Points for appeal

1. Denial of notice period was not considered. It was contrary to DPE circular, my appointment order and many verdicts. It forms the core of my case for reinstatement

2.SAIL caused my dismissal based on a time barred claim. They have to compensate me for ruining my career

3. The undertaking obtained from me was not valid as per contract act section 27 (restraint of trade), article 19(1)(g) (equality for govt job). Such undertakings have been quashed more than 40 times by various courts.

4.No claim is payable if no loss suffered due to breach of contract as per contract act section 73

5. SAIL gained 5 crores by my VRS. Still they wrote to HAL and caused my dismissal. They caused me to spend 10 lakhs fighting many cases. They are bound to compensate me

6. SAIL denied my mediclaim based on my gainful employment. No approval was taken for this. No opportunity was given to me. Such a condition does not exist in mediclaim scheme or VRS scheme. VRS scheme is given so that people can find other jobs. Such a punishment for gainful employment is contrary to the very purpose of VRS.
7. It was done only on me, which is discrimination. I know many people working with me getting Medicalim now. V Srinivasan, Gopalakrishman
8.Mr Bakthavatsalam took VRS from SAIL and working in NIT Trichy (Govt job) is getting mediclaim

Violation of LAW by SAIL

1. Contract act section 27 - “Agreement in restraint of trade, void.—Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. —Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void."
2. Contract act section 2g - “An agreement not enforceable by law is said to be void”
3. Contract act section 73,75 - “73. compensation for loss or damage caused by breach of contract.—When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him . 75. Party rightfully rescinding contract, entitled to compensation.—A person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract.
4. Fundamental right 14,16(1),19(1)(g), Reasonable Restriction 19(6) 16.Equality of opportunity in matters of public employment. 16 (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State 19(1))(G) Protection of certain rights regarding freedom of speech etc (g) to practise any profession, or to carry on any occupation, trade or business
5. Fundamental right 51A: Fundamental duties It shall be the duty of every citizen of India (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement
6. Re-employment - immediately only is covered for refund - Karnataka High Court held in my own case
7. Limitation act - The Limitation Act, 1963, PART II - Suits relating to Contracts, in THE SCHEDULE: PERIODS OF LIMITATION [Sections 2 (j) and 3] “27. DESCRIPTION OF SUIT : For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency. PERIOD OF LIMITATION:Three years. TIME FROM WHICH PERIOD BEGINS TO RUN : When the time specified arrives or the contingency happens”.
8. Steel Authority of India (Rourkela Steel Plant) allowed and gave “no objection” to Mr. Joydeb Nayak to join another Govt Job right after VRS in 2002 which proves that the “Ban/Refund” was only a formality and empty ritual.

9. In M/S P.E.C. Ltd. vs Mr. Jai Bhagwan, Hon'ble Delhi High Court did not find fault with an employee joining another Govt job right after leaving on VRS in 2001.
10. SAIL introduced VRS only to reduce the mounting losses is proved by the below WP (in the own words of SAIL. SSP)

The verdict of the Madras High Court https://indiankanoon.org/doc/1183605/ in Steel Plant Employees Union vs Steel Authority Of India Limited on 28 March, 2002 mentions the reason for VRS : *"5….Due to globalization, intense international competition and the general downtrend in the steel industry worldwide, SAIL as a whole and especially Salem Steel Plant has been incurring losses for the past few years. The loss incurred by the company since 1998-99 as on 31-3-2001 is Rs.4023 crores. The cumulative loss for this financial year upto 31-1 2-2001 has been provisionally assessed at Rs.1290/- crores. Salem Steel Plant (SSP) has so far incurred a cumulative loss of Rs.633.69 crores till 31-3-2001 and has incurred a loss of Rs.112.00 crores in this financial year alone till 31-12-2001. The company is, therefore, facing acute financial crisis and has decided to undergo business and financial restructuring in order to be competitive and viable."*

Salient points

1. SC has held DPE circulars can be modified only if approved by board with valid reasons and informed to DPE, which has never been done by SAIL (RTI - proof)
2. SC 3 judge bench has held all statutory dues have to be paid even if not mentioned in VRS circular. Notice period salary is statutory-mentioned in appointment order
3. Number of courts have held that notice period salary is payable on VRS as per DPE circular, whether mentioned in VRS scheme or not
4. VRS is also termination as held by the courts, as it is against invitation
5. SAIL breached the employment contract and terminated without notice period salary, makes the termination void-ab-initio
6. The CDA rule of SAIL clearly holds that any termination has to be as per appointment order only
7. SAIL can not restrict my future employment after termination-Contract act 27. Even partial conditions (like present case) is invalid as held by SC many times
8. SAIL can not prevent my future employment in another unconnected PSU-Article 19(1)g, that too in open competition (which is allowed as per Hyderabad Div Bench).

9. SAIL can not ask for any refund as they have done nothing to get me a new job
10. SAIL selfishly gave ex-gratia to save on future salary expenses in the long run. It was not a loan. SAIL saved Rs 2 crores in 16 years due to my VRS. Vacancy not filled.
11. SAIL selectively followed DPE guidelines (refund condition), but denied beneficial aspects like notice period salary. They forcefully withheld EL encashment and gratuity without any approval of DPE which is also a violation of Gratuity act
12. VRS was not as per CDA rules. It was as per circular and it was given due to financial problems of SAIL. There was threat of retrenchment held in DPE circular
13. Ex-gratia refund makes me eligible for reinstatement with back wages as held by SC
14. Claim of SAIL was time barred as per limitation act
15. No loss suffered by SAIL. Can not demand any money as per contract act section 73
16. No claim is possible by employee or employer after cessation of employee-employer relationship. Any claim (other than statutory), even though promised in VRS scheme is not valid after termination of relationship as per High Court
17. Any kind of promise or bond or agreement which operates after termination and which restrains the ex-employee in future is not valid
18. I never refused to repay. SAIL wanted TDS also, which was never paid to me
19. Instead of proving the claim in court SAIL gave evidence against me in HAL and caused my dismissal, which is nothing but arm twisting and blackmail
20. Cause of action disappeared (with dismissal). Claim for refund is void
21. I asked for release within 10 days as it was the last day of the scheme. Release later than that date was not possible. I was forced to apply and ask for release on 31-8-02
22. The DPE circular enforcing the refund condition only from a particular date is illegal as held by SC (dividing the homogenous retirees based on an arbitrary date)

Denial of medical insurance

1. Post retirement Medical care is a fundamental right as per SC verdict
2. The question of gainful employment or refund is not posed to anyone else. So it is discriminatory
3. VRS is given so that the employees find jobs elsewhere thereby saving considerable money to SAIL
4. Every VRS optee is working somewhere or other and this question is not posed to anyone in the Mediclaim Form
5. There is no such precondition in the Mediclaim Scheme

6. There is no such condition in the VRS circular of 2002
7. The Employee was not given an opportunity of hearing thus violating the principle of natural justice
8. It is discrimination as only one employee was denied Mediclaim due to “Gainful Employment”
9. This denial of Mediclaim was without any approval and not as per the rules. The dealing officer had no power to deny Mediclaim to anybody without approval
10. The action is arbitrary as it was not as per any rule

Legal Arguments

In 2002 most PSU were making heavy loss. SAIL was also making heavy loss. Salem steel plant was offered for sale and advertisement was issued and bids were received. All feared loss of job in private owner.

Govt announced budgetary support for VRS scheme to reduce manpower cost in the long run. IT was not a loan to be repaid. There was clear threat of retrenchment in the circular.

SAIL, which was supposed to follow the scheme fully, modified it by manipulation, without approval from the govt. SAIL ignored notice period salary and withheld gratuity and leave encashment (5 lakhs) in 3 years forcible deposit.

I was forced to sign the VRS application and mention 30 Aug 2002 as it was the last day of the scheme. The DPE circular allowed even instantaneous release provided notice period salary is paid, which was denied illegally to me.

After VRS I was working in private. After 5 years I applied to HAL clearly mentioning my VRS. I was selected and joined. SAIL wrote many letters and specifically wrote to CVO forcing HAL to dismiss me. SAIL gave evidence against me and caused my dismissal for an offence unconnected with my employment.

SAIL must have initiated civil recovery suite, but instead wrote to HAL, to blackmail me. The recovery suite was time barred as per limitation act. The claim itself is illegal as per contract act section 27. It is a violation of my fundamental right to profession as per 19(1)g of constitution. No employer can restrict future jobs of employees after termination of relationship.

What I signed in 2002 is preprinted. No bargaining power was available to me.

SAIL saved 2 crores in 14 years. I was prepared to refund Ex gratia received. SAIL declined asking for entire money including TDS.

There was no time period mentioned for refund in the VRS circular. Not even a witness sign is there. It is not at all a bond cannot be enforced after separation. It is not signed by both parties to become a contract.

I don't want back wages from 2002. I want back wages from date of dismissal (which was caused by SAIL). I want Rs. 10 lakhs compensation as SAIL forced me to go upto supreme court.

Arul Selvan Vs SAIL --- Citations

SAIL introduced VRS only to reduce the mounting losses is proved by the below WP (in the own words of SAIL. SSP)

> The verdict of the Madras High Court https://indiankanoon.org/doc/1183605/ in Steel Plant Employees Union vs Steel Authority Of India Limited on 28 March, 2002 mentions the reason for VRS : *"5….Due to globalization, intense international competition and the general downtrend in the steel industry worldwide, SAIL as a whole and especially Salem Steel Plant has been incurring losses for the past few years. The loss incurred by the company since 1998-99 as on 31-3-2001 is Rs.4023 crores. The cumulative loss for thi35s financial year upto 31-1 2-2001 has been provisionally assessed at Rs.1290/- crores. Salem Steel Plant (SSP) has so far incurred a cumulative loss of Rs.633.69 crores till 31-3-2001 and has incurred a loss of Rs.112.00 crores in this financial year alone till 31-12-2001. The* ***company is, therefore, facing acute financial crisis and has decided to undergo business and financial restructuring in order to be competitive and viable.****"*

On 25 January 2019, Hon'ble Delhi High Court in Independent News Service Pvt. s Sucherita Kukreti has held that any ban on future employment after termination is violative of Article 21 and Article 51 A holding

> *(L) The ambit of Article 21 of the Constitution of India ensuring Protection of Life and Personal Liberty to all persons has over the years been expanding. Personal Liberty would include* ***liberty to practice a vocation or profession and being not deprived thereof, notwithstanding any agreement to the contrary*** *and which agreement Section 27 of the Contract Act declares as void.*
>
> *(M) Similarly, Article 51A of the Constitution of India constitutes a duty of every citizen to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievements. The defendant, as a citizen of India,* ***cannot be restrained*** *from striving towards individual excellence in the profession/vocation of her choice.*

Ex-gratia refund makes the employee eligible for reinstatement

A number of Court verdicts have allowed reinstatement if the ex-gratia was refunded. Gujarat High Court, Union Bank Of India vs Shivprakash P. Malhotra on 18 September, 2003 Bench: B Shethna, R R Tripathi in https://indiankanoon.org/doc/517612/

> *"The respondent petitioner shall now repay the amount which he had received by way of ex-gratia payment with interest at the rate of 9 % on it till 31.10.2003. The Bank shall reinstate the respondent latest by 1.11.2003."*

Supreme Court Review Petition (civil) 53 of 2003 Appeal (civil) 896 of 2002 PETITIONER: Punjab National Bank RESPONDENT: Virender Kumar Goel & Ors. DATE OF JUDGMENT: 21/01/2004. https://indiankanoon.org/doc/1049590/

> *"The applicants shall be reinstated into their posts with continuity in service, back wages and all consequential benefits as are entitled to them under the Law. They shall, however, refund the entire amount deposited into their bank accounts with interest accrued, if any, to the bank. Full refund of the amount by the applicants would be the condition precedent for reinstatement. Mr. Mukul Rohtagi learned ASG submits that applying the principle of 'No Work No Pay', back wages should not be allowed to them on their reinstatement. We are unable to accept this contention. The applicants were* ***out of their jobs for no fault of theirs****."*

Payment of statutory due which was not mentioned in VRS Circular

http://supremecourtofindia.nic.in/FileServer/2016-10-01_1475296422.pdf

IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO. 3053 OF 2008 A. Satyanarayana Reddy and Others Versus Presiding Officer, Labour Court , 3 judge constitutional bench has held

> *16…… We think it appropriate to say that though there is cessation of relationship between the employee and the employer in VRS but if it does not cover the past dues like lay-off compensation, subsistence allowance, etc., the workman would be entitled to approach the Labour Court under Section 33C(2) of the Act. If it is specifically covered, or the language of VRS would show that it covers the claim under the scheme, no forum will have any jurisdiction.*

Notice period salary is a statutory right as per the Personnel Manual of SAIL which holds :

> *"The following will not amount to a penalty within the meaning of this rule*
> *vi.Termination of service*
> *(a)of an employee appointed on probation, during or at the end of the period of probation,* ***in accordance with the terms of appointment****"*

As per the above verdict, SAIL can not say that notice period salary was not paid as it was not mentioned in the VRS circular. SAIL has to show some circular or approval which has the effect of overruling appointment order, SAIL rules and DPE circulars.

Denial of Notice period Salary makes the termination void ab initio

The Supreme Court in Prabudhayal Birari Vs M.P.Rajya Nagarik Aspurti Nigam, 22-8-2000, 2000(4) ESC 2465 (SC), AIR 2000 SC 3058 http://indiankanoon.org/doc/716984/ ordered the employer to reinstate the employee with back wages instead of paying the notice period salary.

"As per the terms of the appointment, the services of the appellant could be terminated on one month's notice or on payment of one month's salary in lieu of notice by either side.
...the order of termination of services of the appellant was made in contravention of the specific conditions mentioned in the very appointment order, in our view, the trial court was right and justified in decreeing the suit of the appellant"

The Supreme court in Smt. Kusum Gupta Alias Kusum ... vs Haryana State Small Industries ... on 31 July, 1986 Equivalent citations: AIR 1986 SC 1905, (1987) ILLJ 219 SC, 1986 (2) SCALE 207 http://indiankanoon.org/doc/39880/ reinstated

….It is admitted that the "one month's pay plus allowances in lieu of notice period" was never paid to the appellant. She filed a suit questioning the order terminating her services on the principal ground that she had not been paid "one month's pay plus allowances in lieu of the notice period" simultaneously with the order terminating her services.
3.2…. The bye-law is clear that the services of an employee could only be terminated by giving one month's notice or, in lieu of notice, by paying the salary, etc. for the period of one month…..We have no hesitation in allowing this appeal.

The Supreme Court in Indian in Telephone Industries & Anr vs Prabhakar H. Manjuare & Anr on 30 October, 2002 in Special Leave Petition (civil) 15054-15055 of 1998 http://indiankanoon.org/doc/1063572/ has held that the employer can not pay the notice period salary later to make the termination valid. The failure to pay the notice period salary can not be rectified by paying it later. The employer has to reinstate the employee with back wages as the termination itself was null and void just because the notice period salary was not paid. This judgment mentions a number of constitutional bench orders to come to this conclusion.

"The National industrial Tribunal by two separate orders, both dated 1.9.1987 held that the orders of dismissal were invalid for non-compliance of the provisions of Section 33(2)(b) of the Act in that wages for one month were not paid"

http://indiankanoon.org/doc/1565755/_Patna High Court
Rabindra Nath Mishra vs Presiding Officer,Central Govt on 15 January, 2009

It is well settled by the Hon'ble Supreme Court as well as a Division bench decision of this Court that ***non-compliance of the period of notice or salary in lieu of notice*** *goes to the root of the matter and the order of termination exercised has to be set aside. In this regard reference is made to the case of Rana Abhay Singh vrs. The Hon'ble High Court of Judicature at Patna reported in PLJR 2006(3) 400. Paragraphs 33 to 36 of the decision are relevant for this case which are reproduced herein 33. In Vijoy Narain Jha vs. The State of Bihar & Ors., 2000 (1) PLJR 1016, a Division Bench of this Court*

while interpreting the same provision of Rule 74(b) (ii) of the Bihar Code, has held, that the said ***provisions are mandatory and non-observance and non-implementation of the said provisions shall violate and vitiate the order of compulsory retirement against the Government servant.***

34. A detailed discussion in similar case against the Judicial Officer has been, succinctly, highlighted in the said decision in paragraph 12. The Division Bench has, also, considered and relied on the following decision of the Hon'ble Apex Court Chief General Manager, State Bank of India vs. Suresh Chandra Behera (1995) 3 SCC 608 and Madan Mohan Choudhary vs. State of Bihar, AIR 1999 SC 1018. This decision was rendered by the Division Bench on a similar point in a writ petition, on 14.12.1999, whereas, in Krishna Mohan Srivastava vs. The State of Bihar, 2000 (1) PLJR 649, was decided, on 17.12.1999, on a principle as to whether for non-compliance of the said provisions of Rule 74 (b) (ii) of the Bihar Code, order of compulsory retirement shall stand vitiated or not, the Division Bench has agreed that it ***shall vitiate*** *...*

35. In a similar matter, in the case of L.C.Bawa vs. V.K. Kapoor and Anr., 1987 LAB. I.C. 1878, a Division Bench of the Delhi High Court had occasion to interpret and deal with the similar rule provision contained in the Fundamental Rules, Rule 56(j), read with Article 309 of the Constitution of India. It has been held that Rule 56(j) of the Fundamental Rules makes it clear that the order of premature- compulsory retirement of a Government servant can be passed ***only by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice****, which means that the giving of notice has to be at least three months prior to the passing of such an order or in the alternative in lieu of such notice three months' pay and allowances have to be paid to the official sought to be retired prematurely either prior to the passing of such an order or at least simultaneously with the passing of such an order and if this is not done, the order of premature compulsory retirement* ***would be invalid.*** *...*

36. Even the subsequent rectification of the cheque by putting a date would not cure the defect because the ***payment of three months' pay and allowances is mandated to be made before or simultaneously with the passing of the order of premature compulsory retirement****. This view has been held upon consideration of several decisions including some decisions of the Hon'ble Apex Court, as noticed by us from the observations made in paragraphs-4 and 5 of the judgment. In view of the stated position in law the Court is constrained to come to the conclusion that the order of termination of the petitioner contained in annexure-6 dated 31st August, 1987 was not in consonance with the law …..*

Notice period salary has to be paid on VRS by any PSU

Kerala High Court S.N.Murthy Alias S.Narasimha ... vs Hindustan Newsprint Ltd. on 16 February, 2009 http://indiankanoon.org/doc/343570/ made it clear that a PSU (similar to SAIL) has to follow the DPE guidelines. The case happened in 2002, the same year as VRS taken by the Applicant.

> *11. With regard to the 1st relief prayed for, i.e., three months' 'notice pay' payable under Voluntary Retirement Scheme, the stand of the respondent Company is that the petitioner is not at all eligible for the same, as the acceptance of the application of the petitioner for the VRS benefit was under a particular circumstance, pursuant to the mandate in Exhibit P1 verdict. The respondent also placed reliance on Exhibit R1(r) clarification issued by the Government of India, Ministry of Industry, Department of Public Enterprises, highlighting the circumstances under which the three months' 'notice pay' is made payable. Under Clause No.3 of the said proceedings, as to whether notice pay should be disbursed in all cases, it has been clarified that if the application of the employee for Voluntary Retirement is accepted instantaneously and payment is arranged by the management on the same day, the concerned individual would be entitled to payment of ex- gratia as per the norms specified in the Official Memorandum* ***along with the notice pay.***
>
> *15. From the above, it is observed and declared that the petitioner will be entitled to get only the benefit of* ***three months' notice pay*** *under the Voluntary Retirement Scheme*

Andhra High Court in Hindustan Shipyard Limited, ... vs Susarla Nagabhushana Rao And Ors. on 21 October, 1997 Equivalent citations: 1998 (1) ALD 195, 1997 (6) ALT 514 http://indiankanoon.org/doc/20285/ has held that notice period salary has to be paid on VRS. This case also is regarding a PSU similar to SAIL. This court has clarified that VRS is also termination and so, the terms of appointment can not be violated

> *4….. ".... the voluntary retirement itself is, in fact,* ***a termination by the employer*** *and this is the real reason why the scheme itself provides for payment of notice pay which amounts to payment in lieu of notice that the employer has to give for putting an end to the contract of employment. The contract gets terminated only when the employer accepts the request made by the employee; and thereafter,* ***if the employer does not allow the employee to work for the notice period, the salary has to be paid in lieu of that notice period."***
>
> *6…...The* ***requirement of notice is an inducement to the employee to seek voluntary retirement.*** *The salary for one month or three months depending upon the cadre of the employee, was required to be paid*

The SC has held that Notice period salary is to be paid on VRS in Vice Chairman & Managing Director vs R. Varaprasad And Others on 22 May, 2003
http://indiankanoon.org/doc/32226972/

> *….if an application of an employee opting for **voluntary retirement** is accepted instantaneously and the payment is arranged by the Management on the same day the concerned individual would be **entitled** to payment of ex-gratia alone **with the notice period pay**. It is also clarified that in the circumstances where the Management takes time to take a decision about the acceptance of an application submitted by the employee for the VRS and allows the notice period to lapse or the individual concerned has drawn full salary during the notice period served by him, notice period pay would not be admissible as the individual has drawn the salary during the notice period.*
>
> *……Even while dealing with the cases of VRS Phase I, the employees were **given notice pay** for two months 15 days and salary for 15 days.*
>
> *……no separate notice was required to be given and if an employee had drawn the salary during the notice period, he would not be entitled to claim pay for notice period again.*

Orissa High Court Rabindranath Sahoo vs Chairman And Managing Director ... on 11 April, 2018 HIGH COURT OF ORISSA : CUTTACK https://indiankanoon.org/doc/168459585/

> *14. ..... It is also admitted fact that the petitioners are governed under the VRS guidelines issued by the Department of Public Enterprises.*
>
> *29. So far as one month salary of the petitioners as per guidelines is concerned, the petitioners have not received the same in lieu of three months notice period. So, they are **entitled to one month salary while taking VRS**.*
>
> *31. ....Besides, they are also entitled to one month salary while being superannuated from the job. The point is answered accordingly*
>
> *37. .... So, the acceptance of VRS cannot shut up their claim for ever, particularly when they got VRS after necessary guidelines are already in force. Thus, the contention of the learned counsel for the contesting opposite parties to refuse the further entitlement of the petitioners is quite infallible.*
>
> *38..... II. It is also observed that the petitioners are entitled to one month salary as per the guidelines in addition to the above benefit and the Court direct so.*

Violation of Article 19(1)g by SAIL

legalcrystal.com/736656 Maganlal Rambhai Gandhi Vs. Ambica Mills Ltd., Ahmedabad AIR1964 Guj 215; (1963)IILLJ522Guj

> *13. In my opinion, under Article 19(1)(g) of the Constitution, every citizen has the right which is unqualified except by Clauses (2) to (6) of that Article, to*

practice any profession or to carry any occupation, trade or business in any manner he likes in any part of India. The issue of an injunction restraining a person from serving any person or any firm except that of the plaintiff during a certain period would clearly offend the right given by Article 19 of the Constitution.

https://indiankanoon.org/doc/165273/ Sodan Singh Etc. Etc vs New Delhi Municipal Committee & ... on 30 August, 1989 Equivalent citations: 1989 AIR 1988, 1989 SCR (3)1038

25….. The guarantee under Article 19(1)(g) extends to practice any profession, or to carry on any occupation, trade or business. 'Profession' means an occupation carried on by a person by virtue of his personal and specialised qualifications, training or skill. The word 'Occupation' has a wide meaning such as any regular work, profession, job, principal activity, ***employment****, business or a calling in which an individual is engaged.*

As per the above two verdicts, the condition mentioned in the VRS application stating "I also understand that I will not be allowed to take up employment in any other PSU or Govt organisation in future" violates the constitution.

Supreme Court of India Olga Tellis & Ors vs Bombay Municipal Corporation & ... on 10 July, 1985 , 1986 AIR 180, 1985 SCR Supl. (2) 51, https://indiankanoon.org/doc/709776/, a **seven judge constitutional bench** held

"No individual can barter away the freedoms conferred upon him by the Constitution. A concession made by him in a proceeding, whether under a mistake of law or otherwise, that he does not possess or will not enforce any particular fundamental right, cannot create an estoppel against him in that or any subsequent proceeding. Such a concession, if enforced, would defeat the purpose of the Constitution. Were the argument of estoppel valid, an all-powerful state could easily tempt an individual to forego his precious personal freedoms on promise of transitory, ***immediate benefits****."*

The above verdict makes it clear that the undertaking obtained by SAIL from me on the garb of giving Ex-gratia is void as it is violating my fundamental right as per article 19(1)g of the constitution.

Delhi High Court in Desiccant Rotors International vs Bappaditya Sarkar & Anr in 2009 held *"14. The stance of Indian courts on the question of restraint on trade is unmistakably clear. There are no two ways about the fact that the approach towards a negative covenant subsisting during the course of employment is completely different from the approach which would be taken towards the applicability of a* ***negative covenant post-employment duration****. 15…… It is this attempt to protect themselves from competition which clashes with the right of the employees*

*to seek employment where so ever they choose and in a clash like this, it is clear that the **right of livelihood of the latter must prevail**. ….. Such an act cannot be allowed in view of the crystal clear law laid on this issue."*

Ban on future employment in any govt company in future has been held illegal. https://indiankanoon.org/doc/114740127/ - Supreme Court held :Krishan Chander Nayar vs The Chairman, Central Tractor ... on 23 August, 1961 Equivalent citations: AIR 1962 SC 602, (1963) ILLJ 661 SC, 1962 3 SCR 187 Author: Sinha Bench: B Sinha, A Sarkar, K Dasgupta, N R Ayyangar, S Das

> *11. .... But an arbitrary imposition of a ban against the employment of a certain person, under the Government would certainly amount to denial of right of equal opportunity of employment, guaranteed under Article 16(1) of the Constitution. ... We are, therefore, not in a position to say that the reason for the ban, whatever its nature, had a just relation to the question of his suitability for employment or appointment under the Government.*
>
> *12. It is clear, therefore, that the petitioner has been deprived of his constitutional right of equality of opportunity in matters of employment of appointment to any office under the State, contained in Article 16(1) of the Constitution. So long as the ban subsists, any application made by the petitioner for employment under the State is bound to be treated as waste-paper. The fundamental right guaranteed by the Constitution is not only to make an application for a post under the Government but the further right to be considered on merits for the post for which an application has been made. Of course, the right does not extend to being actually appointed to the post for which an application may have been made. The 'ban' complained of apparently is against his being considered on merits. It is a ban which deprives him of that guaranteed right. The inference is clear that the petitioner has not been fairly treated.*

https://www.casemine.com/judgement/in/5ac5e2d64a932619d902de6c - Orissa High court has used the above verdict

No Rights to SAIL after separation on VRS as per Contract act section 27

The condition of ban of future employment in another PSU after VRS coupled with undertaking to refund the VRS Ex-gratia have been repeatedly quashed by various courts. Only some important verdicts are mentioned below

Verdicts specific to VRS

The Hon'ble Madras High Court dealing with arrears of pay revision after VRS in The General Manager vs N.Karthikeyan In Writ Appeal on 17 March, 2017 https://indiankanoon.org/doc/157162291/ held

> *16. The fundamental reciprocal obligations between the employees and the employers will become enforceable so long as the relationship of employer and employee subsists. Once that relationship comes to an end, **no further obligations** other than those that are thrust by a Statute can be enforced.*

So, the demand for ex-gratia, based on a circular, without any force of law can not be enforced.

In https://indiankanoon.org/doc/1809858/ M/S P.E.C. Ltd. vs Mr.Jai Bhagwan in Delhi High Court, the court considered a situation in which person who joined another Govt department even before date of release on VRS from a PSU in 2001. The court held

> *2....Appellant company announced voluntary retirement scheme 1989/2001. On 15.1.2001, respondent applied under the said scheme for voluntary retirement. ....*
>
> *7. It has been argued by learned counsel for the appellant that respondent is not entitled to the benefits under Voluntary Retirement Scheme, as the respondent was in the employment of Haryana Government and this fact has been concealed and withheld from the appellant.*
>
> *9. It is further contended that irrespective of the fact, whether respondent has received double benefit or not from two different departments, appellant is entitled to a decree for recovery of the amount on the ground that the payment received by the respondent under the VRS, is due to respondent's playing a fraud upon the appellant and also due to breach of rules applicable to its employment...*
>
> *23..... Thus, it is not the case of the appellant company that respondent attended another employment during period he remained in service of appellant company. It is also admitted case of the appellant that respondent applied for VRS and he was granted VRS....*
>
> *24. Under the circumstances, I do not find any infirmity or ambiguity in the impugned judgment of trial court and the present appeal is not maintainable. The appeal is accordingly dismissed.*

The above case is almost the same as my case. The employer on learning that an employee joined another Govt company immediately after obtaining VRS approached the court. The previous employer did not approach the present employer as SAIL approached HAL. The court did not grant any relief to the PSU. The court saw that the employee did not derive any double benefit from both employers for the same period and declined any relief. In my case, I joined another PSU after 5 years of VRS and I did not derive any undue benefit.

MP High Court : A VRS optee from SAIL has joined another Govt Company immediately after VRS in 1985. When one person can join another Govt company just after VRS, action by SAIL demanding refund from one person and allowing another to join without any claim is violative of Article 16. legalcrystal.com/504217 in Shri Prakash Mishra Vs Sports Authority of India in MP High Court in 1989

*2. From what has come on record, it is established that the petitioner was working as Resident Audit Officer at the **Bhilai Steel Plant** in the year 1985 when he appeared at an interview held on 14th April 1985 for the post of Administrative Officer at LNCPE, Gwalior....*

3. Admittedly, the petitioner assumed charge of the post on 2nd August 1985 and it is not disputed that this he did after taking voluntary retirement from the post he earlier held in the Bhilai Steel Plant. ....

Supreme Court : In Transfer Petition (civil) 8 of 2000 A.K. Bindal & Anr. Vs Union of India & Ors. On 25/04/2003, Bench: S. Rajendra Babu & G.P. Mathur, it was held :

*Page 16 : ..... a considerable amount is to be paid to an employee ex-gratia besides the terminal benefits in case he opts for voluntary retirement under the Scheme and his option is accepted. The amount is paid not for doing any work or rendering any service. It is paid in lieu of the employee himself leaving the services of the company or the industrial establishment and forgoing all his claims or rights in the same. It is a package deal of give and take. That is why in business world it is 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. After the amount is paid and the employee ceases to be under the employment of the company or the undertaking, he leaves with all his rights and there is no question of his again agitating for any kind of his past rights, with his erstwhile employer including making any claim with regard to enhancement of pay scale for an earlier period. If the employee is still permitted to raise a grievance regarding enhancement of pay scale from a retrospective date, even after he has opted for Voluntary Retirement Scheme and has accepted the amount paid to him, the whole purpose of introducing the Scheme would be totally frustrated.*

The above judgment makes it clear that no claim whatsoever can be entertained after the employee-employer relationship has come to an end. This is applicable for employee as well as employer. The Satyanarayana case (supra) has considered this verdict and held that any statutory due is still payable by the employer, even if not mentioned in the VRS circular.

Gauhati – Oil India Ltd Vs Dilip Kumar Goswami, (2000)IILLJ415 Gau.

"The employer cannot prescribe any term and condition in order to restrict future avocation of an employee after retirement.

" 13. The clarification given by the Department of Public Enterprises in Column-5 shows that the Management of Public Enterprises have been asked to exercise its own managerial discretion and prudence while disposing of the cases of voluntary retirement. The clarification further requires the Management to invoke the powers of office memorandum

dated December 14, 1982, January 25, 1998 and June 23, 1998 (sic) issued by Department of Public Enterprises if they find that an employee seeking voluntary retirement has opted for a job in any other Public Sector Undertaking. This condition also appears to be contrary to the provisions of Section 27 of the Indian Contract Act. An employee going on voluntary retirement and not taking any job in any Public Sector Undertaking will be entitled to full benefits under the Voluntary Retirement Scheme, but the said benefits will be restricted to certain amounts only if such employee takes fresh employment after retirement. The clarification given to this effect cannot be said to be in keeping with the spirit of the provisions of Section 27 of the Indian Contract Act. The Company while disposing of a request for voluntary retirement cannot discriminate in respect of benefits to which an employee is entitled to on such retirement on consideration that the employee concerned was going to take over a job in some other company. A bare reading of the guideline/circular shows that this was issued without any authority of law and against the basic principles behind 'voluntary retirement'."

Hydrabad division bench– legalcrystal.com/436364 S.Rami Reddy Vs Vice-Chairman and Managing Director, Andra Pradesh State Irrigation Development Corporation Limited, 2003(4)ALD609. There is no ban on VRS optees to join any other PSU in open competition

"31. According to the learned counsel, Clause 8 of G.O. Ms. No. 16, dated 22-3-2001, which requires the identified employee to give an undertaking to the effect that he would not seek re-employment in other Government undertakings, is arbitrary and illegal for it violates the provisions of Articles 16 and 21 of the Constitution of India, and in support of this submission, he placed reliance on the judgement of the Gauhati High Court reported in Oil India Ltd. v. Dilip Kumar Goswami, 1999 (7) SLR 494.

76. The effect of the other contention advanced by the learned counsel for the petitioners that the condition in the impugned notice insofar as it mandates the identified employee who opts for VRS to give an undertaking that he shall not be eligible for re-employment in any Government Departments and Public Sector Undertakings, which is in consonance with sub-clause (8) of Clause 8 of G.O. Ms. No. 16, dated 22-3-2001, is arbitrary inasmuch as it takes away their right to livelihood enshrined under Article 21 of the Constitution of India, is also liable to be rejected, inasmuch, the learned single Judge of this Court, having considered this contention, in the above judgement, held thus: In the considered view of this Court, Clause 8(8) of G.O. Ms. No. 16, dated 22-3-2001 suffers from no infirmity. It does not deprive persons, who have opted for Voluntary Retirement Scheme from competing by way of direct

recruitment to any Public Office.

77. It should be noted that the impugned condition only prohibits the petitioners from taking re-employment in Government Departments/Public Sector Undertakings. They are not precluded from taking employment in private organizations or compete by way of direct recruitment to public offices. The apprehension of the petitioners that if they give an undertaking in terms of Clause 8(8) of G.O. Ms. No. 16, dated 22-3-2001, they would be barred from seeking employment in any organization, is misplaced inasmuch as even if they give such an undertaking, they would not waive their fundamental right to equality enshrined under Article 14 and the other fundamental rights guaranteed under Part III of the Constitution of India. If at any future point of time, the petitioners apply for employment and their cases for employment is rejected on the ground of they having undertook not to claim re-employment, are not entitled to claim employment, then they would be at liberty to assail the same."

Supreme court – Gouri Shankar Ghosh Hazara Vs Hindustan Copper, 8-5-2001, A VRS optee can join another PSU, he will be eligible for all VRS benefits

> *"It is clear that there was as such no embargo on an employee of a public sector undertaking being employed by another public sector undertaking"*

Calcutta High Court : SAIL allowed and helped a person get a Govt job immediately after VRS in 2002 (same year as petitioner) but, demanded refund from petitioner when the petitioner joined another PSU in open competition

> https://indiankanoon.org/doc/39953577/ ***In Re: Joydeb Nayak vs The State Of West Bengal And Others on 4 June, 2013***
>
> *The fact remains that the writ petitioner was appointed in a higher secondary school, ran and managed by SAIL and SAIL Authorities published a Voluntary Retirement Scheme (VRS) for the teachers to apply and/or opt for it with certain conditions. The petitioner opted such Scheme and he was allowed to have the benefit of the VRS. At the time of taking VRS, he also asked for No Objection Certificate (NOC), as prescribed in Voluntary Retirement Circular and he also made an application for the post of Head Master in the concerned school which was forwarded by the SAIL Authorities to the Respondents. Subsequently, the writ petitioner was selected by the School Service Commission and he was employed as a Head Master of Beghut Jahnabi High School. At that point of time, neither the District Inspector of Schools (S.E.), Burdwan nor any other authority objected such appointment of the writ petitioner as Head Master, who opted and got voluntary retirement from SAIL. It appears that the approval of such appointment was given by the concerned District Inspector of Schools* ***without any objection and/or asking the writ petitioner to refund the amount of VRS to the SAIL***

Authority or any other authority.

Heard the learned Counsel appearing for the parties and considering there submissions very carefully and from the material available on record it appears that the SAIL Authority published VRS which was opted by the writ petitioner and the writ petitioner was allowed to get the benefit of VRS. The writ petitioner's ***application for re-employment was forwarded by the SAIL Authorities****. The writ petitioner was also given no objection certificate. The Respondents-Authorities are aware of the same.* ***In case, the writ petitioner was not entitled to have any employment then and there the Respondents- Authorities could have refused his prayer for absorption or rejected his selection, instead the Respondents-Authorities have allowed the writ petitioner to be appointed*** *as the Head Master of the concerned school and allowed him to continue till the date of his retirement.*

Cases where ban on future employment (by whatever name it is called like confidentiality, non compete, non disclosure, secret formula, special training, undertaking, bond, affidavit, promise etc) were quashed

Delhi High Court Independent News Service Pvt. ... vs Sucherita Kukreti on 25 January, 2019 http://indiankanoon.org/doc/158227135/

(L) The ambit of Article 21 of the Constitution of India ensuring Protection of Life and Personal Liberty to all persons has over the years been expanding. Personal Liberty would include liberty to practice a vocation or profession and being not deprived thereof, notwithstanding any agreement to the contrary and which agreement Section 27 of the Contract Act declares as void.

(M) Similarly, Article 51A of the Constitution of India constitutes a duty of every citizen to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievements. The defendant, as a citizen of India, cannot be restrained from striving towards individual excellence in the profession/vocation of her choice.

Madras High Court V.Purushothaman vs Government Of Tamil Nadu on 17 September, 2002 dealt with condition restricting a person to serve in the same college till retirement http://indiankanoon.org/doc/1367104/

10. … Apart from the fact that imposition of such conditions is likely to affect the right of the citizen of India under Article 19 of the Constitution to carry on his profession in any part of the country, the imposition of a condition to the effect that the person is required to serve in a college for the rest of the service career must be taken to be against the public policy. ….

11. It is no doubt true that at the time he went for his studies, he had ***given the undertaking****. But it has to be remembered that if such an undertaking*

would not have been given at that stage, possibly the first and second respondents would not have permitted the petitioner to go and join the course. 12. For the aforesaid reasons, the condition as imposed by the third respondent is found to be ***most arbitrary and has to be quashed****. ….The writ petition is allowed.*

https://indiankanoon.org/doc/647033/ Wipro Limited vs Beckman Coulter International ... on 11 July, 2006 Equivalent citations: 2006 (3) ARBLR 118 Delhi, 2006 (2) CTLJ 57 Del, 131 (2006) DLT 681

47.....
2) Negative covenants between employer and employee contracts pertaining to the period ***post termination*** *and restricting an employee's right to seek employment and/or to do business in the same field as the employer would be in restraint of trade and, therefore, a stipulation to this effect in the contract would be* ***void****. In other words, no employee can be confronted with the situation where he has to either work for the present employer or be forced to idleness;*
4) The question of reasonableness as also the question of whether the restraint is partial or complete is not required to be considered at all whenever an issue arises as to whether a particular term of a contract is or is not in restraint of trade, business or profession.

https://indiankanoon.org/doc/65671346/ M/S Stellar Information ... vs Mr Rakesh Kumar & Ors

11. Mr Santhalia further submitted that the Defendants could not be restrained from carrying on their business or approaching the customers as any such restrictive covenant in the Agreements would be void by virtue of Section 27 of the Indian Contract Act, 1872. In support of its contention, he relied on the following decisions:
(i) The decision of the Madras High Court in Lister Technologies Private Limited v Mukundhan Dakshinamurthi & Ors.: 215(5) CTC 830.
(ii) The decision of a Coordinate Bench of this Court in Ambiance India Pvt. Ltd. V. Shri Naveen Jain: 122 (2005) DLT 421.
(iii) The decision of the Bombay High Court in VFS Global Services Private Limited v. Mr Suprit Roy: 2008 (118) FLR 419.
(iv) American Express Bank Ltd. v. Ms. Priya Puri: 2006 (110) FLR 1061.

Gujarat – Lalbhai Dalpatbhai & Co Vs Chittaranjan Chandulal Pandya, AIR 1996 Guj Restriction on employee after termination of employment is not valid. Employee does not have any bargaining power and has to sign on dotted line.

"9....If it is not going to benefit the employer in any legitimate manner, the court would not injunct the employee from exercising his skill, training and knowledge merely because the employee has agreed to it"

Gujarat – Sandhya Organic Chemicals P Ltd Vs United Phosphorous Ltd, AIR 1997 Guj 177. as per contract act, service covenant beyond service period is not valid.

"16....The supreme court has also ruled that under section 27 of the contract act, a service covenant beyond the termination of the service is void"

Supreme court – Superintendence Company of India Vs Krishnan Murgai, AIR 1980 SC 1717. Post service conditions are not valid. Even partial condition is not valid. Inequality of bargaining power with employees and harsh and oppressive conditions make the contract invalid.

"29.A contract, which has for its object a restraint of trade, is prima facie void....whether the restraint was general or partial, unqualified or qualified, if it was in the nature of a restraint of trade, it was void.

32.....If the agreement puts a restraint even though partial, it was void and therefore, the contract must be treated as one which can not be enforced.

53....Not a Indian Decision has been brought to our notice where an injunction has been granted against an employee after the termination of his employment.

58....If the covenant is to operate after the termination of services, or it is too widely worded, the court may refuse to enforce it.

59....there is inequality of bargaining power between the parties, indeed no bargaining may occur because the employee is presented with a standard form of contract to accept or reject... "

Supreme court – Moti Ram Deka Vs East Frontier Railways, AIR 1964 SC 600. If a contract is not valid as per contract act, the fact that it was signed by the employee is of no avail as decided by **7 judge constitutional bench**.

"31....it is well known that if the contract is void, as for instance, under section 23 of the Indian contract act, the plea that it was executed by the party would be to no avail...."

Supreme court – Niranjan Shankar Golikari Vs Century Spinning, AIR 1967 SC 1098, negative covenant in a service agreement is void. Negative covenant after termination of contract is not valid. https://indiankanoon.org/doc/452434/

"This was a case of a negative covenant not to serve elsewhere for three years after the termination of the contract. In this case the court applied the test of what was reasonable for the protection of the plaintiffs' interest. It was also not a case of the employee possessing any special talent but that of a mere canvasser. This decision, however, cannot assist us as the negative covenant therein was to operate after the termination of the contract.

*Herbert Morris v. Saxelby(3) and Attwood v. Lamont(4) are also cases where the restrictive covenants were to apply after the termination of the employment. In Commercial Plastics Ltd. v. Vincent(5) also the negative covenant was to operate for a year **after the employee left** the employment and the court held that the restriction was **void** inasmuch as it went beyond what was reasonably necessary for the protection of the employer's legitimate interests.*

*The result of the above discussion is that considerations against restrictive covenants are different in cases where the restriction is to apply during the period **after the termination of the contract** than those in cases where it is to operate during the period of the contract. "*

Supreme court – Percept D Mark (India) Ltd Vs Zaheer Khan, AIR 2006 SC 3426, any condition after termination of contract will be invalid.

"55. On the pleading contained in the arbitration petition, there can be no escape from the conclusion that what the appellant sought to enforce was a negative covenant which, according to the appellant, survived the expiry of the agreement. This, the High Court has rightly held is impermissible as such clause which is sought to be enforced after the term of the contract is prima facie void under section 27 of the contract Act"

Supreme Court of India : Bank Of India & Ors vs O.P. Swarnakar Etc on 17 December, 2002, Bench: H Sema, S Sinha on the topic of VRS

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

The above judgement makes it clear that the provisions of contract act are applicable in VRS.

Supreme Court of India L.I.C. Of India & Anr vs Consumer Education & Research ... on 10 May, 1995 ; 1995 AIR 1811, 1995 SCC (5) 482

58. .... Imposition of conditions including the one struck down by the High Court are, therefore, unconstitutional and Impermissible.

Therefore, the imposition of condition of refund of VRS ex-gratia is liable to be struck down.

In Madras High Court, in R.Babu vs Ttk Lig Ltd on 1 March, 2004, The Hon'ble Mr.Justice K.GOVINDARAJAN and The Hon'ble Mr. Justice N.KANNADASAN O.S.A.No.6 of 2003 and CMP No.693 of 2003, http://indiankanoon.org/doc/447682/ it was held

"6. ….. submission viz., violation of Section 27 of the Indian Contract Act with

regard to the negative covenants of the agreement dated 1.5.1990. Even though the learned counsel for the respondent has contended that the relevant portion in Krishan Murgai's case relating to the violation of Section 27 of the Indian Contract Act was delivered by the learned single Judge, viz., His Lordship A.P.SEN, J., who according to him dissented with the majority of the two other learned Judges of the Bench and as such, the same is not applicable, we do not agree with the said argument. A perusal of the said judgment discloses that no injunction can be granted against an employee after the termination of his employment, restraining him from carrying on a competitive trade. In fact, even though the above proposition of law was laid down by the learned Judge, finally all the three learned Judges held that the judgment of the Delhi Bench was correct and dismissed the appeal. Hence, the judgment of His Lordship A.P.SEN, J., cannot be construed as a dissenting judgment. It is a case in which two learned Judges of the Bench did not dealt with the question while the third learned Judge dealt with and also declared the law. The dictum of His Lordship A.P.SEN, J., is ***undoubtedly the law declared by the Supreme Court as contemplated by Article 141 of the Constitution of India and it shall be binding on all Courts within the territory of India*** *and there is no escape from that conclusion."*

In Madras High Court http://indiankanoon.org/doc/16422195/ Unknown vs M/S.Secan Invescast (India) ... on 1 February, 2013, the division bench has dealt with restrictive covenants extensively citing more than 5 judgements of the SC. As per this judgement, the condition not to serve any other PSU for life time in any part of the world is absolutely not permitted as it is not reasonable.

*"20. As per various judicial pronouncements, the reasonable restraint is permitted and does not render the contract void ab initio. Reasonable restrictions can be placed in the following ways:- 1.**Distance:** suitable restrictions can be placed on employee to not practice the same profession within a stipulated distance, the stipulation being reasonable. **2.Time limit**: if there is a reasonable time provided in this clause then it will fall under reasonable restrictions. 3.**Trade secrets**: The employer can put reasonable restrictions on the letting out of trade secrets. 4.**Goodwill**: There is an exception under section 27 of the Indian Contract Act on the distribution of goodwill.Reasonableness of restraint depends upon various factors, and the restraint in order to prevent divulgence of trade secrets or business connections has to be reasonable in the interest of the parties to ensure adequate protection to the covenantee.*

45. Referring to the decisions of ((1895) 2 Q.B. 315 Robb. Vs. Green, AIR 1967 SC 1098 Niranjan Shankar Golikari case and AIR 1995 SC 2372 -

*M/s.Gujarat Bottling Co.Ltd. Vs. Coca Cola Co. and others, the learned single Judge rightly held that the **negative covenant of the agreement can be enforced only during the period of contract and that the same cannot be enforced after the expiry of the agreement period**. We do not find any error or illegality warranting interference with the order of the learned single Judge and this appeal is liable to be dismissed."*

Some more notable case laws related to Employee's undertaking:

1. Whether restraint is general/specific or totally /partially qualified / unqualified, if it was extending beyond the term of services – it is void. (Madub Chunder Vs. Rajcoomar Doss, (1874) 14 Beng LR 76 at pp.85-86)
2. Former employer seeking to enforce an agreement to restrain the employee from adopting and using any of the processes invented by the former employer in a subsequent employment is void. Reason being an employee cannot be restrained from using knowledge which he gained during the course of his previous employment forever. (M/s. Sociedade de Fomento Indl. Ltd Vs. Ravindranath Subraya Kamath, AIR, 1995, Bom 158)
3. Unclear, obscure, unreasonable and uncertain confidential negative covenants are unenforceable. (Polaris Software Lab Ltd., Vs. Suren Khiwadkar, 2004 I LLJ 323 : 2003 (3) Mah.L.J. 557 (Mad. HC)

Time Barred Claim

The Claim of SAIL is time barred as per limitation act which allows only 3 years to make the claim from the date of breach of contract (Aug 2007). So, the claim is time barred.

The Limitation Act, 1963, PART II - Suits relating to Contracts, in THE SCHEDULE: PERIODS OF LIMITATION [Sections 2 (j) and 3] "27. **DESCRIPTION OF SUIT :** For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency. **PERIOD OF LIMITATION:**Three years. **TIME FROM WHICH PERIOD BEGINS TO RUN** : When the time specified arrives or the contingency happens".

In this regard, the High Court of **Delhi** in Satender Kumar Vs Municipal Corporation of Delhi, Arb P No 253/2009 held

"16.(i)Limitation commences when the cause of action accrues/arises

(v)No fresh period of limitation can arise simply because letters and reminders are written time and again, attempting to keep the claim alive, although the claim by virue of Article 18 of the Limitation Act, has clearly become time barred."

IN THE HIGH COURT OF DELHI AT NEW DELHI CM(M) No.28 /2014, SH. ROHIT

SHARMA AND ANR. vs NTPC LTD.

> *10. In the present case, since the breach on behalf of the petitioner no.1/defendant no.1 becomes clear when the respondent/plaintiff wrote its letter dated 19.6.2009 accepting the resignation while simultaneously refusing to waive the bond amount, the breach on the part of the petitioner no.1/defendant no.1 with respect to the service bond thus specifically arose on 19.6.2009. The cause of action once it arose on 19.6.2009, **suit had to be filed within three years** i.e on or before 19.6.2012. The suit however, as stated above, was only filed on 5.6.2013 i.e beyond three years limitation period and the suit is therefore clearly barred by limitation.*

As per the above verdict, having come to know the breach of contract in 2008, SAIL must have filed the recovery suit by 2011. As it was not done till 2016, it is a time barred claim.

No Loss suffered by breach of contract

As SAIL has not suffered any loss due to my not refunding the VRS Ex-gratia, SAIL can not claim any compensation. Due to my VRS SAIL gained Rs 2 crores. Moreover, my ex-gratia was not paid from SAIL money.

The Contract act section 73. "Compensation for loss or damage caused by breach of contract.- When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach."

In this regard, the **Kerala** High court has held in State of Kerala Vs United Shippers and Dredgers Ltd, 1982KLJ430.

> *"7...If the breach has not resulted in any harm, loss or damage to the other party, the question of recompensating him or restoring to him something he has lost would not arise.*
>
> *8.....section 75 would necessarily indicate that the party who complains of a breach must have really suffered some loss or damage apart from being faced with the mere act of breach of contract....If in any case the breach has not resulted in or caused any loss or damage to a party, he cannot claim compensation"*

Madras High Court, Toshniwal Brothers (P) Ltd. vs Eswarprasad, E. And Others on 18 January, 1996 https://indiankanoon.org/doc/1777318/

> *"20 ..... In my view, the decisions of the Apex Court referred to above would go to show in **most unmistakable terms and force** that what has been dispensed with under the provisions of S. 74 even in a case to which it applies is the proof of actual loss or damage, and it **does not justify the award of compensation whether a legal injury has resulted in consequence of the breach or not since compensation is only awarded to make good the loss or damage** which naturally arose in the usual course of things, or which the parties knew when they made the contract, to be likely to result from the breach."*

Madras High Court, Toshniwal Brothers (P) Ltd. vs Eswarprasad, E. And Others on 18 January, 1996 https://indiankanoon.org/doc/1777318/ (many supreme court verdicts cited in it)

> *"20 ..... In my view, the decisions of the Apex Court referred to above would go to show in **most unmistakable terms and force** that what has been dispensed with under the provisions of S. 74 even in a case to which it applies is the proof of actual loss or damage, and it **does not justify the award of compensation whether a legal injury has resulted in consequence of the breach or not since compensation is only awarded to make good the loss or damage** which naturally arose in the usual course of things, or which the parties knew when they made the contract, to be likely to result from the breach."*

VRS Ex-gratia is not a loan, but paid only to avoid future salary expenses

legalcrystal.com/935242 Karnataka High Court K Ajitkumar Gadiyar vs Corporation Bank A Body ... on 10 August, 2011

> *Ex gratia payment. Payment made by one who recognizes no legal obligation to pay but who **makes payment to avoid greater expense** as in the case of a settlement by an insurance company to avoid costs of suit. A payment without legal consideration.*

External Debt is not a misconduct

Failure to pay debt is not itself misconduct and creditors should not approach employer as he is not a debt collecting agency: R.V.Owen, 1850(15) QB476:117 Eng 539(543). The same view has been expressed in Andhra High court, http://indiankanoon.org/doc/50355582/ in Dasari Srinivas vs The Dy.General Manager, decided on 31 July, 2014, Writ Petition 4860 OF 2003 in which the bank terminated an officer for external debt. AS per this judgment, SAIL could not have written to vigilance dept of another company for recovery of their dues.

Disappearance of cause of action

Supreme Court of India has held in Shipping Corporation Of India Ltd vs Machado Brothers & Ors on 25 March, 2004 in Appeal (civil) 1855-1856 of 2004 http://indiankanoon.org/doc/1968235/ "*we are of the opinion that continuation of a suit which has become infructuous by disappearance of the cause of action would amount to an abuse of the process of the court and interest of justice requires such suit should be disposed of as having become infructuous.*".

As I have been dismissed from HAL, the cause of action (refund of Ex-gratia on joining another PSU) has automatically disappeared.

DPE circular is illegal-Making distinction based on arbitrary date

The condition mentioned in the DPE circular dated 6-11-2001, based on which the illegal condition of ban on future employment was inserted, has mentioned *"4. The employees who have been already released by the PSUs before the date of this OM shall not be covered under this scheme"*. Making such a distinction between retirees based on an arbitrary date and contrary to the aim of the Scheme (to reduce manpower costs) has been quashed by the SC in http://indiankanoon.org/doc/1416283/ D.S. Nakara & Others vs Union Of India on 17 December, 1982, 1983 AIR 130, 1983 SCR (2) 165 by 6 judge bench stating

> *"We are satisfied that by introducing an arbitrary eligibility criteria: 'being in service and **retiring subsequent to the specified date**' for being eligible for the liberalised pension scheme and thereby dividing a homogeneous class, the classification being not based on any discernible rational principle and having been found wholly unrelated to the objects sought to be achieved by grant of liberalised pension and the eligibility criteria devised being **thoroughly arbitrary**, we are of the view thatthe eligibility for liberalised pension scheme of being in service on the specified date and retiring subsequent to that date' in impugned memoranda, Exhibits P-I and P-2, violates Art. 14 and is **unconstitutional and is struck down**."*

Mediclaim is a fundamental right

The stand that Mediclaim is not a fundamental right is contrary to law as per the below verdicts: The Hon'ble Supreme Court of India in L.I.C. Of India & Anr vs Consumer Education & Research ... on 10 May, 1995 (1995 AIR 1811, 1995 SCC (5) 482) http://indiankanoon.org/doc/1657323/ has held

> *It was, therefore, held that "the right to health, medical aid and to protect the health and the vigour of a worker while in service or **post retirement** is a fundamental right*

under Article 21 read with Articles 39(e), 41, 43, 48-A of the Constitution of India and ***fundamental human right*** *to make the life of workmen meaningful and purposeful with dignity of persons". In Regional Director, ESI Corporation v. Francis De Costa, 1993 supp (4) SCC 100 at 105, the same view was stated.*

It has been repeatedly held by the SC that pension is not a bounty, but is a right, which can not be denied under any circumstances. Such a fundamental right can not be taken away by the whims and fancies of individuals without following the due process of law, without any provision in the rules and without any approval.

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA CWP No. 4621 of 2011 in Union of India Vs. Shankar Lal Sharma the court even awarded costs on the Govt who denied post retirement medical benefits to retired employees:

52. It is the prime responsibility of the State Government to protect health and vigour of ***retired*** *Government officials, this being their fundamental right under Article 21, read with Articles 39(3), 41, 43, 48A of the Constitution of India.*

SAIL interpreted the rules to their own advantage and discriminated only the applicant to deny the Mediclaim benefits which is the only post retirement benefit by the company, worth a small sum of Rs 5000 per year, without there being any provision in the rules. The Supreme court in Sudhir Chandra Sarkar vs Tata Iron & Steel Co. Ltd. And ... on 27 March, 1984 : 1984 AIR 1064, 1984 SCR (3) 325 http://indiankanoon.org/doc/119736/ has held

"Pension and gratuity .... not a gratuitous payment, it has to be earned by long and continuous service.

Can such social security measures be denuded of its efficacy and enforcement by so interpreting the relevant rules that the workman could be denied the same at the absolute discretion of the employer notwithstanding the fact that heor she has earned the same by long continuous service ?

Absolute discretion uncontrolled by guidelines which may permit denial of equality before law is the anti-thesis of rule of law. Absolute discretion not judicially reviewable inheres the pernicious tendency to be arbitrary and is therefore violative of Art. 14. Equality before law and absolute discretion to grant or deny benefit of the law are diametrically opposed to each other and cannot co-exist."

An officer took the law into his own hands and punished the applicant without following any norms, which is a clear case of misuse of power.

Denial of Pension benefits (Post retirement Medical Insurance in which employees bear 50% cost)

Srinagar, May 5: The Central Administrative Tribunal (CAT) in Srinagar has observed as "arbitrary, illegal, and sin" the withholding of retirement benefits of employees for prolonged periods, saying it was out of sync with the constitution.

“Withholding of retirement benefits of retired employees for years together is not only illegal and arbitrary but a sin, if not an offence,” a bench of M S Latif said in a judgment passed in response to a plea by 64-year-old Kaka Jee Koul, who superannuated on March 31, 2020, as a Sub Inspector in the Home Department.

The tribunal held that depriving an employee of his retirement benefits for a prolonged period was against the “concept of social and economic justice which is one of the founding pillars of our constitution”.

“In our system, the constitution is supreme but the real power vests in the people of India as the constitution has been enacted for the people by the people, and is of the people,” the CAT said.

It said that a public functionary cannot as such be permitted to act in a way that the law would not countenance causing harassment to a common man in particular when the person subjected to harassment had been their employee.

The tribunal said this while relying on the observation of Lord Hailsham in Cassell and Company Limited versus Broome (1972 AC 1027) and of Lord Delvin in Rookes versus Barnard and others (1964 AC 1129) as also the Apex Court in the Lucknow Development Authority versus M K Gupta JT 1993(6) SC 307.

It also cited a Supreme Court’s judgment titled Mukti Nath Rai versus State of Uttar Pradesh (1992 (2) SCC 644), wherein the apex held that “in these hard days it is essential that payment of pension should begin promptly”.

Supreme Court of India Deokinandan Prasad vs State Of Bihar & Ors on 4 May, 1971 Equivalent citations: 1971 AIR 1409 https://indiankanoon.org/doc/1566/

> *pension is not to be treated as a bounty payable on the sweet will and pleasure of the Government and that the right to superannuation pension including its amount is a valuable right vesting in a Government servant*

Some Useful articles about restraint of trade after termination of employment.

http://www.mondaq.com/india/x/295626/employee+rights+labour+relations/Contract+Of+Service+And+Restrictive+Covenants

http://www.rna-cs.com/validity-of-non-compete-clause/

http://lexquest.in/extent-validity-non-compete-clause-india/

http://www.lawyersclubindia.com/articles/Non-Compete-Clauses-and-The-Indian-Contract-Act-1972-4621.asp

http://www.legalservicesindia.com/article/article/exceptions-of-agreement-in-restraints-of-trade-with-reference-to-indian-and-english-case-laws-1753-1.html

Judgment Links

Varaprasad case - Notice period applicable in VRS - SC

http://indiankanoon.org/doc/32226972/

Notice period has to be paid if mentioned in rules or appointment order

Dismissal without notice period can not be rect...

notice period salary not paid-dismissal is ille...

Shipping Corporation - No suit possible after disappearance of cause of action - SC

http://indiankanoon.org/doc/1968235/

Gowri Shankar Hazara - A VRS optee can join another PSU - held by SC

Hindustan Copper Judgment.docx

News screen shot - VRS can join another PSU.docx

Emplyer can not recover due unless triparty agr...

Invalid contract-SC.pdf

Lalbhai_Dalpatbhai_&_Co._vs_Chittaranjan_Chandu...

negative condition in employment-GUJ HC.pdf

Niranjan_Shankar_Golikari_vs_The_Century_Spinni...

no action possible after period of limitation S...

Oil_India_Ltd._vs_Dilip_Kumar_Goswami_on_23_Jun...

Outside evidence not permissible in domestic en...

PNB VRS refund rejoin SC 2003.pdf

post employment restrictions not valid.PDF

Sandhya_Organic_Chemicals_P._Ltd._..._vs_United...

SBI-VRS-SC.PDF

State_Bank_Of_India_And_Ors._vs_K.P._Narayanan_...

Superintendence_Company_Of_India_..._vs_Krishan...

time barred claim.PDF

Unconstitutional conditions invalid-SC.PDF

Unreasonable condition of recovery on VRS-Kar H...

Unreasonable undertaking-SC.PDF

No rights after VRS-Del HC.pdf

pension discrimination is not correct-SC.pdf

conditions after termination-SC.pdf

VRS Ex-gratia arrears on pay revision.pdf

Ex Gratia defined by Kar HC

HC-VRS refund and reinstate.PDF

Judgement Div Bench Madras. Referred many SC judgments

Post termination conditions not valid-Madras HC...

Post restraint conditions violate constitution Article 19(1)(g) by restricting employment

Restraint violates 19-1-G-Bombay HC.pdf

Restraint after termination is not valid :

Restrain after termination-Bom HC.pdf

An undertaking not to serve competitor after resignation is not valid :

Undertaking to serve not valid-Madras HC.PDF

Very useful article by SC lawyer regarding Contract act section 27

Kami Export - Negative Covenant in Contract of ...

Hi-lighted the relevant sentences in the below judgments which all hold that no employer can restrict an employee after termination of employment

In the below case an employee gave an affidavit that he will not join a competitor - held not valid.

Affidavit not to work elsewhere-invalid CAL HC.pdf

All the below cases hold the same view

Negative conditions after expiry of contract-Bo...

Training Bond-Not valid-Jet airways-Bom HC.pdf

Condition after termination not valid-Delhi HC.PDF

The below cases also hold the same view :

Madhub Chunder v. Rajcoomar Doss, (1874) 14 Beng LR 76 at pp. 85-86

(Taprogge Gesellschaft MBH v. IAEC India Ltd., AIR 1988 Bom 157

(M/s. Sociedade de Fomento Indl. Ltd. v. Ravindranath Subraya Kamath, AIR 1995 Bom 158

Gujarat Bottling Company Ltd. vCoca Cola Company, AIR 1995 SC 2372

Parasulla Mallick v. Chandra Kanta Dass, AIR 1918 Cal 546

Percept D'Markr (India) Pvt. Ltd vs Zaheer Khan & Anr on 22 March, 2006

Pepsi Foods Ltd. And Others vs Bharat Coca-Cola Holdings Pvt. ... on 30 July, 1999

https://indiankanoon.org/doc/721210/

American Express Bank Ltd. vs Ms. Priya Puri on 24 May, 2006 Equivalent citations: (2006) IIILLJ 540 Del https://indiankanoon.org/doc/445135/

Wipro Limited vs Beckman Coulter International ... on 11 July, 2006 Equivalent citations: 2006 (3) ARBLR 118 Delhi, 2006 (2) CTLJ 57 Del

Godrej Industries Ltd vs 7 Conrad Anthony Rebello on 6 October, 2009 Bench: Anoop V.Mohta

Hemal vs State on 27 December, 2010 Author: Harsha Devani, https://indiankanoon.org/doc/1042794/

Suresh Dhanuka vs Sunita Mohapatra on 2 December, 2011 Author: A Kabir SC

https://indiankanoon.org/doc/1050877752/

https://www.linkedin.com/pulse/employment-bond-its-validity-india-supriya-pawar

CASE LAWS:

1. The Supreme Court in Niranjan Shankar Golikari v The Century Spinning And Mfg Co. cited a Calcutta High Court judgment with approval. It provides in clear terms that: "An agreement to serve a person exclusively for a definite term is a lawful agreement, and it is difficult to see how that can be unlawful which is essential to its fulfilment, and to the due protection of the interests of the employer, while the agreement is in force." Thus, it implies that the restrictive covenants are valid for the duration of employment and not violative of section 27 of the Indian Contract Act, 1872. The validity of the restrictive covenants comes into question if they extend to post-termination scenarios.

2. After the perusal of various Supreme Court judgments, the Madras High Court in Toshnial Brothers (Pvt) Ltd v E Eswarprasad & Ors held that the existence of a legal injury accruing as a consequence of breach is a pre-requisite for claiming liquidated damages in accordance with section 74 of the Indian Contract Act, 1872. In other words, the employer must show a legal injury automatically resulting from the breach of the commitment to serve for a minimum period.

3. In Pepsi Foods Ltd v Bharat Coca-Cola Holdings (P) Ltd, the Delhi High Court held that a negative covenant that restrained employees from undertaking employment for 12 months after they left the plaintiff's service amounted to a violation of Section 27. It held that such contracts are unenforceable, void and against public policy, and that what the law prohibits cannot be permitted by an injunction.

4. Fertiliser and Chemical Travancore Pvt. Ltd v. Ajay Kumar and Others- It has been held that in the said case that three trainees were selected by the employer who signed a bond stating that they would obtain two years of training in the company and after the training they

will put in at least five years of service in the company. In the event of breach of this condition Rs. 10,000 was to be paid as reasonable amount of compensation for the damages to be likely incurred by the employer. The trainee resigned after five months of training. The High Court of Kerala held in this case that though the candidates were selected for training and not for permanent service, it still involved a lot of time, energy and expenses of the employer. The employer will surely suffer loss when a trainee breaks the condition of bond and walks off. The employer is derived of the expected service of a competent person. Breach of bond by the trainee is aspect entailing damages to the employer. Only the quantum of damages needs to be decided.

5. Toshinial Brothers (Pvt.) Ltd v. Eswarprasad- An employee was engaged as Sale engineer; He was contracted for a period of three years however he left the undertaking after serving for 14 months only. In this case it was held that it is not necessary for the employer to prove any post breach damages separately. It is to be kept in mind that the concerned employee was recipient of special favour or concession or training at the cost and expenses wholly or in part of the employer, and the employee has breached the bond. The breach constitutes legal injury resulting to the employer. The High Court also clarified the position that the statutory exception for mitigating the quantum of damages will have no bearing.

6. *Superintendence of Company v. Krishan Mugai-* In this case, it was held by the court that, if an agreement restricts trade for a party in a future event to carry on a trade then such nature agreement is prima facie void. A contract of this nature is prima facie void but becomes binding and valid if it can be proved that it is necessary from the point of view of parties and also to the community. Such interests are valid as they take care of the interest of the employer and do not cause any undue hardship to the employee, who will receive a wage or salary for the period in question.

7. In Shree Gopal Paper Mills Ltd v Surendra K Ganeshdas Malhotra the Bombay High Court observed that there was no proprietary interest of the employer in need of protection as a covenant that mandated the employee to serve for a period of 20 years was held to be oppressive and one-sided. Further, the contract must not be too heavily one-sided such that it loses the character of a contract promoting trade and attains the character of a contract in restraint of trade. The Bombay High Court refused to grant injunction in favour of the company on the ground that the negative covenant was one-sided and unreasonable.

CONCLUSION:

From the above analysis, it is clear that the restrictions that operate during the period for which the employee has agreed to serve would usually not amount to a restraint in of trade. This comes with caveat that the covenants are not one-sided, do not impose unreasonable fetters and are not oppressive. However, restrictions operating subsequent to termination would be considered invalid and in breach of section 27 of Indian Contracts Act, 1872. Further, for computation of liquidation damages to be awarded in case of breach of employment bond, the court would pay due regard to the guidelines mentioned above and would be unlikely to grant specific performance of the contract. In addition, the bonds would also be valid with respect to trainees if the employer proves that it has suffered a legal injury resulting from the trainee's breach of the bond.

The employment bond is considered to protect the interest of the employer. But it also looks after the situation of the employee also. In this regard, many Courts found that this agreement must be reasonable in nature to safeguard both sides at the same time without causing any injustice to any party. And in the case of a breach of the agreement, the compensation needs to be reasonable and proportionate to the damage caused to the employer.