REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5685 OF 2021

M/s. NEW VICTORIA MILLS & ORS. … Appellants

Versus

SHRIKANT ARYA …Respondent

J U D G M E N T

SANJAY KISHAN KAUL, J.

1. National Textile Corporation Limited (for short '**NTC**'), is a public sector undertaking constituted and registered under the Companies Act, 1956. Appellant No.2 before us is the National Textile Corporation (Uttar Pradesh) Limited, Kanpur, a subsidiary of appellant No. 3 that has set up several industrial establishments in the State of Uttar Pradesh. M/s. New Victoria Mills, appellant No.1, is one such establishment set up by appellant No.2 in Kanpur. Respondent was working as a Supervisor (Maintenance) in appellant No.1 since 1991, having been so appointed on transfer from M/s. Atherton Mills, another industrial unit set up by

appellant No.2.

2. The textile industry went through difficult times at the turn of the century and accordingly, endeavours were made to examine the feasibility of the continued existence of different textile mills. A question mark over the existence of these mills in turn had ramifications for the persons who were employed with these mills. In order to safeguard the interests of these employees, a Modified Voluntary Retirement Scheme (for short '**MVRS/Scheme**') was propounded by appellant No.3 to facilitate the voluntary retirement of employees and workers of appellant No.1 and certain other mills operated by appellant No.2. It is of significance to note that this MVRS was proposed pursuant to the recommendations made by the Board for Industrial and Financial Reconstruction (for short '**BIFR**'), with the objective of rationalising surplus manpower and reducing the losses of appellant No.2. BIFR had come into the picture as the production activities of appellant No.2 were brought to a standstill and it had been declared a sick undertaking under the Sick Industrial Companies (Special Provisions) Act, 1985. The financial condition of appellant No.2 was so precarious that BIFR recommended closure of nine out of eleven mills of appellant No.2,

including appellant No.1. While making this recommendation, in order to secure the interests of the employees, BIFR imposed a condition that the mills would only be closed if all employees working therein were given the benefit of a voluntary retirement scheme. Thus, MVRS came to be promulgated in supersession of the earlier revised voluntary retirement scheme.

3. The Management reserved the right to refuse the MVRS application without assigning any reasons in terms of Clause 1.6 of the MVRS. Clauses 1.6 of the MVRS reads as under:

> "1.6 The management reserves the right to refuse a MVRS application without assigning any reasons further applications for MVRS in respect of 1.6.1 & 1.6.2 may be put up before the Board of Director for consideration.
>
> 1.6.1 Where disciplinary proceeding are either pending or are contemplated against the employee concerned for imposition of major penalty.
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> 1.6.2 Where prosecution in a Criminal Court is contemplated or may have already been launched in any Court of Law and
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> 1.6.3 Employees who resign from the services of the company in a normal manner are not entitled in MVRS."

4. Further clause 4.0 of the MVRS provided for the benefits under the MVRS, which reads as under:

> "**4.0 <u>OTHER TERMINAL BENEFITS UNDER THE</u>**

SCHEME

4.1 Balance in the Provident Funds Accounts payable as per Employees Provident Fund Act and rules made thereunder.

4.2 Cash equivalent of accumulated earned leave/privilege/leave as per the rules of the mills/office, concerned.

4.3 Gratuity as per Payment of Gratuity Act or the Gratuity Scheme, if any."

5. The procedure for the MVRS was set out in Clause 5.0. Suffice to produce some of its relevant sub-clauses, which have been referred to as under:

"**5.0PROCEDURE**

5.1 An eligible employee may submit an application in the prescribed form for voluntary retirement under the scheme by tendering resignation from the post held and service in NTC to the Competent Authority. The post falling vacant as a result of an employee's voluntary retirement under the scheme shall in all cases stand abolished simultaneously while accepting resignation and order to that effect issued simultaneously before disbursing retirement benefits to employees under this scheme and no person (Permanent/badly/substitute/temporary etc.) shall be engaged in his/her place."

....

"5.10 Once an employee's (sic) avails himself/herself of voluntary retirement from a PSU, he/she shall not be allowed to take up employment in any other PSU. If he/she desires to do so, he/she shall have to return the VRS compensation received by him/her to the PSU concerned where the compensation was paid out of a Government grant, the PSU concerned shall remit the

refunded amount to the Government in case the PSU is already closed/merged, the VRS compensation shall be returned directly to the Government."

A significant aspect of Clause 5.1 was that the post itself was to stand abolished and fall vacant as a result of the employee's voluntary retirement, simultaneously with the acceptance of their resignation and this was to be a prelude to the disbursement of retiral benefits to the employee under the Scheme. The objective appears to be to ensure that the Scheme was not utilised to see the exit of an employee and replace him with someone else, something which would be contrary to the very purpose of the Scheme.

6. The respondent sought to avail of the opportunity under the Scheme and addressed a letter dated 12.07.2002. The relevant extract of the same is as under:

"*That in the context of information dated: 13.06.2002 & 04.07.2002 of the Mill under Amended Voluntary Retirement from Service Scheme operated by National Rehabilitation Scheme, applicant wants to submit his resignation.*

It is, therefore, requested to accept resignation of the applicant by making sure payment of all benefits of the service period of the applicant."

It is relevant to note that the resignation was sought to be brought

into force forthwith with the only request that payment of all benefits of service be disbursed promptly.

7. An aspect which caused some anguish to the respondent was that apparently there was a pre-existing dispute between appellant No.1 and the respondent, relating to deposits to be made in the provident fund account of the respondent. This is apparent from two letters addressed in this regard dated 29.03.2000 and 23/24.04.2000, making a grievance that the provident fund amount has not been deposited in his account since 1991. Even on submission of his letter dated 12.07.2002, it appears that this issue was not resolved, consequently triggering a letter from the respondent dated 03.03.2003 about the same. In this letter, respondent made a request that since the issue was not resolved, his application under the MVRS be kept suspended till the amount is deposited in his provident fund account and the account regularised. The reason for this request was also set out in the same letter immediately thereafter, that is, "*because after the acceptance of resignations, receipt of this amount will not only be difficult, rather it will be impossible*."

8. A general information was issued about acceptance of letters of resignation under the MVRS on 28.05.2003 in which the name of the

respondent figured at serial No.4. The four persons were to retire from the services of the mill on 01.06.2003. However, a letter was issued by appellant no. 1 on 02.06.2003, after the cut off date had already come into effect from 01.06.2003;informing the respondent that the said date be treated as cancelled and a new cut off date would be informed shortly. The respondent was advised to attend to his duties.

9. In the aforesaid scenario, the respondent addressed a letter dated 01.07.2003 requesting that his letter dated 12.07.2002 under the MVRS be treated as having been cancelled because he had changed his mind about submitting his resignation under the MVRS, noticing that his resignation letter had still not been accepted. However, vide letter 14.07.2003 the resignation submitted under the MVRS was accepted intimating that the respondent was to retire from 16.07.2003.

10. It is the aforesaid letter which triggered off the litigation, with the respondent filing Civil Miscellaneous Writ Petition No.16587/2004 before the High Court of Judicature at Allahabad under Article 226 of the Constitution of India seeking the following prayers:

a. Quashing of the impugned order dated 14.07.2003;

b. A direction to allow the respondent to join his duties on the post

of Supervisor (Maintenance) and pay him all his emoluments as entitled;

c. To pay him his back-wages since 16.07.2003 and permit him to work on the post till the age of his superannuation when he would be entitled to all his retiral benefits.

11. The writ petition was resisted on the ground that the resignation already stood accepted and the postponement of the cut off date would not in any way take away the validity of the acceptance. It may be worthwhile to note that while responding to the petition, Appellant explained their position qua the respondent's grievance about the provident fund contributions not being credited to his account. It was stated that the entire provident fund contribution had been deposited with the Office of the Regional Provident Fund Commissioner and it appears that the same was credited to a wrong person with a similar name.This was a mistake in the Office of the Regional Provident Fund Commissioner, which was recommended to be corrected and had also been corrected. In fact, the account number to which the amount was credited was the correct account number.

12. The learned single Judge ruled in favour of the respondent in terms

of the judgment dated 22.08.2005. The judgment also noted that the question of reinstatement in service could not arise as appellant No.1 had been closed down pursuant to a notification of the Central Government dated 09.03.2004 issued during the pendency of the writ petition. However, the learned single Judge found that it was “not clear” that at any point of time, the respondent had given an unconditional offer of resignation under the MVRS. Rather, his resignation was conditional on the payment of all dues, which included the provident fund dues which should be first cleared and paid to him. We may note at this stage as a matter of record on perusal of the letter dated 12.07.2002 that we do not find it so. All that was stated in the letter was a request to accept the resignation of the respondent by making sure payment of all benefits of his service period. There was no prior condition put nor could have been put under the MVRS as Clause 5.1 itself envisaged the simultaneous acceptance of the resignation and abolishment of the post; and payment being made thereafter. Pertinently, the resignation letter had been submitted under the MVRS and hence was subject to Clause 5.1.

13. The second aspect which weighed with the learned single Judge was that the respondent continued to work till 14.07.2003, after his

resignation was accepted by appellant No. 1; despite the fact that he had already withdrawn his resignation prior to that date on 01.07.2003. In fact, the reasoning is predicated on what is stated to be "better footing" as the offer made by the respondent under the MVRS was only conditional and that condition had admittedly not been fulfilled, which is something that we are unable to agree on a plain reading of the letter dated 12.07.2003. A reference was also made to the letter dated 03.03.2003 seeking to keep the letter dated 12.07.2002 in abeyance (not that the resignation letter was recalled till that stage). Another significant aspect which has weighed with the learned single Judge is the continued working of the respondent, due to which the jural relationship of employer and employee continued even though the circular notifying the acceptance of the respondent's resignation letter was issued on 28.05.2003,. The subsequent letter dated 02.07.2003 was taken into account as having cancelled the earlier cut off date communicated on 28.05.2003, while informing that a new cut off date would be provided. The new cut off date was then only intimated vide letter dated 14.07.2003, to be effective from 16.07.2003. Prior to that date, on 01.07.2003, the respondent had already asked for recall/cancellation of

his resignation.

14. The appellants aggrieved by the same preferred an appeal before the Division Bench of the Allahabad High Court, being Special Appeal No.1188/2005. An aspect which is greatly emphasised by the counsel for the respondent was the manner in which this appeal was prosecuted. Apparently, no endeavour was made by the appellants to get their appeal listed for almost six years, until the matter was finally listed on 10.10.2011 - which is when the appeal was admitted and notice was issued. Further, an interim order was passed staying the operation of the order of the learned single Judge. The respondent was given liberty to collect the entire money which he was to get on acceptance of his resignation without prejudice to his rights and subject to the final decision in the appeal. It is the say of the respondent that during this period of six years, the respondent did not receive the money and encashed the amount only after the aforesaid interim order was passed. Suffice to say that the cheque for Rs.5,47,267/- was issued by appellant No.1 to the respondent on 22.10.2011, which was duly encashed by the respondent in terms of the impugned order dated 10.10.2011. It does not really come out of the record as to what steps may have been taken

during this period of time to enforce the judgment of the learned single Judge. The Contempt Petition No.2967/2006 was apparently filed by the respondent seeking enforcement, but that also appears not to have been pursued with much rigour. We also note that the appeal against the single judge's order was dismissed for non-prosecution thrice and restored!

15. The Division Bench finally bestowed its consideration on the appeal on 12.03.2019, and upheld the order of the learned single Judge. A reference was also made to Clause 1.6 of the MVRS extracted aforesaid, which gave authority to appellant No.1 to refuse a resignation application without assigning any reasons. Thus, it was opined that the acceptance of the request for voluntary retirement was a condition precedent to such a retirement. On the issue of abolishing the post as per Clause 5.1 of the MVRS, it was opined that since appellant No.1 had cancelled the original cut off date of 01.06.2003 and had asked the respondent to join his duties once again, the post must have continued and, thus, Clause 5.1 had not come into operation.

16. The aforesaid order of the Division Bench has been assailed by filing a Special Leave Petition before this Court. Vide order dated 17.02.2020, notice was issued and the operation of the impugned order

was stayed. Leave was granted on 07.09.2021 when the matter was heard finally and judgment reserved.

17. We have examined the principles governing the case of voluntary retirement under the Scheme in the given factual scenario and in the conspectus of the submissions of the counsel for the rival parties.

18. In a nutshell the submission of the appellants before us was that the respondent had not even challenged the letters dated 28.05.2003 or 02.06.2003, which effectively accepted the respondent's resignation request under the MVRS. This would imply that the acceptance of resignation by appellant No. 1 was complete. What the respondent had sought to challenge was only the revised cut off date by assailing the letter dated 14.07.2003, which sought to relieve the respondent from 16.07.2003. Once such a resignation was accepted, and not even assailed, there could be no question of the respondent being permitted to resign post acceptance of the resignation. It was only a postponement of the cut off date for administrative reasons, which merely delayed the relieving of the respondent and did not defer the acceptance of the resignation.

19. Learned counsel for the appellants sought to rely upon the

judgment of this Court in ***Air India Express Limited &Ors. v. Captain Gurdarshan Kaur Sandhu***[1] to support the plea that mere delay in relieving someone from their duties does not impact the acceptance of their resignation. In fact, a prior judgment of this Court in ***Raj Kumar v. Union of India***[2], which was referred to in ***Air India Express Limited &Ors.***[3]**,** involves a scenario where the State Government had recommended that the resignation of an IAS officer be accepted and the Government of India had requested the Chief Secretary of the State to intimate the date on which he would be relieved of his duties so that a formal notification could be issued. However, before the date could be informed and a formal notification be issued, the officer withdrew his resignation letter. On an order accepting his resignation being issued subsequently, a challenge was raised and it was opined by this Court that there was no indication in the correspondence between the parties that the resignation was not to become effective until the acceptance was intimated. In fact, the officer had forwarded his resignation letter for early acceptance and thus, on a plain reading of the letter, the resignation became effective as soon as it was accepted by the appointing authority.

1 (2019) 17 SCC 129.
2 (1968) 3 SCR 857
3 (supra)

20. On a contra position, the judgment of this Court in ***Union of India v. Gopal Chandra Misra***[4] was referred to, where the resignation letter by a sitting Judge of the Allahabad High Court was found to have been validly withdrawn. The resignation letter began with the statement that the Judge was resigning from office but that was not a standalone statement. Had it been so, the resignation would have been *in praesenti* involving immediate relinquishment of the office and termination of his tenure as a Judge. There was really no requirement of acceptance of a resignation letter of a Judge, but it was not so. The first sentence was followed by two more sentences which intimated a subsequent date for the resignation to be effective and since the letter of resignation was withdrawn before that date, it was held to have been validly withdrawn.

21. We may note that the significance of the aforesaid is that ultimately, the wordings of the letter would be material and in the present case since it is under scheme it would be MVRS.

22. Learned counsel for the appellants sought to refer to the aspects of (a) the respondent's acceptance of the cheque (but that was under interim directions of the Court); (b) abolishment of the post as New Victoria Mills was shut by a notification dated 09.03.2004 (but in that eventuality

4 (1978) 2 SCC 301

if the respondent succeeds, he would still be in employment with all consequences); (c) superannuation of the respondent in 2018 (which would only mean that his benefits would be only till that time). The only other aspect of significance is that had the respondent not opted for voluntary retirement under the MVRS, he could have been retrenched under the Industrial Disputes Act, 1947.Learned counsel for the appellants clarified during arguments that the amount paid to such persons was lower than the amount paid to employees opting for resignation under the MVRS. If one may say, that was the very incentive for an employee to accept the MVRS.

23. On the other hand, learned counsel for the respondent sought to rely on judgments of this Court in ***J.N. Srivastava v. Union of India &Anr.***[5] and ***Shambhu Murari Sinha v. Project & Development India &Anr.***[6] to canvas a proposition that an employee has a right to withdraw his application for voluntary retirement even after its acceptance, if such withdrawal is done prior to the date of the employee's actual retirement. Learned counsel for the respondent submitted that the jural relationship of employer and employee between appellant No.1 and respondent

5 (1998) 9 SCC 559
6 (2000) 5 SCC 621

continued till 16.07.2003 and thus, the respondent had *locus poenitentiae* to withdraw his resignation on 01.07.2003.

24. On a closer reading of the aforesaid judgments, it would be appropriate to notice the factual matrix in the context of the observations therein. In ***J.N. Srivastava***[7], the voluntary retirement notice was to operate three months hence. The proposal was accepted before the expiry of three months; but the employee withdrew the voluntary retirement notice before the date on which the retirement was to be operative. In ***Shambhu Murari Sinha***[8], a resignation letter submitted by the employee under a voluntary retirement scheme was accepted by the management but the employee was not relieved from service and was permitted to continue working, by postponing the cut off date. The employee withdrew the offer of voluntary retirement in the meantime. A number of judicial pronouncements were referred to by this Court for the proposition that a resignation in spite of its acceptance could be withdrawn before the effective date.

25. In ***Power Finance Corporation Limited v. Pramod Kumar Bhatia***[9]***;*** the Corporation withdrew a voluntary retirement scheme after

7 (supra)
8 (supra)
9 (1997) 4 SCC 280

an application made thereunder had been accepted. This Court held that the acceptance of his offer to voluntarily retire was subject to adjustment of the amount payable to him, and hence did not attain finality. Learned counsel for the respondent did point out that though that was something which was beneficial to the management, on the same principle, it should equally apply to an employee.

26. Learned counsel for the respondent sought to emphasise that a voluntary retirement scheme like the MVRS was in the nature of an "invitation to offer" and would, thus, be governed by the principles of contract law (***Bank of India v. O.P. Swarnakar***[10]***; HEC Voluntary Retd. Emps. Welfare Soc. & Anr. v. Heavy Engineering Corporation Ltd. &Ors.***[11]). Thus, the application submitted by the respondent under the Scheme on 12.07.2002 was in the nature of an offer. The respondent suspended his resignation vide letter dated 03.03.2003 till such time as appellant No.1 deposited respondent's provident fund dues and, thus, the offer of the respondent stood revoked. On the same principle it was urged that the application of the respondent under the MVRS was pre-conditioned on appellant No.1 clearing respondent's dues, particularly his

10 (2003) 2 SCC 721
11 (2006) 3 SCC 708

provident fund dues. Appellant No.1 did not comply with the attached condition relating to the provident fund dues. Learned counsel for the respondent also relied upon the judgment in ***Food Corporation of India & Anr. v. Ram Kesh Yadav &Anr.***[12] opining that in case of a conditional offer, the offeree cannot accept a part of the offer which results in performance by the offeror and then reject the condition subject to which the offer is made.

27. On the terms and conditions of the MVRS, learned counsel for the respondent drew our attention to Clause 5.1 which required that on acceptance of the respondent's resignation, he would not only retire but simultaneously the post would also be abolished. This would only happen on 16.07.2003. How could the respondent have been asked to carry on if the post stood abolished?

28. The last aspect, which was brought to our attention was an RTI reply received on 07.12.2010, which clarified that three employees had taken back their resignations. This was not the only scenario, as there were five other employees/officers, who had been transferred to mills in other States. These facts were only to show that the closure of appellant No. 1 could not deprive the respondent of the benefit of employment in

12(2007) 9 SCC 531

some other mill, though now the question of employment no more remains alive as he would have retired in 2018 but would still be entitled to financial benefits. We may, at this stage, also note that a response to an RTI query of the respondent clarified that there was no scheme for absorption of the employees of the mills in other States.

29. We have examined the factual contours of the current controversy in the conspectus of the legal position set forth aforesaid. In fact, if one looks to the different judgments cited from both sides, there are actually factual nuances which have led to one result or the other. The factual nuances have to be most importantly examined in the context of the scheme which applies, as the present case is not one of resignation *per se* but that of exercising an option available under the MVRS.

30. The respondent before us filed the application under the Scheme. If we look closely at the letter dated 12.07.2002, the intent of the respondent was clear, i.e., to submit his resignation. It is not a resignation operative from a future date but one which would operate as per the Scheme. It is also not a conditional resignation as was sought to be canvassed by the respondent. The mere assertion that all benefits arising out of the service period of the applicant would be paid to him is

a natural corollary of their resignation. We do believe that such a resignation can hardly be called conditional.

31. The aforesaid being the position; if we look at this resignation letter under the Scheme, no doubt in terms of Clause 1.6 of the MVRS, the option lay with the management to decline an application without assigning any reasons. That again, to our mind, will not make the resignation conditional. In a contractual context, it would be an offer made by an employee under the Scheme which may or may not be accepted by the appellant-management. Once the acceptance takes place, the contract stands concluded. No doubt such acceptance has to be in terms of the Scheme. Thus, the crucial question is whether the subsequent communications of the respondent could give the resignation letter a colour of a conditional resignation and whether the withdrawal was prior to its acceptance.

32. The MVRS, more specifically Clause 4.0, provides for terminal benefits payable under the Scheme. Clause 4.1 requires the balance in the provident fund account to be paid as per the Employees Provident Fund Act. Thus, the right of a person whose resignation has been accepted is to receive *inter alia* the benefit of the provident fund amount

as one of the terminal benefits under the Scheme. The fact that there was some discrepancy on account of the description of the name in the account for which there was some prior communication itself, will not imply that any delay in disbursement of the provident fund amount would entitle the respondent to withdraw his resignation. If there is any unreasonable delay, the amount may carry interest. In the given facts of the case, it appears that the account was credited to an account number where it ought to have been credited, but there was some problem in the name/description of the beneficiary which had caused some confusion/delay. No doubt the appellant-management ought to have taken better care of this but then the appellant had pointed out that the problem arose on account of the management by the concerned authority of the provident fund account, and not the appellant.

33. Another significant aspect which we must take note of is the terms of the Scheme as per Clause 5.0. Clause 5.1 required the post to be abolished simultaneously with the request of voluntary retirement being accepted. This had to be done before disbursing retirement benefits to the employee under the Scheme. There was a specific stipulation that no person would be engaged in his/her place. The objective was clear, that

it should not be that on the one hand, manpower is reduced by giving the benefit of MVRS to an employee and on the other, some other person is deployed in the post. That would be, in a sense, destructive of the very objective of why the Scheme was propounded, i.e., on account of the precarious financial condition of appellant No.1.

34. The next communication addressed by the respondent is the letter dated 03.03.2003. The respondent did not withdraw his resignation, which he could have done at that stage. He seeks to refer to the aspect of the non-correction of the provident fund account and inaction with respect to his earlier communications, which were almost three years old. The respondent seeks to attribute negligence and error to the concerned departments under appellant No. 1, an aspect which has been specifically denied by appellant No.1. The respondent stated that non-deposit of the amount in the provident fund account despite regular deduction from salary is on account of some grievous conspiracy. Actually, the amount was deposited in the relevant account but, as observed aforesaid, there was some confusion about the beneficiary of the account, which was clearly to be the respondent. All that the respondent's letter states is that his resignation be "kept suspended" till the amount is deposited in his

provident fund account. The rationale for the same is set out in the very next sentence, i.e., if the resignation is accepted the receipt of the amount will not only be difficult but rather it will be impossible.

35. The aforesaid allegation is apparently arising out of some element of frustration which the respondent may have felt due to non-correction of the provident fund account as the acceptance of resignation and disbursement of the amount are not interlinked aspects, except to the extent that the amount under the provident fund account had to be paid to the respondent under the Scheme. In that, there was no impediment, except the factual correction which was required in the description of the account as explained by the appellants, which was also not attributable to any fault on their part.

36. It is in the aforesaid situation that on 28.05.2003, a letter was issued by appellant No.1 accepting the resignation of four persons including the respondent. Once the resignation letter had been accepted, the chapter was over. The respondent was to retire from the services with effect from 01.06.2003 in terms of the said letter.

37. The respondent, however, seeks to take advantage of the letter dated 02.06.2003 of appellant No.1, which extended the cut off date

already fixed for 01.06.2003. The respondent, thus, seeks to plead that once the date from which he was to be relieved was extended, it would amount to non-acceptance of his resignation. This plea is supported by the fact that since the acceptance of resignation and the abolition of the post were simultaneous exercises, how could the respondent be asked to continue to work, as there would be no post against which the respondent could so work. The respondent, taking advantage of the aforesaid, addressed a letter on 01.07.2003 claiming that his resignation had not been accepted till that date, and his letter of resignation under the MVRS dated 12.07.2002 may be treated as cancelled.

38. Appellant No.1 refused to act on the same as in their view the resignation letter already stood accepted on 28.05.2003. The respondent was relieved w.e.f. 16.07.2003.

39. We have no doubt that the acceptance of resignation and the abolition of the post were simultaneous exercises as that is part of Clause 5.1 of the Scheme, the objective of which we have already set forth above. Clause 5.1 also prevents appellant No.1 from appointing anyone else to that post. Thus, in our view, once the letter of resignation was accepted on 28.05.2003, the post stood abolished. We have already

mentioned that the letter dated 03.03.2003 cannot be construed as a letter of withdrawal of resignation. The postponement of the cut off date and the consequent payment which would have to be made to the respondent for those few days is really a matter of financial exercise for appellant No.1, with which the respondent cannot concern himself as long as his resignation is accepted. In order to test the proposition, one can state that were the appellant to cancel the acceptance of the resignation after 28.05.2003, it would not have been permissible for them to do so because they had already accepted the respondent's resignation on this date. In contractual terms, appellant No. 1's acceptance of the respondent's offer of resignation as available under the MVRS was completed on 28.05.2003. The respondent cannot be permitted to take advantage of the postponement of the cut off date by a few days, during which time the respondent was asked to attend to office, albeit against no sanctioned post.

40. We have to keep in mind the background in which the Scheme came to be propounded. Appellant No.1 amongst other mills faced such financial difficulties that their financial feasibility did not permit them to carry on business. The competent authority to deal with the issue of

financial feasibility at that time was BIFR, which came to the conclusion that nine out of eleven textile mills in the State of Uttar Pradesh were not viable and could not be rehabilitated and, thus, recommended their closure. The Central Government exercising powers under Section 25(o) of the Industrial Disputes Act, 1947 granted permission for closure of the nine textile mills on 09.03.2004, including that of appellant No.1. In order to safeguard the interests of the employees, BIFR imposed the condition while recommending closure, that all employees working in the said mills would be given the benefit of voluntary retirement and only then would the mills be closed. The appellants being State and public entities, it appears that BIFR took greater care to safeguard the interests of the employees working therein. It is in this context that the appellants also placed before us, which can really not be disputed, the financial consequence for persons who did not accept the MVRS. Such persons would be retrenched according to the Industrial Disputes Act, 1947 and the financial benefits accruing to them would be far lesser than that under the MVRS. Thus, the MVRS was undisputedly beneficial to the employees who availed of the same. That would be natural, since only then would an employee have any incentive to avail of the Scheme.

41. We can also not lose sight of the fact that appellant No.1 had, in fact, closed down and this was taken note of by the learned single Judge. The mere fact that some staff continued to work after the closure of the Mill, or the fact that some people may have been deployed in other mills cannot help the respondent's case for reinstatement. Importantly, the latter aspect has also been disputed by appellant No.1.

42. An analysis of the MVRS including Clause 5.1 belies the respondent's contention that there was any requirement of making the payments in advance. The wordings of the Scheme are clear that acceptance of resignation has to simultaneously happen with the abolition of the post and thereafter, the payments have to be disbursed.

43. We have endeavoured to appreciate the contention of the appellants about non-challenge of the letter dated 28.05.2003 and 02.06.2003 with only the revised cut off date of 16.07.2003 being assailed. This does seem to have an element of infirmity in the manner in which the respondent sought to vent his grievance, but in view of larger consideration we are not required to look into the aspect of whether this is fatal to his claim. The construction we have given to the MVRS is as per its clauses and the action of the parties under the Scheme, which

result in the conclusion that the resignation had already been accepted on 28.05.2003 before the respondent endeavoured to withdraw the same on 01.06.2003. It has, thus, rightly been contended by the appellants that the mere delay in relieving the respondent from duties would not impact the acceptance of his resignation, as observed in ***Air India Express Limited & Ors.***[13]. A different scenario would have arisen, if the resignation letter was not *in praesenti* and had fixed a future date for its operation, and before that date the resignation letter was withdrawn.

44. We have referred to the judicial pronouncements cited by the respondent aforesaid on the plea that the respondent has *locus poenitentiae* to withdraw the resignation letter as the jural relationship between the parties continued till the actual date of his resignation. (***J.N. Srivastava***[14] and ***Shambhu Murari Sinha***[15]).

45. As noticed in para 3 aforesaid in ***J.N. Srivastava***[16], the resignation was to operate prospectively from a specified date and was withdrawn before that date, despite being accepted – which is a different factual scenario. We are also not in disagreement with the legal principle

13 (supra)
14 (supra)
15 (supra)
16 (supra)

propounded by the respondent that a scheme like the MVRS was an "invitation to offer." The application submitted by the respondent under the Scheme on 12.07.2002 was in the nature of an offer but we cannot accept the plea that vide letter dated 03.03.2003 there could be suspension of his resignation conditional on the deposit of provident fund dues which actually already were deposited (albeit a confusion over the credit to which it was named). The acceptance was also not conditional clearing of dues, including provident fund dues, as that was a consequence which would flow from the acceptance of the resignation. Thus, in pursuance of the offer and acceptance on 28.05.2003, the transaction was completed. Unlike the case in ***Shambhu Murari Sinha,***[17] this is not a case of a conditional offer with part offer being accepted, but rather, acceptance of the offer in the terms of the Scheme, with the consequences as envisaged under the Scheme of financial benefits flowing to the respondent on acceptance of the resignation.

46. The result of the aforesaid is that we are unable to persuade ourselves to agree with the conclusions arrived at by the learned single Judge as affirmed by the learned Division Bench. We are of the view that the resignation letter of the respondent stood accepted on 28.05.2003 and

17 (supra)

the respondent is entitled to the benefits under the Scheme which have already been paid to the respondent albeit without prejudice to the rights and contentions of the respondent in the proceedings.

47. The impugned order is set aside. The appeal is accordingly allowed leaving the parties to bear their own costs.

....……J.
[Sanjay Kishan Kaul]

....……J.
[M.M. Sundresh]

New Delhi.
September 27, 2021.