

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on:-17.09.2019.
Date of Decision:- 27.09.2019.

+ W.P.(C) 9304/2019 & C.M. No.38360/2019 (stay)

POONAM GARG

..... Petitioner

Through: Mr. M.K. Bhardwaj and Mr.Shubham
Gairola, Advs.

versus

IFCI VENTURE CAPITAL FUNDS LTD THROUGH ITS
MANGING DIRECTOR & ORS

..... Respondents

Through: Mr. Prashanto Chandra Sen, Senior
Advocate along with Mr. Nitin Dahiya and Mr.Raj
Lakshmi Singh, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J

JUDGMENT

1. The present petition under Article 226 of the Constitution of India seeks quashing of the order dated 04.07.2019 passed by the respondent no.1 rejecting the petitioner's prayer for withdrawal of her notice of voluntary retirement from service dated 07.06.2019. The petitioner also seeks a direction to the respondents to permit her to continue in service till her superannuation.

2. The petitioner, who joined the services of respondent no.1/IFCI Venture Capital Funds Ltd. ('the Company' for short) on 06.01.1995

as Staff Officer, earned promotions over time based on her performance and was finally promoted as General Manager (Human Resources) w.e.f. 01.04.2015 at which post she continues to serve. After 24 years of service at the Company, the petitioner offered to voluntarily retire by way of her notice dated 07.06.2019 addressed to the respondent no.3/Managing Director of the Company, in accordance with the IFCI Venture Capital Funds Limited Staff Regulations, 2019 ('Regulations' for short), and requested to be relieved from service w.e.f. 07.09.2019. At this stage, it may be noted that as the respondent No.1 is a public limited company through a subsidiary of IFCI Ltd., a Govt. of India undertaking, its regulations are not statutory but have been framed in pursuance to the Memorandum of Association of the Company.

3. Within six days of submitting her notice, on 13.06.2019, the petitioner sought to withdraw her request for voluntary retirement from the Company while expressing her willingness, in the interest of the organisation, to accept any role/responsibility assigned to her by the Company. In the meanwhile, as the petitioner had requested to be relieved from service only w.e.f. 07.09.2019, she continued to discharge her duties without any interference. On 04.07.2019 however, the Company issued the impugned order to the petitioner informing her that while her request for voluntary retirement had been accepted by the Competent Authority, her letter dated 13.06.2019 seeking withdrawal of her request for voluntary retirement had not been considered favourably and that, resultantly, she would be relieved from service on 06.09.2019. Aggrieved by the impugned

order, the petitioner made a representation to the respondent no.2/Chairman of the Company seeking his intervention in the matter, but received no reply thereto.

4. In these circumstances the petitioner, apprehending that she may be relieved from service w.e.f. 06.09.2019, has approached this Court by way of the present petition claiming that her request for voluntary retirement had been made on account of the grave mental and physical stress caused by her brother's hospitalisation at Fortis Hospital, New Delhi in June, 2019. She further claims that shortly thereafter, her brother's health improved considerably and she was informed of his imminent discharge from the hospital. In the light of these developments, she submitted her application on 13.06.2019 seeking withdrawal of her request to voluntarily retire. She also claims that her application for withdrawal was drafted under the guidance of the respondent no.3, who was of the opinion that such withdrawal would only serve the interest of the organisation considering the wide range of responsibilities discharged by her at the Company, being the only General Manager tasked with the supervision of seven departments. It is the petitioner's case that once she had already withdrawn her request for voluntary retirement on 13.06.2019, the Company could not have accepted the same vide its order dated 04.07.2019, after such a long period had elapsed from the date of her withdrawal.

5. In its counter affidavit the Company, while opposing the present petition, has claimed that the petitioner's request for voluntary retirement was accepted by its Competent Authority, i.e., respondent

no.3, on 08.06.2019 itself and the petitioner, a high-ranking official of the Company being its General Manager, was aware of this fact and had constructive notice of the said acceptance. The respondent has further contended that the petitioner also knew that the order of acceptance of her voluntary retirement had been noted in the Company's Board Resolution dated 10.06.2019. Consequent to the acceptance of her request for voluntary retirement, the Company had even issued an office order on 11.06.2019 *inter-alia* reallocating work between the employees of the Company as also redistributing the roles and responsibilities of the petitioner, which fact was duly communicated through e-mail to all the employees. The respondent has contended that it is only after receipt of this office order dated 11.06.2019 that the petitioner submitted her application seeking withdrawal of her request for voluntary retirement, which had stood accepted by that time. In these circumstances, the respondent has averred that the petitioner's application for withdrawal of her request was rightly rejected by the Competent Authority on 01.07.2019, which decision was communicated to her by way of the impugned order.

6. In support of the petition, Mr. M. K. Bhardwaj, learned counsel for the petitioner submits that paragraph 33(2)(v) of the Regulations clearly stipulates that an employee, who has elected to retire voluntarily, can seek withdrawal of his application for voluntary retirement. Thus, there is no reason as to why the respondents did not accept the petitioner's request for withdrawal of her application for voluntary retirement, especially when she sought the same within six

days of her original request. By placing reliance on the decision of the Supreme Court in *J.N.Srivastava v. Union of India & Anr. (1998) 9 SCC 559*, he submits that in any event, once the petitioner had herself requested for voluntary retirement w.e.f. 07.09.2019, she was entitled to withdraw her request at any time before the said date, being the effective date of retirement, and it was incumbent upon the respondents to accept her request for withdrawal. He also places reliance on the decision of the Supreme Court in *Balram Gupta v. Union of India & Anr. 1987 (Supp) SCC 228* and submits that once the petitioner's offer to retire and her withdrawal of the said offer happened in such quick succession, there was absolutely no reason as to why the said withdrawal should not have been accepted.

7. Mr.Bhardwaj further submits that the respondents' claim that the petitioner's request for voluntary retirement had been accepted on 08.06.2019 itself by respondent no.3 and approved by the Board on 10.06.2019 is wholly false, which is evident from the fact that the impugned order does not mention any date on which the same was accepted and the respondents have taken this false plea solely with the aim of scuttling the rights of the petitioner. Without prejudice to his aforesaid submission, he submits that in any event the purported acceptance of the petitioner's request by the respondent no.1 on 08.06.2019 or 10.06.2019 cannot affect the petitioner's right to seek withdrawal as the Company did not communicate their acceptance of her request for voluntary retirement until the date of the impugned order, i.e., 04.07.2019. By relying on the decisions of the Supreme Court in *Bipromasz Bipron Trading SA Vs. Bharat Electronics*

Limited (BEL) (2012) 6 SCC 384 and *Ashok Kumar Sahu Vs. Union of India & Ors. (2006) 6 SCC 704*, he submits that till the respondents' acceptance of the petitioner's request was communicated to her, the said acceptance could not be treated as an order in the eyes of law. The fact remains that the purported acceptance of her request for voluntary retirement on 08.06.2019 or 10.06.2019, as claimed by the respondents, was never communicated to the petitioner before she submitted her request for withdrawal on 13.06.2019. It is, therefore, evident that before the respondents communicated their alleged acceptance of the petitioner's request for voluntary retirement, she had sought withdrawal thereof. The petitioner's request for withdrawal, therefore, ought to have been accepted.

8. Mr. Bhardwaj finally relies on *Bank of India & Ors. Vs. O.P. Swarnakar Etc. (2003) 2 SCC 721* to contend that the Supreme Court had held that even in the case of a nationalised bank where the employee may not enjoy the same status as that of a government employee or an employee of a statutory body, every request of an employee has to be considered within the Bank's regulatory framework. He, therefore, submits that the petitioner's request for voluntary retirement ought to have been considered within the framework of the Regulations of the Company which clearly provide that an employee can make a request for withdrawing his/her notice for voluntary retirement. He further contends that the Company ought to have acted within the parameters set out by its own Regulations and that even the Competent Authority, while considering the petitioner's request for withdrawal of her notice of voluntary retirement, ought to

have acted reasonably and rationally and could not have rejected the same on its ipse dixit without assigning any reasons thereto.

9. On the other hand, Mr. Prashanto Sen, learned Senior Counsel for the respondents submits that the present petition is liable to be outrightly dismissed on the ground that it raises disputed questions of fact namely the petitioner's allegation that she had submitted her application for withdrawal under the guidance of the respondent no.3, which has specifically been denied. He submits that even otherwise the petitioner's reliance on decisions pertaining to cases of either government employees or statutory bodies is wholly misplaced as the nature of the petitioner's employment in the present case was purely contractual. By placing reliance on the decisions of the Supreme Court in *HEC Voluntary Retd. Employees Welfare Society & Anr. Vs. Heavy Engineering Corpn. Ltd. & Ors.* (2006) 3 SCC 708, *State Bank of India & Ors. Vs. S. N. Goyal* (2008) 8 SCC 92 and *New India Assurance Co. Ltd. Vs. Raghuvir Singh Narang* (2010) 5 SCC 335, he submits that in a case like the present one where the relationship between the employer-Company and the employee-petitioner was purely contractual, the petitioner cannot seek permission to continue in service and the only remedy available to the petitioner, if any, is to seek damages by approaching the Civil Court.

10. Mr. Sen further submits that the petitioner has not only made wholly false averments regarding the reasons for which she sought withdrawal of her request for voluntary retirement, but she has also deliberately concealed the fact that she had knowledge about the acceptance of her request on 08.07.2019 itself. He submits that the

petitioner has consistently failed to be forthright or transparent in her conduct as neither her application seeking voluntary retirement nor her application seeking withdrawal thereof contained any reasons to substantiate her prayers and it is only in the writ petition that she has, for the first time, adopted her brother's illness as the reason for seeking voluntary retirement. He further submits that, contrary to the petitioner's claims, any purported illness suffered by her brother was not the real reason behind her request for voluntary retirement as the petitioner is habituated to making such requests. Even in the past, when the Company sought to transfer her to a different department, the petitioner being opposed to such transfer had threatened to seek voluntary retirement. He submits that, in these circumstances, she was rightly disallowed from withdrawing her request for voluntary retirement after it had already been accepted; as encouraging such practice would trigger administrative chaos in the Company. He submits that in view of the petitioner's request for retirement being accepted, the Company had already re-allocated the work in its office on 11.06.2019 whereby the departments entrusted to the petitioner had been re-assigned to another employee. He submits that permitting an employee like the petitioner to continue in service would only be against the interest of the Company.

11. Mr.Sen further submits that paragraph 33(2)(v) of the Regulations permits withdrawal only of a request for voluntary retirement made under paragraph 33(2)(ii) and not of a request made under paragraph 33(2)(i). The petitioner, who had already attained the age of 50 years at the time of seeking voluntary retirement, had

submitted her application under paragraph 33(2)(i) and was, therefore, not entitled to seek withdrawal thereof under paragraph 33(2)(v) of the Regulations. He submits that paragraph 33(2)(ii) is applicable only where an employee seeks voluntary retirement after 20 years of service even though he or she has not attained the age of 50 years. He, thus contends that once the petitioner had submitted her application for voluntary retirement under paragraph 33(2)(i), there was no provision in the Regulations entitling her to seek withdrawal of her request for voluntary retirement once made and that too after it had been accepted. He, therefore, prays that the writ petition be dismissed.

12. I have heard the learned counsel for the parties and with their assistance perused the record.

13. In the light of the submissions made by the parties, it is apparent that the basic facts are undisputed and the short question arising for my consideration is as to whether the petitioner could have withdrawn her application seeking voluntary retirement from service before the same actually became effective, considering the respondents' claim that her application was accepted by the respondent no.3, even before her request for withdrawal was received.

14. During the course of arguments, the parties have primarily relied on the petitioner's notice dated 07.06.2019 requesting voluntary retirement, the Company's alleged acceptance of her request for retirement dated 08.06.2019, the petitioner's notice dated 13.06.2019 withdrawing her request for voluntary retirement and the Company's reply dated 04.07.2019 to the petitioner's communications which are

reproduced hereinbelow:

*“The Managing Director
IFCI Venture Capital Funds Limited
61, Nehru Place, New Delhi*

*Subject: Voluntary retirement from the service of IFCI
Venture Capital Funds Limited*

Dear Sir

*This is to bring to your notice that I joined the organisation
on 06th January, 1995 and have since completed more than
24 years of service. I hereby wish to opt for voluntary
retirement from the services of IFCI Venture due to
personal reasons.*

*According to the rules and regulations governing the
organisation, I may please be relieved on 07th September,
2019.*

Kindly accept the same.

Your faithfully

-sd-

*(Poonam Garg)
General Manager*

Dated: 07th June, 2019”

“Re: Voluntary Retirement (VR)

*Ms. Poonam Garg, General Manager has sought
voluntary retirement (VR) from the services of
IFCI Venture Capital Funds Ltd. vide letter dated
7th June 2019 citing personal reasons. She has
also requested that as per the rules and
regulations of the organization, she may be
relieved on 7th September, 2019.*

X | *Accordingly, looking into the reasons cited by her,
it is proposed to accept her request for VR.*

Submitted Please.

*Sd-
Milly Nandi
AGM
8/6/2019*

MD

'X' is approved. 7th September 2019 being a non-working day (Saturday), she should be relieved on 6th September 2019 i.e. Friday at close of business hours. Further, the matter should also be reported in the upcoming Board meeting on 10/6/19. Proposal for recruitment of CFO should also be put up before the Board in view of VR sought by Mrs Poonam Garg.

*-Sd-
Shakti Kumar
Managing Director
8/6/2019*

AGM (MN) Draft Board memo is placed for approval please.

*-Sd-
Milly Nandi
AGM
8/6/2019*

MD

*-Sd-
Shakti Kumar
Managing Director
8/6/2019”*

*“The Managing Director
IFCI Venture Capital Funds Limited
61, Nehru Place, New Delhi*

Subject: Withdrawal of notice of Voluntary retirement from the services of IFCI Venture Capital Funds Limited

Dear Sir

This is in reference to my letter dated 07th June, 2019 regarding opting for voluntary retirement due to my personal reasons.

I hereby withdraw my requests for voluntary retirement. In the interest of the organisation, I am ready to accept any role/responsibility assigned to me by the Competent Authority.

You are requested to kindly accept my request of withdrawal from voluntary retirement. Inconvenience caused to the Competent Authority is highly regretted.

Your faithfully

-sd-

*(Poonam Garg)
General Manager*

Dated: 13th June, 2019”

“No.IVCF/HR/2019-20/13047

July 04, 2019

*Ms. Poonam Garg
General Manager
IFCI Venture Capital Funds Ltd
16th Floor, IFCI Tower
61, Nehru Place
New Delhi-110019*

Dear Madam

*Re: Voluntary Retirement from the services of IFCI
Venture Capital Funds Ltd.*

This has reference to your letter dated 7th June 2019

requesting for Voluntary Retirement from the services of IFCI Venture. We would like to advise you that your request for Voluntary Retirement has been accepted by the Competent Authority.

Further, with reference to your letter dated 13th June, 2019 regarding withdrawal of request of Voluntary Retirement from the services of IFCI Venture, it is stated that your request for withdrawal of Voluntary Retirement from the services of IFCI Venture Capital Funds Ltd has not been considered favourably by the Competent Authority in line with the extant rules.

Accordingly, as per the extant rules, you will be relieved from the services of IFCI Venture on 6th September, 2019 (close of business hours)

This is for your kind information.

Sd/-

Milly Nandi

Asst. General Manager-HR”

15. From a perusal of these communications, the fact that the petitioner, while submitting her application seeking voluntary retirement, had specifically requested that the same be accepted w.e.f. 07.09.2019 is evident and undisputed. The petitioner's request for voluntary retirement was not as per any particular temporary scheme floated by the Company but was in accordance with its Regulations and is akin to a request for resignation; even the mandatory notice period of 90 days to be served by a retiring employee, as prescribed by the Regulations, stood fulfilled by the petitioner on her effective date of retirement, i.e., 07.09.2019. The respondents, while not denying this position that the petitioner had intended her voluntary retirement to take effect from 07.09.2019, have claimed that since the

petitioner's request was accepted by the company on 08.06.2019 itself, her subsequent request for withdrawal on 13.06.2019 could not be accepted. In fact, the tenor of this order dated 08.06.2019, on which heavily reliance has been placed by the respondents, makes it abundantly clear that even the Board of Directors of the Company had specifically directed the petitioner's retirement to be accepted w.e.f. 07.09.2019, which was after the expiry of the notice period in accordance with the Regulations of the Company.

16. The question as to when an employee can be allowed to withdraw his request for resignation or voluntary retirement and the employer's right to reject such request for withdrawal has been considered by the Supreme Court from time to time and the common thread running through all these decisions is that in normal circumstances, an employee can withdraw its resignation before it comes into effect or operation. In this regard, reference may be made to paragraph 41 of *Union of India Vs. Gopal Chandra Misra (1978)* 2 SCC 301.

"41. The general principle that emerges from the foregoing conspectus, is that in the absence of anything to the contrary in the provisions governing the terms and conditions of the office/post, an intimation in writing sent to the competent authority by the incumbent, of his intention or proposal to resign his office/post from a future specified date can be withdrawn by him at any time before it becomes effective, i.e. before it effects termination of the tenure of the office/post or the employment."

17. The Apex Court in *Air India Express Limited and Ors. Vs. Gurdarshan Kaur Sandhu* 2019 (11) SCALE 310 has in paragraph 17 of its decision, after considering its earlier decisions in *Gopal Chandra Misra (supra)*, *Balram Gupta (supra)*, *Punjab National Bank Vs. P.K. Mittal* 1989 Supp (2) SCC 175 and *J.N. Srivastava (supra)*, summarised the circumstances in which withdrawal of a request for voluntary retirement can be permitted by observing as under:

“17. It is thus well settled that normally, until the resignation becomes effective, it is open to an employee to withdraw his resignation. When would the resignation become effective may depend upon the governing service regulations and/or the terms and conditions of the office/post. As stated in paragraphs 41 and 50 in Gopal Chandra Misra, “in the absence of anything to the contrary in the provisions governing the terms and conditions of the office/post” or “in the absence of a legal contractual or constitutional bar, a ‘prospective resignation’ can be withdrawn at any time before it becomes effective”. Further, as laid down in Balram Gupta, “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.”

18. The petitioner’s application for voluntary retirement, having been made in accordance with paragraph 33 of the Regulations, as also the fact that the contentions raised by both sides revolve around the language of paragraphs 33(2)(i), (ii) and (v), it would be apposite to reproduce the same for the facility of reference. The relevant extracts of paragraphs 33 (2)(i), (ii), (iii) and (v) of the Regulations

read as under:-

“33. Superannuation and Retirement

.....
(2)

(i) An employee who has attained the age of 50 years shall have an option to retire anytime thereafter by giving to the Company three months' notice in writing.

(ii) Without prejudice to the sub regulation 2(i), the employee of the Company may voluntary retire at any time after the completion of 20 years of qualifying service (even though he has not attained the age of 50 years), after giving to the competent authority three months notice in writing. Provided that this sub regulation shall not apply to an employee who is on deputation or study leave abroad, unless after having been transferred or having returned to India, he has resumed the charge of the post in India and served for a period of not less than one year.

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 to which he is on deputation at the time of seeking voluntary retirement.

(iii) The notice or voluntary retirement given under sub-Regulation (ii) shall not be valid unless it is accepted by the Competent Authority, Provided that where the Competent Authority does not communicate its decision not to accept such notice before the expiry or period specified in the notice, the retirement shall become effective from the date of expiry of such period.

.....

(v) *An employee, who has elected to voluntarily retire, pursuant to sub-Regulation 2 (ii) and has given notice for the purpose, shall not be entitled to withdraw the notice, except with the permission of the Competent Authority, provided that the request for such withdrawal shall be made before the intended date of his retirement.”*

19. The petitioner has, by placing reliance on paragraph 33(2)(v), contended that the Regulations clearly envisage that an employee seeking voluntary retirement would be entitled to withdraw the said request subject to such withdrawal being made prior to the intended date of retirement. On the other hand, the respondents have vehemently contended that the petitioner’s application for voluntary retirement was covered under paragraph 33(2)(i) of the Regulations which entitles an employee to seek withdrawal of its request for voluntary retirement; it is only cases governed by paragraph 33(2)(ii) when an application seeking withdrawal of an earlier request can be entertained by the management, but even this withdrawal is subject to the permission of the Competent Authority. The respondents have, therefore, contended that no employee has an absolute right to seek withdrawal of his application for voluntary retirement. Upon a careful perusal of the Regulations, I am unable to accept the respondents’ contentions that paragraph 33(2)(v) is not applicable to cases where voluntary retirement has been sought under paragraph 33(2)(i). Once paragraph 33(2)(ii) states in no uncertain terms that it operates without prejudice to the provisions of paragraph 33(2)(i), it is evident that any request for withdrawal envisaged under paragraph 33(2)(v)

would include requests for voluntary retirement made under both paragraphs 33(2)(i) and (ii) and, therefore, the respondents' plea that the petitioner was not entitled to seek withdrawal under Paragraph 33(2)(v) is wholly unmerited.

20. In any event, even if the respondents' plea that paragraph 33(2)(v) of the Regulations was not applicable to paragraph 33(2)(i) were to be accepted, it would only imply that there is no provision in the Regulations dealing with the withdrawal of an application made under paragraph 33(2)(i) while an application made under paragraph 33(2)(ii) can be withdrawn subject to conditions prescribed in paragraph 33(2)(v). Thus, as per the case sought to be pleaded by the respondent, once there is no specific provision for withdrawal of an application made under paragraph 33(2)(i), a necessary corollary thereof is that there is neither any specific bar nor any conditions attached to seeking withdrawal of a request for voluntary retirement made under paragraph 33(2)(i). In these circumstances, any requests for withdrawal of an application made under paragraph 33(2)(i) would necessarily be covered by general principles which provide that even in the absence of any specific provision in the regulations, an employee can seek withdrawal of his request for resignation or voluntary retirement. Reference in this regard may be made to the observations of the Supreme Court as contained in paragraph 8 in ***P.K. Mittal*** (*supra*), which read as under:-

“8. The result of the above interpretation is that the employee continued to be in service till 21-4-1986 or 30-6-1986, on which date his services would have come normally to an end in terms of his letter dated 21-1-1986. But, by that

time, he had exercised his right to withdraw the resignation. Since the withdrawal letter was written before the resignation became effective, the resignation stands withdrawn, with the result that the respondent continues to be in the service of the bank. It is true that there is no specific provision in the regulations permitting the employee to withdraw the resignation. It is, however, not necessary that there should be any such specific rule. Until the resignation becomes effective on the terms of the letter read with Regulation 20, it is open to the employee, on general principles, to withdraw his letter of resignation. That is why, in some cases of public services, this right of withdrawal is also made subject to the permission of the employer. There is no such clause here. It is not necessary to labour this point further as it is well settled by the earlier decisions of this Court in Raj Kumar v. Union of India [(1968) 3 SCR 857 : AIR 1969 SC 180 : 1969 Lab IC 310] , Union of India v. Gopal Chandra Misra [(1978) 3 SCC 301 : 1978 SCC (L&S) 303 : (1978) 3 SCR 12] and Balram Gupta v. Union of India [1987 Supp SCC 228 : 1988 SCC (L&S) 126]”

21. Thus, when looked at from any angle it is evident that the petitioner was well within her right to seek withdrawal of her request for voluntary retirement before its effective date. If paragraph 33(2)(v) is taken as not being applicable to the petitioner's case, then her request had to be considered as per the general principles laid down by the Supreme Court, which as noted hereinabove prescribe that a request for resignation can be withdrawn anytime before it becomes effective. The petitioner's voluntary retirement was to be effective from 07.09.2019, not only as per her application but even as per the alleged acceptance of the respondent. Her withdrawal application, therefore, having been made much earlier, was liable to

be accepted. On the other hand, if paragraph 33(2)(v) is taken as being applicable to the petitioner's case, the only rider therein is that the leave of the Competent Authority was required before seeking such withdrawal, but as rightly contended by the petitioner the Competent Authority cannot be permitted to exercise its discretion in this regard in a wholly whimsical and arbitrary manner. The petitioner has served the Company for 24 years without any complaint whatsoever against her and had been promoted as a General Manager, yet its impugned order assigns no reason whatsoever for rejecting her request. There is also no reason as to why the Company should not permit the petitioner to seek withdrawal of her request, especially since she sought the same within barely 6 days of her making the application for voluntary retirement. It is not even the case of the Company that they had appointed any new person to assume the duties of the petitioner or had in any manner invested in training any new employee for the post which she was holding. Merely because the respondent No.1 had issued an order on 11.06.2019 redistributing the duties of its employees, would not be a ground to deprive the petitioner of the right available to her under law. Once the Company's Regulations do not require an employee to provide reasons at the time of seeking voluntary retirement or seeking withdrawal thereof, the petitioner's failure to provide any reasons either at the time of submitting her application seeking voluntary retirement or while seeking withdrawal thereof cannot be a ground to reject her request for withdrawal. In the facts of the present case, when the withdrawal was sought within a short span of time when neither any new

personnel had been appointed nor any substantial reorganisation of personnel had been carried out by the Company, the rejection of the petitioner's request for withdrawal was wholly unjustified. Even the contention of the respondents that the petitioner is habituated to requesting voluntary retirement as a manner of protesting her transfer remains unsubstantiated as nothing has been placed on record in support thereof.

22. I also find merit in the petitioner's contention that even if the respondent's plea that her request for voluntary retirement made on 07.06.2019 had been accepted on 08.06.2019 is taken on its face value, the same itself clearly records that her retirement was to be effective from 06.09.2019 (07.09.2019 being a holiday) and, therefore, she was entitled to withdraw the same before the effective date mentioned in the alleged acceptance order dated 10.06.2019. The Apex Court has, in *Air India Express Limited (supra)*, reiterated that it is open for an employee to withdraw his resignation at any time until the same becomes effective. This right, no doubt, is subject to there being a specific bar in the regulations or upon the employer demonstrating that it had made alternative arrangements after accepting the employee's request for voluntary retirement. In the present case, neither has any provision in the Regulations prohibiting such withdrawal been pointed out nor have the respondents been able to demonstrate that they had appointed any other employee in place of the petitioner.

23. There is also merit in the petitioner's contention that the mere acceptance, if any, of her voluntary retirement by the respondents on

08.06.2019 was inchoate till the time it was communicated to her as absolutely nothing has been placed on record to show that the same was in fact communicated to her at any time prior to 04.07.2019. The mere fact that the petitioner was holding the post of General Manager would not lead to the presumption that she was privy to all board resolutions or orders passed by senior officers of the Company. In fact paragraph 33(2) when read in entirety leaves no manner of doubt that even as per the Regulations of the Company, before a request for voluntary retirement becomes effective, it has to not only be accepted by the Competent Authority, but such acceptance is also required to be communicated to the employee. Paragraph 33(2)(iii) specifically stipulates that it is only when no such communication is made to the employee before the expiry of the notice period, that the same becomes effective even without any communication from the employer. Reference may also be made to the observations of the Supreme Court in paragraphs 33 and 34 of its decision in **Bipromasz** (*supra*) which reads as under:

“33. The aforesaid observations make it clear that an order passed by an authority cannot be said to take effect unless the same is communicated to the party affected. The order passed by a competent authority or by an appropriate authority and kept with itself, could be changed, modified, cancelled and thus denuding such an order of the characteristics of a final order. Such an uncommunicated order can neither create any rights in favour of a party, nor take away the rights of any affected party, till it is communicated.

34. The aforesaid proposition has been reiterated in Laxminarayan R. Bhattad v. State of Maharashtra [(2003) 5 SCC 413], wherein it has been held

that: (SCC p. 431, para 52)

“52. ... It is now well known that a right created under an order of a statutory authority must be communicated so as to confer an enforceable right.”

Similar view has been reiterated in Greater Mohali Area Development Authority v. Manju Jain [(2010) 9 SCC 157 : (2010) 3 SCC (Civ) 639] wherein it is observed as follows: (SCC p. 164, para 24)

“24. Thus, in view of the above, it can be held that if an order is passed but not communicated to the party concerned, it does not create any legal right which can be enforced through the court of law, as it does not become effective till it is communicated.”

24. I may now deal with the respondent's final contention that the general principles relating to withdrawal of resignation or voluntary retirement would not be applicable to the present case as the relationship between the petitioner and the respondent was purely contractual and a contract for personal service is not specifically enforceable. It is pertinent to note at this stage that the petitioner is not seeking the specific performance of any contract but is, instead, aggrieved by the arbitrary actions of the respondent no.1 which is a subsidiary of IFCI Ltd., a non-banking finance company being a Government of India undertaking, and is amenable to the writ jurisdiction of this Court. In my view, even if the Regulations are not statutory but are governed by their Memorandum of Association, the Company is still expected to act fairly. The respondent no.1/Company cannot be permitted to act arbitrarily in contravention of its own Regulations or to ignore the settled legal position that an employee can be permitted to withdraw their request for voluntary retirement, as

long as the request for withdrawal is made before the date on which such retirement was to become effective. The decision in *S.N. Goyal (supra)*, on which the respondents have placed reliance, is wholly inapplicable to the present case as the same dealt with a case of termination wherein the Apex Court had held that even in a case where the termination of a contract of employment is found to be illegal or in breach, the remedy of the employee is to seek damages and not specific performance and, therefore, it is not open for the Court to grant reinstatement in such a case. In the present case, the petitioner is not challenging her termination but is assailing the arbitrary rejection of her request to withdraw an application for voluntary retirement made by her. Per contra, the decision of a full bench of the Supreme Court in *Bank of India & Ors. v. O.P. Swaranakar (supra)*, relied upon by the petitioner, clearly holds that if the terms and conditions of an employee's service are contractual in nature, the parties would still be bound by the terms of the said contract and, therefore, in the facts of the present case, the respondent-employer cannot be permitted to act in violation of its own Regulations, even if they are not statutory in nature.

25. Before I conclude, I also deem it appropriate to deal with the decision in *HEC Voluntary Retd. Emps. Welfare Society (supra)*, heavily relied upon by the respondents relating to a case where a company had floated a scheme for voluntary retirement. The Supreme Court had therein, after holding this scheme to be an invitation to offer made by the company to its employees, set down that the employer/company as well as its employees would be governed by

the terms of the scheme in accordance with the provisions of the Indian Contract Act, 1872. Similarly, the decision in *New India Assurance Co. Ltd. (supra)* only reiterates the settled principle that when voluntary retirement is governed by a contractual scheme, the general principles of contract and the provisions of the Indian Contract Act, 1872 would apply; therefore, an application for voluntary retirement is an offer by the employee and anytime before its acceptance, the employee would be entitled to withdraw the same. Thus, I find that these decisions, instead of forwarding the case of the respondents, support the petitioner's case as she is also praying that the respondent be bound by the terms of its own Regulations as also their own alleged acceptance order dated 08.06.2019 which clearly stated that her retirement would be effective only w.e.f. 07.09.2019 and she was, therefore, entitled to withdraw her request for voluntary retirement.

26. For the aforesaid reasons the writ petition is entitled to succeed. Consequently, the impugned order dated 04.07.2019 rejecting the petitioner's request for withdrawal of her application for voluntary retirement is quashed. The respondents are directed to treat the petitioner to have validly withdrawn her request for voluntarily retirement. As the petitioner has continued to be in service even after 07.09.2019, the respondents are directed to grant her all consequential benefits by treating her to be in continuous service.

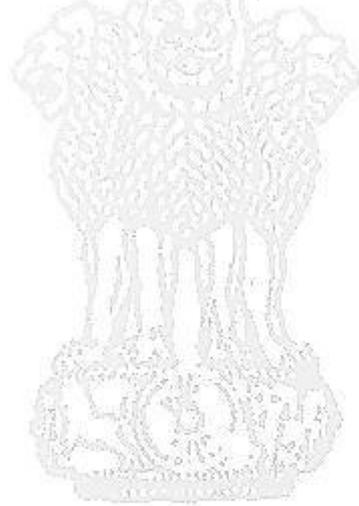
27. The writ petition is allowed in the aforesaid terms.

C.M. No.38360/2019 (stay)

28. In view of the writ petition having been allowed, this application does not survive for adjudication and is dismissed as infructuous.

SEPTEMBER 27, 2019

**(REKHA PALLI)
JUDGE**



नित्यमेव जयते