the calculation of pension under the Pension Regulations also proceeds on the basis of the last ten (10) months' salary prior to that date.

37. We are firmly of the view that the present endeavour by the private respondents is a misadventure and has to be rejected without any hesitation. The impugned order of the Division Bench of the High Court is, thus, set aside.

38. The appeal is accordingly allowed.
39. We would have been inclined to impose costs but for the fact that the private respondents would be mostly pensioners by now.

Nidhi Jain

Appeal allowed.