Neutral Citation Number: 2023/DHC/000213

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 08.12.2022

Judgment delivered on: 12.01.2023

\+ W.P.(C) 5511/2022 & CM APPL. 16399/2022

ASHWANI KUMAR SHARMA & ORS. ..... Petitioners

Through: Mr. Atul Chaubey, Adv.

versus

UNION OF INDIA ..... Respondent

Through: Mr. Jivesh Kumar Tiwari, Sr. Panel Counsel with Mr. Mimansak Bhardwaj and Mr. Sunny, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

ANOOP KUMAR MENDIRATTA, J

1. Petitioners invoke the writ jurisdiction under Article 226 and Article 227 of the Constitution of India for quashing of order dated December 08, 2021 passed in OA No.2781/2021 by the Central Administrative Tribunal (in short 'the Tribunal'), whereby the petition seeking following reliefs was dismissed:-

> *"a. Quash the order/clarification/directive dated 25.06.2021 and 13.07.2021 amending/interpreting the definition of employment/re-employment to include engagement on*

contractual/consultant basis and amending CPSE to include CPSE/government in clause 8(iii) of VRS 2019 as non est, arbitrary, unlawful and hence void ab initio ; and/or

b. To declare that the applicants were entitled to join - CPSE/government on consultancy/contractual basis as the same is not violation of clause 8 (iii) of VRS 2019 and such CPSEs/government must ignore the order/clarification/directive dated 25.06.2021 and 13.07.2021 while considering the application of engagement; and/or

c. Direct the respondents to inform the CPSE/government departments to consider the candidature of the applicants at par with other retirees; and/or

d. Direct the respondents to give the applicant all consequential benefits; and/or

e. Award compensation to the extent of financial loss the applicants have suffered because of the impugned order and consequential resignation/termination of contract; and/or

f. Award cost for the deficiency on the part of respondents and forcing employees into litigation; and/or

g. Pass any order/direction as may be deemed just and proper in the facts and circumstances of the case."

2. In brief, the petitioners are the retired employees from Bharat Sanchar Nigam Limited (BSNL), who opted for Voluntary Retirement Scheme, 2019 proposed by BSNL as approved by the Government of India. As per the petitioners, the VRS retirees were to be treated at *par* with the retirees after superannuation for all purposes.

The respondents published a notification dated 02.02.2021 inviting applications from retired eligible employees for engagement as Consultant at

LSA, Haryana Zone. Petitioner No.1 & 2 were engaged as Consultants by the respondent but the contract of the petitioners was terminated vide order dated 06.07.2021 and 07.07.2021 citing decision of respondent vide DOT OM No.19-I/2019/SU-I dated 25.06.2021 with reference to clarification sought by BSNL Corporate Office dated 02.03.2021.

The aforesaid memorandum issued by the Department of Telecommunications may be reproduced for ready reference:-

"Government of India
No. 19-I/2019-SU-I
Department of Telecommunications
[O/o of JS(Admin)- PSU Division]
*****

Sanchar Bhawan, New Delhi
The, 25th June, 2021

OFFICE MEMORANDUM

Sub: Regarding permission to join another CPSE on contractual basis after taking VRS from BSNL

Please refer to BSNL Corporate Officer letter no. BSNLCO-PERI/11(18)/27/2020-PERS1 dated 02.03.2021, vide which the following information had been sought:

i. Whether the term "re-employment" used in BSNL VRS-2019 is the same as employment used in consolidated guidelines of DPE on VRS/VSS; and

ii. Whether engagement in a CPSE on contractual/consultancy basis would also qualify as re-employment/employment.

2. DPE guidelines dated 20.07.2018 prohibit the VRS optees of a CPSE from taking up employment in another CPSE, and in case any VRS

optee desires to take up employment in another CPSE, such VRS optee shall have to refund the entire amount of ex-gratia received under the Scheme before joining such CPSE. There is no such distinction made between employment and re-employment in the DPE guidelines.

3. In case of engagement on contractual/consultancy basis in a CPSE or Government, the employee gets salary from the CPSE or the Government, and hence such engagement on contract or consultancy basis is a form of employment in such CPSE or the Government. Therefore, engagement in a CPSE/Government on contractual/consultancy basis would also qualify as re-employment/employment under the DPE guidelines.

Sd/-
(Jitin Bansal)
Director (PSU Affairs)
jitin.bansal@gov.in

To
CMD, BSNL/MTNL
Copy to
Member (F), DCC / Member (S), DCC / DG(T) / CGCA"

3. The petitioners are further aggrieved against the action of Department of Telecommunication, Ministry of Communications regarding engagement of Consultants in DOT Engineering Centre on short term basis as per Notification No.1-13/020/Pers./TEC Vol. II dated 08.11.2021, which expressly bars the BSNL/VRS retirees from being considered for engagement as Consultants from amongst the eligible candidates retired from Central/State Government servants.

4. The grievance of the petitioners is that the aforesaid notification debarring the VRS retirees of BSNL VRS-2019 is in violation of fundamental rights guaranteed under Article 14 and 16 of the Constitution of

India as the petitioners are eligible and qualified for being engaged as Consultants at par with other retired employees. It is also averred that the engagement as 'Consultants on short term contract basis' being deemed as 're-employment' is detrimental to public interest and deviation from government policy.

5. *Per contra*, the stand of the respondent (DOT) is that clarification regarding permission to join another CPSE on contractual basis after taking VRS from BSNL vide OM No.19-I/2019/SU-I dated 25.06.2021 was issued, on its request vide letter dated 02.03.2021. Further while examining the issue raised by BSNL, the respondent took the following points into consideration and may be beneficially reproduced:-

> *"7. That while examining the issue raised by BSNL, respondent took following points into consideration:-*
>
> *a. That the voluntary Retirement Scheme-2019 (VRS 2019) was formulated by BSNL. The BSNL VRS-2019, para 8(iii) states that "employees retired under the Scheme, shall not be eligible for re-employment in any other CPSE. Provided that in case any employee desires to take up re-employment in any CPSE, such employee shall have to refund the entire amount of ex-gratia received under the scheme to BSNL before joining such CPSE. BSNL shall remit the refunded amount to the Government.*
>
> *b. Para 13 and 14 of Department of Public Enterprises i.e. DPE consolidated guidelines on VRS dated 20.07.2018 stiputated as:-*
>
> *Para 13:- "once an employee avails himself of voluntary retirement from a CPSE, he shall not be allowed to take up employment in another CPSE. If he desires to do so, he shall have to return the VRS compensation received by him to the CPSE concerned. Where the compensation was paid out of a*

Government grant, the CPSE concerned shall remit the refunded amount to the Government".

Para 14:- "it will be the responsibility of the concerned administrative Ministry to assist those opting for VRS in getting loans from banks for pursuing gainful self-employment".

6. In nutshell, the contention of the respondent is that there is no distinction between 'employment' and 're-employment' in DPE Guidelines dated 20.07.2018 and engagement in a CPSE/government on contractual/consultancy basis would also qualify as re-employment/employment under the DPE guidelines. Consequently, the DPE guidelines prohibit VRS retirees from employment in another CPSE including consultancy/contractual engagement. The petitioners were already paid upto 125% of the last drawn salary in terms of the VRS Scheme. Further, even in case of engagement on contractual/consultancy basis in a CPSE or government, the employee gets salary from the CPSE/government and hence, the engagement attracts the bar under VRS BSNL-2019 scheme as well as DPE guidelines.

Reference has also been made to relevant Clause 8 of General Conditions in the BSNL Voluntary Retirement Scheme, 2019, which may be reproduced as under :-

"8. GENERAL CONDITIONS:

(i) The Scheme is not negotiable and shall not be subject matter of any industrial dispute.

(ii) There shall be no recruitment in BSNL against the posts falling vacant on account of voluntary retirement under the Scheme, and these posts will be abolished.

(iii) The employee(s) retired under this Scheme, shall not be eligible for Re-employment in any other CPSE.

Provided that in case any employee desires to take up re-employment in any CPSE, such employee shall have to refund the entire amount of ex-gratia received under the Scheme to BSNL before joining such CPSE. BSNL shall remit the refunded amount to the government.

(iv) All payments under the scheme and any other benefit payable to the employee(s) by BSNL shall be subject to prior settlement/re-payment in full of loans, advances, returning of property and any other dues payable by such employee(s) to BSNL.
Provided that such employee can give an option to settle the pending dues to BSNL from the amount of payment under Ex-gratia, Gratuity or other retirement benefits.

(v) In the event of the death of any employee after submission of option but before the effective date of voluntary retirement under this Scheme, the amount of Ex-gratia payment shall not be released to the family/legal heirs of deceased employee;
Provided that other retirement benefits as applicable according to the existing rules shall be paid to the family / legal heirs.

(vi) All payments made under the scheme shall be subject to deduction of tax at source as per Income Tax Act 1961, wherever applicable.

(vii) The Competent Authority shall have absolute discretion either to accept or reject the request of any employee seeking Voluntary Retirement under the Scheme without assigning any reason.

(viii) 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.

(ix) An employee who voluntarily retires under this scheme or his/her family or legal heirs shall have no claim or compensation except the benefits under the Scheme."

It is also submitted that no rights accrue to the petitioners who took VRS in 2019 as they did not retire in due course on attaining the age of superannuation for consideration for engagement on contractual/consultancy basis.

7. Having considered the respective contentions, the Tribunal noticed the fact that para 7 of the impugned Notification dated 08.11.2021 stipulated that the persons retired under BSNL/MTNL VRS-2019 Scheme would not be considered, so they need not apply. It was observed that since the petitioners

are retirees of BSNL-2019 scheme, who opted for VRS, they are not covered under the said Notification and as such, not eligible to be engaged as Consultants on contractual basis. It was further reasoned that the conditions stipulated in Notifications of 08.11.2021 and 29.11.2021 regarding engagement of Consultants from two different zones i.e. Delhi and Mumbai on contractual basis for a short term period of six months is governed by various factors such as work requirement in a particular zone and it is the discretion of the respondent whether to engage the persons who took VRS under BSNL/MTNL VRS-2019 Scheme or not. It was held that normally in such circumstances, the Tribunal or Courts do not interfere and did not find any right accrued to the petitioners who took VRS in 2019 to have been infringed in the context of engagement as Consultants. The O.A. was accordingly dismissed.

8. Learned counsel for the petitioners as well as the respondent have reiterated the contentions raised before the Tribunal and made reference to the communications and OMs referred before the learned Tribunal.

In support of the contentions, reliance has been placed by the learned counsel for the petitioners on judgment passed in ***A.K. Bindal Vs. Union of India, [*****(2003) 5 SCC 163 : 2003 SCC (L&S) 620], *S. Rami Reddy Vs. Respondent: Vice-Chairman and Managing Director, Andhra Pradesh State Irrigation Development Corporation Limited and Ors,* [2003 (4) ALD 609, 2003 (6) ALT 390], *Union Public Service Commission Vs. Girish Jayanti Lal Vaghela & Ors,* (2006) 2 SCC 482, *Unitech Limited Vs. Telangana State Industrial Infrastructure Corporation & Others,* 2021

(219) AIC 39 and ***Gouri Sankar Ghosh Hazra Vs. Hindustan Copper Ltd. & Ors.*****, Special Leave to Appeal (Civil) No.17935/2000.**

On the other hand, learned counsel for the respondent placed reliance upon the judgment passed by the Division Bench of High Court of Delhi on 06.05.2014 in **LPA 308/2013** ***Deepak Mohan Sethi Vs. BSES Rajdhani Power Ltd. & Anr.*** and connected cases.

9. The crucial question which arises for consideration is whether the engagement of VRS retirees of BSNL VRS-2019 as Consultants on purely short terms basis for a period of six months which could be extended up to maximum of six terms (six months each) or 65 years of age, whichever is earlier, from amongst the retired Central/State Government servants and retired officials of BSNL/MTNL in terms of Notification No.: 1-13/2020-Pers.lTEC VOL II dated 08.11.2021 would amount to 're-employment' as referred in Clause 8 (iii) of the Voluntary Retirement Scheme. Consequently, if the retirees of BSNL VRS-2019 could be debarred from being considered for such engagement on contractual/consultancy basis.

10. The respondent, at the outset, has vehemently disputed the maintainability of the claim preferred on behalf of the petitioners on the ground that having accepted the terms of the Voluntary Retirement Scheme-2019, the same cannot be re-agitated to claim the rights settled in terms of the VRS Scheme. Reliance has been further placed upon ***Deepak Mohan Sethi Vs. BSES Rajdhani Power Ltd. & Anr.*** and connected cases (supra).

11. In ***Deepak Mohan Sethi*** (supra), the appellants who took voluntary retirement from NDPL/BSES during the period 2003 to 2006 did not claim

or demand at the time of accepting voluntary retirement, as regards the time bound promotion scale during the period 1992 to 2000 but later on claimed the same by filing of writ petitions in 2013.

In the aforesaid background, the Division Bench in para 38 summarized the principles in relation to VRS as under:-

> *"38.* ***Summary of principles***
>
> *37.1* ***Voluntary Retirement Schemes*** *– Voluntary Retirement Schemes (VR Scheme) are ordinarily floated with a purpose of downsizing the employees. A considerable voluntary retirement amount is offered to the employees for voluntary retirement, not for doing any work or rendering any service but in lieu of their leaving the service and foregoing all their claims or rights in the same. It is a package deal of give and take. It is beneficial both to the employees as well as the employers and, therefore, known as "Golden Handshake". The main purpose of paying this amount is to bring about a complete cessation of the jural relationship between the employer and the employee.*
>
> *37.2* ***Voluntary Retirement Schemes are not negotiable*** *– The VR Schemes are purely voluntary and not negotiable.*
>
> *37.3* ***Voluntary Retirement Schemes are contractual in nature*** *–The VR Scheme is an invitation to offer. If the employee opts for VRS, it amounts to an offer which when accepted by the employer, results in a concluded contract. Both the parties are bound by the terms of the VR Scheme. It is not for the Court to rewrite the terms of the VR Scheme. The relationship between the parties to the VR Scheme is governed by the Contract Act, 1872 and not by any statute.*
>
> *37.4* ***Cessation of jural relationship*** *– Acceptance of the VRS application results in complete cessation of jural relationship between the employer and the employee, and the employee cannot agitate for any kind of his past rights or enhancement of pay scale for an earlier period, unless by reason of a statute, he becomes entitled thereto.*
>
> *37.5* ***Full and final settlement*** *–The employees opting voluntary retirement under the VR Scheme are paid compensation calculated in the manner specified in the Scheme in full and final settlement.*
>
> *37.6* ***Estoppel*** *– The employees who accept the VRS with open eyes without making any kind of protest regarding their past rights, are estopped from making a claim in the Court of Law. If a person makes a representation to*

another, on the faith of which the latter acts to his prejudice, the former cannot resile from the representation made by him. The doctrine of estoppel is a branch of the rule against assumption of inconsistent positions. One who knowingly accepts the benefit of a contract is estopped from denying the binding effect of such contract on him. This rule has to be applied to do equity.

37.7 ***Waiver*** *– Having taken advantage of VRS and having taken the amount without any demur, the employees cannot raise a claim for past rights or non-revision of pay scale. Such claims are also barred by the principle of waiver. The plea of waiver is closely connected with the plea of estoppel, the object of both being to ensure bona fides in day to day transactions.*

37.8 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.

37.9 The employees who are not satisfied with the amount offered in the VR Scheme should wait and pursue their claims without opting for VRS. However, the employees who in their wisdom thought that in the factual situation, VRS was a better option available and apply for VRS and accept the money, it is not open to them to contend that they exercised the option under any kind of compulsion.

37.10 If the employee is permitted to raise a grievance regarding his past rights or the enhancement of a pay scale from retrospective date even after opting for VRS and accepting the amount thereunder, the whole purpose of the VR Scheme would be frustrated.

37.11 ***Belated service related claims*** *- A belated service related claim is liable to be rejected on the ground of delay and laches except in the case of a continuing wrong. However, there is an exception to the above exception namely if the grievance in respect of any order or administrative decision related to or affected several others also and if the opening on the issue would affect the settled rights of third parties, then the claim would not be entertained. The VRS results in cessation of jural relationship and therefore falls in the last category of exception to an exception.*

37.12 ***Stale Claims*** *– Stale claims of failure to make out grounds for condonation of delay in seeking remedy should not be entertained by the Courts.*

37.13 The delay in filing the writ petition cannot be condoned on the ground that the employee had been making representations. Merely making

representations is not a good ground for condoning the delay unless it is a statutory representation."

It was further held that the rights claimed pertained to the period prior to the acceptance of VRS and were sought to be enforced after the ending of jural relationship, after a delay of over a period of 12 years. The petitions were accordingly dismissed with costs considering the concealment of the relevant facts of having taken the VRS.

12. On the face of record, the authority cited by the learned counsel for the respondent is clearly distinguishable as in the present case debarring of post retirement engagement on contractual/consultancy basis has been challenged at the earliest opportunity in view of misplaced interpretation given to the terms of BSNL VRS-2019. Further, the OA preferred before the Tribunal specifically claimed that no such right for contractual/consultancy appointment as offered to superannuated employees was conceded in the scheme by the BSNL VRS-2019 retirees and no such separate class was sought to be created by the respondent at the relevant time.

13. Reverting back to the facts of the present case, it may be noticed that the purpose of introducing the Voluntary Retirement Scheme also referred in the business world as "Golden Handshake" brings about a complete cessation of jural relationship between the employer and employee. The employee ceases under the employment of the undertaking and generally there is no question of agitating of any kind of his past rights arising out of the employment. The rights of both the employer and employee are strictly governed by the terms and conditions entered into the Voluntary Retirement

Scheme and nothing beyond the terms of the Scheme can adversely restrict or constraint the rights of either side.

It is well settled that normally it is not within the domain of any court to weigh the *pros and cons* of the policy or to scrutinize it or test the degree of its beneficial or equitable nature for the purpose of varying, modifying or annulling it, except whether it is arbitrary or violative of any constitutional, statutory or other provisions of law.

14 BSNL Voluntary Retirement Scheme (VRS) was one of the initiatives undertaken to strengthen BSNL to make it viable in which attractive VRS was offered to all the willing employees of BSNL, who were more than 50 years of age. A letter/message dated 23.11.2019 was issued by the Director NR BSNL Board to the employees to allay the doubts raised by some quarters that employees, who undertook VRS would be treated as a separate group and would be treated distinctly. It was therein clarified that BSNL employees retiring on VRS-2019 is neither a distinct nor a separate group but would be at par with retirement on superannuation and, as such, any doubts are devoid of any merit.

15. The objective of the VRS Scheme for BSNL employees itself notices that the Scheme aims at optimizing and right-sizing of Human Resource of BSNL by providing attractive benefits to the eligible employees opting for voluntary retirement before the normal date of superannuation. The Scheme was applicable to all the eligible employees as specified in Clause 3 (g) of the Scheme. It was also observed that for the purpose of Scheme unless the context otherwise requires, the existing Rules means "BSNL Rules in force

as on the date of Notification of this Scheme or Government of India Rules as applicable to BSNL employees". The benefits conferred to the eligible employees voluntarily retiring under the Scheme were further specified under Clause 6 of the Scheme. In the aforesaid context, Clause 8 & 9 of the Scheme, which is relevant is apt to be noticed:

> *"8. GENERAL CONDITIONS:*
>
> *(i) The Scheme is not negotiable and shall not be a subject matter of any industrial dispute.*
>
> *(ii) There shall be no recruitment in BSNL against the posts falling vacant on account of voluntary retirement under the Scheme, and these posts will be abolished.*
>
> ***(iii) The employee(s) retired under this Scheme, shall not be eligible for Reemployment in any other CPSE.***
>
> ***Provided that in case any employee desires to take up re-employment in any CPSE, such employee shall have to refund the entire amount of ex-gratia received under the Scheme to BSNL before joining such CPSE. BSNL shall remit the refunded amount to the government.***
>
> *xxxx xxxx x xxx xxxx xxxx*
>
> *9. In case of any doubt or ambiguity over the meaning/interpretation of any of the terms of this scheme, the decision of CMD BSNL shall be final and binding. "*

16. A bare perusal of Clause 8 (iii) of BSNL VRS-2019 reflects that the only restraint which is envisaged under the Voluntary Retirement Scheme-2019 is that **the employees retired under this Scheme, would not be eligible for re-employment in any other CPSE**. In the eventuality, the employee still desires to take up re-employment in any CPSE, such employee was required to refund the entire amount of ex-gratia received under the Scheme to BSNL.

It is pertinent to notice that there is no specific clause restraining the engagement as Retainer, Consultants etc. on temporary basis to which the superannuated employees of BSNL in normal course are eligible and the clause is now sought to be interpreted as placing bar for engagement even on consultancy/contractual basis.

17. It has been held in ***Dinesh Chandra Sangma Vs. State of Assam*, AIR 1978 Supreme Court 17** in para 12 that in many employments, whether of Private Limited Companies or Public Companies, contracts of employments are executed containing a term for termination of employment by notice. Such cases of contractual employment are different from those of government employees whose employment is a matter of status and not of ordinary contract. The conditions of service of a government servant are governed by statutes or statutory rules made under Article 309 of the Constitution of India.

18. It may be noticed that while working as a contractual employee, the petitioners herein were not to be governed by the relevant service rules applicable to the regular incumbents and consequently the normal incidents of service like earned leave, benefits of provident fund are not applicable to a contractual employee. Similarly, neither a contractual employee can be placed under suspension entitling him to subsistence allowance, or any penalty inflicted as in case of a government servant, nor is the contractual employee entitled to any protection under Article 309 of Constitution of India. Thus, there is a basic distinction when an employee is appointed on contractual basis vis-à-vis a regular employment under the government

which is a matter of status and not a contract and is governed by the provisions of Article 309 and 311 of the Constitution of India.

19. The petitioners by accepting the BSNL VRS-2019, cannot be deemed to have waived or surrendered or abrogated their rights as available to any other BSNL employee on normal superannuation except to the extent specified in Voluntary Retirement Scheme. It may further be noticed that there appears to be a clear clarification/understanding issued vide letter dated 23.11.2019 by the Director, BSNL Board that BSNL employees retiring on VRS (VRS-2019) is neither distinct nor a separate group but will be at par with retirement on superannuation.

The theory of legitimate expectation can be validly invoked by the petitioners being the optees of BSNL VRS-2019, in terms of letter dated 23.11.2019 issued by Director, BSNL Board. The promise extended on behalf of BSNL vide aforesaid letter cannot be considered to be unconstitutional. The petitioners have successfully raised a case of discrimination being made between the employees regularly retiring from BSNL and those who accepted the Voluntary Retirement under BSNL VRS-2019 despite assurance in terms of letter dated 23.11.2019 referred to above. The expectation of employment on contractual/consultancy basis by the VRS optees and for being treated at par with the employees who superannuate on reaching the age of retirement, appears to be a legitimate expectation. A distinction appears to have been incorrectly carved out by the respondent by debarring such VRS retirees from being engaged on contractual/consultancy basis *vis-a-vis* employees superannuating in routine course from BSNL/DOT in violation of Articles 14 and 16 of the Constitution of India.

The respondent is estopped from unilaterally changing the terms of VRS-2019 against the express assurance given by the BSNL to the employees at the time of introducing the Voluntary Retirement Scheme.

20. The only restriction placed was for the purpose of re-employment in terms of VRS Scheme and it did not include the engagement on contractual/consultancy basis in terms of the Policy Guidelines now sought to be relied by the respondent.

An effort to further classify the optees of BSNL VRS-2019 as distinct from those superannuating in normal course, would be a clear violation of Articles 14 and 16 of the Constitution of India. The clarification dated 23.11.2019 did not reflect, if any embargo or restriction was contemplated to be imposed in respect of the retirees under BSNL VRS-2019 pertaining to engagement on short term contractual basis. There appears to be clear distinction between 're-employment' and 'contractual employment' and no unilateral change could be imposed on the retirees under BSNL VRS-2019.

It may also be noticed that the engagement on contractual/consultancy basis is not a regular employment and is generally notified to meet out the exigencies till the regular recruitment is made and is governed by the contract itself. Further, the engagement of the petitioners as Consultants on contractual basis could have been equally beneficial to the organization considering their vast experience within the undertaking.

21. The guidelines for engaging Consultants in Tele-Communication Engineering Centre (TEC) issued vide Notification No.: 1-13/2020-Pers.lTEC VOL II dated 08.11.2021 by the Government of India, Ministry of

Communications, Department of Telecommunications, Telecommunication Engineering Centre (TEC) highlights the conditions mentioned in DoT OM No.1-50(1)/2018-Estt dated 10.09.2020 which has been referred by the respondent.

In accordance with the aforesaid OM dated 10.09.2020, retired persons shall be appointed/engaged on a short term contract basis initially for a period of six months, which can be further extended based on his/her performance up to a maximum of six terms (six months each) or 65 years of age, whichever is earlier. Further the candidates should not be more than 65 years of age and the engagement of retired personnel on short terms contract basis can be terminated by either of the party with prior notice of 30 days. The restrictions regarding engagement of VRS employees have been further reflected under Clause 1.2 and clause 3.1 referring to the 'eligibility'. The eligibility as referred in Clause 3.1 bars the persons retired under BSNL/MTNL VRS-2019. Clause 13 further provides that TEC reserves the right to review the guidelines at any time and the guidelines, so reviewed, will be placed in the public domain preferably through the website of TEC. Further, the Head of TEC or his appointed/nominal representative shall have the power to remove any difficulty in the way of implementation of guidelines.

22. We are of the considered view that any guidelines/notification issued by the Competent Authority after the VRS Scheme-2019 was finalized and accepted, could not have restricted the rights of the employees opting for BSNL VRS-2019 beyond Clause 8 (iii) of the VRS Scheme which only provided the restriction regarding 're-employment' in any other CPSE.

The expression 're-employed' normally has been assigned to mean, taken back into service or taken into service. It should not be equated with a 'contract of service' as in that eventuality the term 'contractual employment' would lose its significance and lead to anomalous results. The same would be also in contrast to the purpose for which the BSNL Voluntary Retirement Scheme-2019 was formulated. The purpose of the same was not to debar the optees of the Scheme from the contractual or consultancy services in the absence of any specific clause in this regard.

23. A mere reference to the notification of post advertised by BSNL reflects that the appointment is purely on *adhoc* basis and is contractual which is to expire by efflux of time. The person holding such post, as such, does not have any right to continue in the post on efflux of time unless specifically extended. The employment also does not confer any benefits as in case of regularly appointed employees and neither are they governed under the rules framed under Article 309 of the Constitution of India nor entitled to any protection under Article 311 of the Constitution of India.

24. The Tribunal failed to properly weigh the aforesaid aspects and consider the legal issues in proper perspective. For the reasons detailed hereinabove, the order passed by the Tribunal is liable to be set aside.

25. The resultant position which emerges is that the engagement of petitioners who are BSNL VRS-2019 retirees in any CPSE/Government department on contractual/consultancy basis, for which the retired employees on superannuation in due course are eligible for consideration, is not in violation of Clause 8 (iii) of BSNL VRS-2019.

It is accordingly held that clarification/directive dated 25.06.2021 interpreting the definition of employment/re-employment to include engagement on contractual/consultant basis is contrary to the terms and conditions of BSNL VRS-2019. The applicants as such are eligible to be considered for appointment on consultancy/contractual basis. The petition is accordingly allowed to aforesaid extent. Pending application, if any, also stands disposed of. No order as to costs.

(ANOOP KUMAR MENDIRATTA)
JUDGE

(V. KAMESWAR RAO)
JUDGE

JANUARY 12, 2023*/sd*